418-98

THERESE M. WILLIAMS,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
NORTH HUNTERDON-VOORHEES REGIONAL HIGH SCHOOL DISTRICT, HUNTERDON COUNTY,	:	DECISION
RESPONDENT.	:	
	<u>:</u>	

SYNOPSIS

Petitioner, tenured Coordinator of Special Services, alleged that the Board's elimination of her position was in bad faith and violative of her tenure and seniority rights.

ALJ granted the Board's motion for summary decision as the ALJ found no evidence, besides conjecture, existed in the record to support a conclusion that improper considerations were determinative factors of the RIF decision. Thus, the Board implemented the RIF properly.

Commissioner reversed the ALJ's grant of summary decision to the Board as he determined, contrary to the characterization of the ALJ and the Board, that petitioner advanced sufficient evidentiary proofs of the existence of genuine disputes with respect to material facts, thereby precluding resolution of this case as a matter of law. Commissioner remanded the matter to OAL for an evidentiary hearing on all of petitioner's claims, including her claims of entitlement to the assistant superintendent and supervisor positions and resolution of her outstanding Motion for Leave to Amend.

SEPTEMBER 24, 1998

OAL DKT. NO. EDU 11536-97 AGENCY DKT. NO. 459-11/97

THERESE M. WILLIAMS,	:	
PETITIONER,	:	
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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of petitioner and those of the Board were filed within the time prescribed by *N.J.A.C.* 1:1-18.4.

Petitioner's exceptions maintain that the Administrative Law Judge (ALJ) clearly erred in granting summary decision to the Board in this matter. With respect to the abolishment of her position, she advances that, contrary to the determination of the ALJ, her certification in this matter clearly establishes that there is "more than sufficient evidence to raise a genuine factual issue as to whether the abolition of [her] position was solely a cost-saving measure as argued by the Board, or a pretext for firing [her] without the expense and inconvenience of tenure charge proceedings. (Petitioner's Exceptions at p. 3) Even more compelling substantiation of the inappropriateness of summary decision herein, petitioner argues, is that the initial decision fully neglected to address her claims that, in the wake of the RIF, she had tenure and seniority entitlement to the newly created position of Assistant Superintendent of Pupil Personnel/Curriculum and the position of Supervisor of Guidance and Special Services. A comparison of the job descriptions for these positions vis-à-vis her credentials and prior responsibilities, petitioner maintains, unambiguously substantiates her assertions of entitlement to either of these positions. (*Id.* at p. 4) Finally, she advances that the ALJ failed to rule on her motion to amend her petition to add a recently vacated assistant principal position to her claim of entitlement list. Petitioner, therefore, asks that the Commissioner reverse the initial decision and remand this matter for plenary hearing.

The Board's exceptions request that the Commissioner adopt the initial decision and further urge that petitioner's claims in their entirety be dismissed along with her Motion for Leave to Amend. Specifically the Board seeks an order declaring that

> (1) the reduction in force resulting in the elimination of Petitioner's former position as Coordinator of Special Services was proper; (2) Petitioner is not entitled to the position of Assistant Superintendent of Curriculum/Pupil Personnel Services; and (3) Petitioner is not entitled to the position of Supervisor of Guidance and Special Services. Further, as Petitioner is not entitled to the position of Assistant Principal, the Board request[s] that Petitioner's Motion for Leave to Amend the Petition to add a claim to said position be denied. (Board's Exceptions at p. 2)

Upon his independent and careful review of the record, the Commissioner is compelled to reverse the ALJ's grant of summary decision to the Board in this matter as he determines, contrary to the characterization espoused by the ALJ and the Board, that petitioner has advanced sufficient evidentiary proofs of the existence of genuine disputes with respect to material facts, thereby precluding resolution of this case as a matter of law. *Brill, supra.*¹ As such, the Commissioner directs that this matter be remanded to the OAL for an evidentiary

¹ It is noted that on Page 2 of the initial decision the ALJ stated that the parties in this matter had filed cross-motions for summary decision. In actuality, the Board filed for summary decision and petitioner filed a cross-motion to amend her petition.

hearing on all of petitioner's claims, including her claims of entitlement to the assistant superintendent and supervisor positions and resolution of her outstanding Motion for Leave to Amend.²

Accordingly, the within initial decision is reversed and this matter is remanded to the OAL for plenary hearing.³

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

SEPTEMBER 24, 1998

² Subsequent to the issuance of the within initial decision, the Board filed a motion with the ALJ requesting sealing of the record with respect to certain exhibits, submitted by petitioner with her June 24, 1998 Certification, which the Board asserts contains confidential information regarding special education services provided to several students in the District which is protected by the Individuals with Disabilities Act, the Family Educational Rights and Privacy Act of 1974, and the New Jersey Administrative Code. It is noted that in response to such motion, the ALJ advised the parties that, as her decision in this matter had been rendered, inquiries, motions or requests should be directed to the Commissioner of Education. No inquiry from either party with respect to this motion was received by the Commissioner. As such, and in light of his determination in this matter, the Board's motion to the court is being returned to the OAL, with the record of this matter, for resolution.

³ This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.