

SERGIO CALAFIORE, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
UNION COUNTY EDUCATIONAL : DECISION
SERVICES COMMISSION, :
UNION COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed the decision of the respondent, the Union County Educational Services Commission (Commission), to remove him from his position as a Food Services Teacher as the result of a reduction in force (RIF). Petitioner filed his appeal on September 19, 2014, alleging that the RIF was arbitrary, capricious and unreasonable. On April 15, 2015, petitioner filed a motion to amend the petition to include a seniority claim stemming from the same set of circumstances, which alleged that respondent violated his seniority rights under *N.J.S.A.* 18A:28-10 when it assigned a Commission employee to teach a food services class that petitioner was entitled to teach by virtue of his seniority. The Commission thereafter filed a motion for summary decision, which was opposed by the petitioner.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:28-9, a local board of education has the authority to reduce its teaching force for reasons of economy; in this case, the Commission abolished petitioner's position in good faith, in order to save money; because petitioner did not possess the credentials to necessary to teach special education students, there were too few students and a lack of full-time duties to justify petitioner's continued employment; however, the Commission's argument that one of the reasons it terminated petitioner's position was because he did not have the necessary credentials for teaching special education students is somewhat specious as the record shows that petitioner was still teaching special education students after the Commission had notice of his lack of credentials; nevertheless, the petitioner did not hold the proper credentials to teach special education students, and the respondent therefore had the right to remove him from that assignment. The ALJ concluded that the Commission reasonably determined that abolishing petitioner's position would achieve financial savings without any detrimental impact to the students or the school's programs; accordingly, the Commission's decision to abolish petitioner's position was not arbitrary, capricious, or unreasonable under *N.J.S.A.* 18A:28-9. Further, the ALJ found that petitioner's motion to dismiss was filed almost a year after the matter was transmitted to the OAL and, if allowed, would cause undue prejudice to the respondent; accordingly, the ALJ denied petitioner's motion to amend his petition under *N.J.A.C.* 6A:3-1.7.

The Commissioner concurred with the ALJ's conclusion that the Commission's decision to abolish petitioner's position as the result of a RIF was made in good faith, and was not arbitrary, capricious or unreasonable. However, the Commissioner found that – with respect to petitioner's motion to amend the petition – the ALJ abused her discretion under *N.J.A.C.* 1:1-6.2 when she denied petitioner's request to amend his petition. The Commissioner found that the motion to amend was filed seven months after the matter was transmitted to the OAL – not a year after, as the ALJ asserted. Further, the record does not support the ALJ's assertion that the granting of the motion to amend would result in undue prejudice. Accordingly, the Commissioner granted petitioner's motion to amend, and remanded the matter to the OAL for a determination on whether the petitioner is entitled to a position with the Commission by virtue of his seniority rights.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

July 28, 2016

OAL DKT. NO. EDU 12005-14
AGENCY DKT. NO. 223-8/14

SERGIO CALAFIORE, :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner, Sergio Calafiore, and the Union County Educational Services Commission's (Commission) reply thereto. In this matter, the petitioner alleges that the Commission's decision to abolish his position as a result of a reduction in force was arbitrary, capricious and unreasonable.

The petitioner's exceptions substantially reiterated the substance of his submissions at the OAL, recasting the arguments therein to support the contention that the Administrative Law Judge (ALJ) erroneously granted summary decision in favor of the Commission. Specifically, the petitioner maintains that the ALJ wrongfully found that the Commission's decision to abolish his food-services instructor position was not arbitrary, capricious or unreasonable under *N.J.S.A. 18A:28-9*. The petitioner also takes exception to the ALJ's order denying his motion to amend the petition to include a claim that the Commission also violated his seniority rights when it employed another less senior teacher to instruct a food

services class. Therefore, the petitioner asserts that the ALJ erroneously dismissed the petition. In reply, the Commission also reiterated the positions advanced in its submissions at the OAL, stressing that the ALJ properly granted its motion for summary decision and denied the petitioner's motion to amend his position.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons set forth in the Initial Decision – that the Commission's decision to abolish the petitioner's position as a result of a reduction in force was not arbitrary, capricious or unreasonable. The Commissioner finds the petitioner's exceptions unpersuasive, largely reflecting arguments previously raised before the ALJ and taken into account by her in determining that the Commission acted in good faith, and abolished the petitioner's position for valid economic reasons.

With respect to the petitioner's motion to amend the petition, the Commissioner finds that the ALJ abused her discretion under *N.J.A.C. 1:1-6.2* when she denied the petitioner's request to amend his petition. Pursuant to *N.J.A.C. 1:1-6.2*, once a case is transmitted to the OAL, "pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice." In the Initial Decision, the ALJ found that allowing the petition to be amended would cause undue prejudice to the respondent because discovery was complete; the respondent filed a motion for summary decision on the original petition; and "it would be highly prejudicial to respondent to have to address a new claim for relief when it did not have any notice of it for over a year." (Initial Decision at 11). Although there may be cases where a petitioner's request to amend a petition seven months after the matter

is transmitted would result in undue prejudice, the rationale for the undue prejudice to the Commission stated in the Initial Decision is completely inconsistent with the record.

This matter was transmitted to the OAL on September 19, 2014, and on April 15, 2015, the petitioner filed a motion to amend the petition to include a seniority claim stemming from the same set of circumstances that were detailed in the original petition, *i.e.*, the abolishment of his position as a result of a reduction in force.¹ Importantly, when the petitioner filed the motion to amend the petition in April 2015, there was no outstanding motion for summary decision as the Commission did not file its motion for summary decision until June 30, 2015.² Additionally, the Commission concedes in its reply exceptions that it was on notice as early as November 2014 that the petitioner claimed another Commission employee was teaching a food services class that the petitioner was entitled to teach by virtue of his seniority.³ Therefore, the ALJ wrongfully denied the petitioner's motion to amend the petition to include his seniority claim.⁴ In the interest of "efficiency" and "the avoidance of over-technical pleading requirements" the two claims that stem from the same set of circumstances should have been simultaneously adjudicated at the OAL. *N.J.A.C.* 6A:3-1.3(i). Contrary to the Commission's arguments, the 90-day rule contained in *N.J.A.C.* 6A:3-1.3(i) does not limit the ability to amend a petition outside of 90 days, as pleadings may be freely amended at the Judge's discretion as long

¹ Despite the undisputed procedural history, the ALJ states that the motion to amend the petition was filed nearly a year after the matter was transmitted to the OAL, when in fact it was actually filed seven months after the matter was transmitted.

² It also appears from the record that discovery was still ongoing in April 2014.

³ According to the Commission, petitioner's counsel contacted the Commission's counsel on November 18, 2014 and raised the seniority issue, and the parties exchanged a series of correspondence regarding the matter.

⁴ Under *N.J.A.C.* 1:1-12.2, with the exception of specific motions not at issue here, "all motions shall be decided within 30 days of service of the last permitted response". Yet in the instant matter, the ALJ did not decide the petitioner's motion to amend the petition – which was filed in April 2015 – until she issued the Initial Decision on June 16, 2016.

as the amendment does not create undue prejudice. *See, T.F.S., on behalf of minor child, C.M.S. v. Board of Education of the Township of South Brunswick, Middlesex County, et al.*, Commissioner Decision No. 400-05, decided November 2, 2005; *Roberts v. Keansburg Board of Education*, 5 N.J.A.R. 208 (1983).

Accordingly, the petitioner's motion to amend the petition is hereby granted and this matter is remanded to the OAL for a determination as to whether the petitioner is entitled to a position with the Commission by virtue of his seniority rights.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: July 28, 2016

Date of Mailing: July 29, 2016

⁵ Pursuant to P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1), Commissioner decisions are appealable to the Superior Court, Appellate Division.