

SCHILLER, PITTENGER & GALVIN, P.C.

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Attorneys for Plaintiff

TARA FURMANIAK,

Plaintiff,

v.

BAYONNE BOARD OF EDUCATION;
DENIS WILBECK, individually and in his
capacity as a member of the Board of
Education; AVA FINNERTY, individually and
in her capacity as a member of the Board of
Education; and, JOHN NIESZ, individually and
in his capacity as Superintendent of Schools for
the Bayonne Public School District,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY
DOCKET NO.

**COMPLAINT
AND JURY DEMAND**

Plaintiff, Tara Furmaniak, residing in the City of Jersey City, County of Hudson, State of New Jersey, by way of Complaint against the Defendants says:

PARTIES

1. At all times relevant herein, Plaintiff, Tara Furmaniak (hereafter “Plaintiff”), is an employee of the Bayonne Public School District.

2. Defendant, Bayonne Board of Education (hereafter “BBOE”), is an entity organized under the laws of the State of New Jersey and accordingly acts under color of law. The BBOE duties, *inter alia*, is to provide a thorough and efficient system of instruction and care for all who attend the public schools within the district.

3. At all times relevant herein, Defendant, Denis Wilbeck (hereafter “Defendant Wilbeck”), was an elected member of the BBOE and as such is required to abide by all appropriate state and local laws, including the Bylaw Guide as promulgated by the BBOE.

4. At all times relevant herein, Defendant, Ava Finnerty (hereafter “Defendant Finnerty”), was an elected member of the BBOE and as such is required to abide by all appropriate state and local laws, including the Bylaw Guide as promulgated by the BBOE.

6. At all times relevant herein, Defendant, John Niesz (hereafter “Defendant Neisz”), was the Superintendent of Bayonne Public Schools for the BBOE and as such was required to abide by all appropriate state and local laws, including the BBOE’s policy addressing the duties of the Superintendent.

FACTS

7. For nearly ten (10) years, Plaintiff has been employed as a teacher, educational service professional, and school administrator. She is a tenured employee. She holds two Master’s Degrees, is certified as an Administrator, Teacher and Counselor, and holds six (6) NJ Dept. of Education certificates.

8. Plaintiff’s uncle, Mark Smith, did serve as Mayor of the City of Bayonne from November 2008 to July 2014. He ran for re-election in 2014 and lost. The opposing political “slate” running for elected members of the BBOE included Defendant Wilbeck. The Bayonne Teacher’s Association endorsed the opposing mayoral candidate and Defendant Finnerty. That is, in 2014 they were supporting the mayoral candidate who opposed Mark Smith.

9. Plaintiff’s father, Leo Smith, did hold for eight (8) years the position of Business Administrator for Defendant BBOE and worked for the Bayonne Board of Education for forty-

four (44) years. Defendant Finnerty was a political opponent of Leo Smith, who won her respective BBOE seat out-polling Mr. Smith in the November 2018 Board of Education election.

10. In or about 2015, Plaintiff was promoted to the position of Assistant Principal.

11. In 2017 the BBOE conducted a Reduction in Force (“RIF”) due to budget constraints. Plaintiff “bumped” to school counselor and in doing so suffered a reduction in salary of approximately \$65,000.

12. In the summer of 2017, Plaintiff applied for the position of Dean of Students. Plaintiff’s qualifications exceeded those of others who sought same. She did not get the position.

13. In the winter of 2018, Plaintiff applied for the position of Interim/Acting Assistant Principal. The Superintendent at that time, Dr. Michael A. Wanko, did not grant Plaintiff an interview.

14. On or about August 14, 2019, Defendant Niesz was appointed as Superintendent of Schools.

15. As Superintendent, Defendant Niesz is obligated to recommend for Board appointments, assignments, transfers, suspensions, promotions, or dismissals for any and all employees of the BBOE, except those in the office of Board Secretary. Further, the Superintendent acts as the recommending officer for all certificated and non-certificated personnel.

16. Members of the BBOE, pursuant to established laws particularly set forth in the code of ethics, must, *inter alia*:

- * Confine their actions to policy making, planning and appraisal, and help to frame policies and plans only after the Board has consulted those who will be affected by them;

- * Carry out their responsibilities and not to administer the schools, but together with Board members, insure they are well run; and

* Vote to appoint the best qualified personnel accessible after consideration of the recommendation of the chief administrator officer.

17. In the 2019-2020 school year, once again a position for Assistant Principal became available. There were two (2) applicants, one of whom was Plaintiff.

18. Plaintiff has significantly greater work experience, including discharging administrative duties. The other applicant had little or no school administration experience relative to the needs of the open position.

19. Plaintiff had previously served as an Assistant Principal (Woodrow Wilson School), School Counselor, and Teacher. Plaintiff is certified as a teacher, educational service professional, and school administrator. By all measurements, Plaintiff was more qualified than the male who was competing for the job.

20. In or about July 2019, Leo Smith announced he was running as an Independent seeking a position on the BBOE. The election is scheduled for November 2019. Defendant Wilbeck is also running for a position on the BBOE.

21. Prior to Tuesday, August 20, 2019, Plaintiff learned she was the recommended candidate of Defendant Niesz and Assistant Superintendents, Dr. Dennis Degnan and Mr. Kenneth Kopacz, to assume the position of Assistant Principal.

22. On or about August 20, 2019, Defendant Niesz, with the concurrence of two Assistant Superintendents, submitted Plaintiff's name for the open position to the BBOE "hiring committee" occupied by individuals, including Defendants, Wilbeck and Finnerty.

23. At the August 20, 2019, meeting, Defendants, Wilbeck and Finnerty, took exception to Plaintiff being nominated and declared words to the effect that "she was Leo's daughter," "part of the Smith Family," and "we don't want her." Said response was clearly referencing former Business Administrator and political opponents, Leo Smith and Mark Smith.

Wilbeck and Finnerty took action against Plaintiff because of her “intimate association” with her father and uncle.

24. Defendant Niesz, in spite of his duty and obligation to support the best person for a position, did fail to assert his authority and should have insisted that Plaintiff, clearly the most qualified of the two applicants, be chosen for the open post. Defendant Niesz did, therefore, act in concert with Defendants Wilbeck and Finnerty in denying Plaintiff the position to which she was entitled based upon her greater credentials and qualifications.

25. Shortly after the August 20, 2019, decision, Plaintiff requested and was granted a meeting with the Superintendent and the two Assistant Superintendents, all of whom had previously advised Plaintiff she was their choice for the position.

26. At that meeting, Plaintiff sought to determine why she did not get the position and why the other candidate, who had significantly lesser credentials, did receive the appointment.

27. Upon making such inquiry, there was immediate silence. Thereafter, Defendant Niesz stated, “I am not recommending you any longer.” Plaintiff asked for justification and received no response. Plaintiff stated the obvious – she was a female, the other candidate a male who was far less qualified. Again, she received no response. Defendant Niesz told Plaintiff that they would not give her a reason.

28. Clearly, Defendants Wilbeck and Finnerty had political animus towards Leo Smith and, as a result, did deny Plaintiff her promotion because of her intimate association with her father. Defendant Niesz knew, or should have known, of the basis for the other co-Defendants’ improper actions and nevertheless joined in their action. He knew their improper actions were based upon the Plaintiff’s relationship with both the former Business Administrator and the former Mayor of Bayonne.

FIRST CAUSE OF ACTION

29. Plaintiff hereby repeats the allegations set forth above and make same a part hereof as if set forth at length herein.

30. Defendants' actions did violate Plaintiff's protected rights as set forth in the New Jersey Constitution, particularly the First Amendment securing Plaintiff's right of intimate association. Same is enabled through the *New Jersey Civil Rights Act, N.J.S.A. 10:6-2*.

31. Specifically, Defendants did illegally and improperly deny Plaintiff the position of Assistant Principal due to the afore-noted association, to wit, her familial relationship to the former Mayor and the former Business Administrator. All the while they were acting under color of law.

32. As a direct and proximate result of Defendants' conduct, Plaintiff was caused to suffer damages, including financial loss and emotional and mental anguish and other economic and non-economic damages.

33. Defendants did act individually or did otherwise conspire to violate Plaintiff's due process rights as set forth in the New Jersey State Constitution and made applicable herein through the *New Jersey Civil Rights Act, N.J.S.A. 10:6, et seq.*

WHEREFORE, Plaintiff demands judgment against the Defendants, jointly and severally, or in the alternative, for damages as follows:

- (1) Compensatory and exemplary damages;
- (2) Pain and suffering;
- (3) Emotional distress;
- (4) Punitive damages;
- (5) Attorneys' fees and costs as provided by law; and

(6) Such other and further relief as the Court may deem just and equitable.

JURY DEMAND

Plaintiff demands a trial by jury on all issues of the within Complaint.

DESIGNATION OF TRIAL COUNSEL

Plaintiff hereby designates Robert B. Woodruff as trial counsel in the above matter.

SCHILLER, PITTENGER & GALVIN, P.C.
Attorneys for Plaintiff

/s/ Robert B. Woodruff

Dated: 09/26/2019

ROBERT B. WOODRUFF

Civil Case Information Statement

Case Details: HUDSON | Civil Part Docket# L-003713-19

Case Caption: FURMANIAK TARA VS BAYONNE BOARD OF EDUCATION

Case Initiation Date: 09/26/2019

Attorney Name: ROBERT B WOODRUFF

Firm Name: SCHILLER PITTENGER & GALVIN, PC

Address: 1771 FRONT ST STE D

SCOTCH PLAINS NJ 070760000

Phone: 9084900444

Name of Party: PLAINTIFF : Furmaniak, Tara

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: EMPLOYMENT (OTHER THAN CEPA OR LAD)

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO

Title 59? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

09/26/2019

Dated

/s/ ROBERT B WOODRUFF

Signed