

#486-08 (OAL Decision: Not yet available online)

STEVEN KORBA, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF CLINTON,
HUNTERDON COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a former non-tenured kindergarten teacher in the respondent Board’s district – challenged the Board’s decision not to renew his annual contract for the 2007-2008 school year, following petitioner’s alleged sexual harassment of a colleague. The Board filed a motion for summary decision, which was denied.

The ALJ found, *inter alia*, that: the Board’s argument that petitioner’s appeal should be dismissed for failure to exhaust administrative remedies is without merit; petitioner admitted to almost all of the allegations against him; petitioner’s credibility as to statements he denied making was lacking; and petitioner failed to prove that his nonrenewal was arbitrary, capricious or unreasonable. Accordingly, his request for reinstatement was denied and the petition dismissed.

The Commissioner concurred with the ALJ that the respondent Board properly exercised its right to non-renew petitioner’s employment and adopted the Initial Decision as the final decision in this matter.

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.

December 15, 2008

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In this matter, petitioner asks that the Commissioner reinstate him to his position of Kindergarten teacher in respondent's district. The record presented to the Commissioner – which does not include a transcript of the proceedings in the Office of Administrative Law (OAL) – and the Initial Decision by the Administrative Law Judge (ALJ) have been reviewed.¹

At the outset, the Commissioner concurs with the ALJ's determination that petitioner did not waive his rights to a hearing in the OAL by 1) failing to ask the respondent board for a written statement of reasons for the non-renewal and 2) declining to make an informal appearance before the board. The procedures discussed in *Donaldson v. North Wildwood Board of Education*, 65 N.J. 236 (1974), provide a non-tenured employee with the opportunity to appear informally before the employing board but do not require the employee to do so. This is appropriate in light of the fact that the applicable school law statutes and regulations do not require the respondent board to provide petitioner, a non-tenured teacher, with an opportunity to challenge its actions via a formal hearing, *i.e.*, with discovery and the

¹ Neither party filed exceptions.

examination of witnesses. *Donaldson, supra*, 65 N.J. at 246. Petitioner may only pursue such a hearing in the OAL, pursuant to *N.J.A.C.* 6A:3-1.3(d).

With respect to the ultimate issue in the case, the Commissioner agrees with the ALJ – for the reasons set forth in the Initial Decision – that respondent was not arbitrary, capricious or unreasonable in its decision not to renew petitioner. Thus, respondent met the standard to which petitioner – as a non-tenured teacher – was entitled, and petitioner's appeal must fail. The petition is dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: December 15, 2008

Date of Mailing: December 15, 2008

² This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.