

PAMELA KONDRATICK, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE : DECISION  
 BOROUGH OF HAMBURG, :  
 SUSSEX COUNTY, :  
 :  
 RESPONDENT. :

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SYNOPSIS

Petitioner appealed the non-renewal of her employment as a middle school social studies teacher at the end of the 2006-2007 school year, notwithstanding the recommendation of renewal by the Superintendent. Petitioner would have acquired tenure on the first day of class for the 2007-2008 school year, had her contract been renewed. Respondent asserted that the non-renewal was performance based, citing petitioner's reliance on showing videotapes during class, insufficient parent contacts, and failure to adequately maintain her classroom, among other things.

The ALJ found, *inter alia*, that: a board of education possesses broad discretion in renewing the contract of non-tenured teaching staff members; the burden of proof rests upon the petitioner to show that the Board's non-renewal decision was arbitrary, capricious or unreasonable; and respondent's non-renewal determination is supported by credible evidence and was not arbitrary or capricious. The ALJ concluded that petitioner had failed to sustain her burden of proof, and recommended dismissal of the petition.

Upon careful and independent review of the record, the Commissioner concurred with the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

<p>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.</p>
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September 29, 2009

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner and the Board sought and were granted extensions of time within which to file exceptions and reply exceptions, respectively, to the Initial Decision. These submissions – received in accordance with the modified timelines – were fully considered by the Commissioner in reaching her determination here.

Petitioner’s exceptions charge that the Administrative Law Judge’s (ALJ) factual findings and legal conclusions with respect to the Board’s reasons for her non-renewal were not supported by the credible evidence. In support of this contention, she essentially recasts and reiterates her arguments advanced below in her post-hearing summation: 1) as to the ALJ’s finding that she placed over-reliance on videos based on written lesson plans – testimony and evidence showed she did not actually show many of the videos but, rather, included them for the benefit of a possible substitute teacher and, additionally, one of the videos was not shown during class time but during a week of standardized testing when the regular academic schedule was suspended; 2) as to his finding that she kept an untidy classroom and condoned damage to desks

by students, he overlooked clear testimony that petitioner shared her classroom with another teacher who found it difficult to control her students and petitioner's uncontroverted testimony established that the damage and disarray occurred when this teacher was using the room; 3) as to his finding that she had insufficient parent contacts recorded in her log book, he discounted evidence that the Board provided no guidance as to the number of parent contacts which were expected and, even so, the number of contacts recorded by petitioner substantially exceeded any minimum number which could have been expected by the Board. (Petitioner's Exceptions at 1-3) Petitioner also contends that although the ALJ found that the Principal was very specific in detailing her deficiencies, he failed to specifically cite them. Also, she argues, this finding is severely compromised by this Principal's admission on cross-examination that he requested that the petitioner revise and rewrite the District's social studies curriculum guide over the summer of 2008 and further asked that she attend a textbook fair to pick out new texts for the District. These responsibilities, she professes, are obviously not ones which would be given to a teacher lacking the qualities necessary for renewal of her contract. (*Id.* at 3) Petitioner, therefore, requests that the Commissioner reject the Initial Decision.

In reply, the Board submits petitioner offers no support for her contention that the ALJ's findings and conclusions were not supported by the credible evidence; rather, she merely offers the fact that contrary testimony was presented. Petitioner's sole argument, it contends, is that the ALJ should have interpreted the proffered evidence in a light most favorable to her. (Board's Reply Exceptions at 2-3) As recognized by petitioner in her post-hearing brief, the Board offers, "if a rational consideration of the relevant evidence can arguably yield two different decisions, it is not arbitrary and capricious...if there is substantial evidence to support that ruling." Petitioner's Brief 4-5 (citation omitted) (*Id.* at 3-4) Here, the Board offers,

“[a]mple testimony offered at the hearing indicated Petitioner’s failure to comply with the exceptional standard for teachers as required by Respondent. In making his findings, the ALJ relied on evidence of Petitioner’s unsatisfactory communication with parents, her failure to maintain a controlled classroom, and the Board’s overall dissatisfaction with her performance.”

(*Id.* at 4) The Board, therefore, urges adoption of the Initial Decision.

Upon full review and consideration of the record, which included transcripts of the proceedings conducted at the OAL on December 22, and 23, 2008, and January 14 and April 2, 2009, the Commissioner, finding petitioner’s exception arguments wholly unpersuasive, concurs with the ALJ – for the reasons fully and clearly presented on pages 19-22 of his Initial Decision – that petitioner has failed to sustain her burden of establishing by a preponderance of the credible evidence that the Board’s decision not to renew her employment contract was arbitrary, capricious, unreasonable, or otherwise unlawful.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: \_\_\_\_\_

Date of Mailing: \_\_\_\_\_

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\* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).