

LINDA MINNELLA, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF MIDDLETOWN, :
 MONMOUTH COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner – a part-time, non-tenured substance abuse counselor – sought reinstatement to the position she had held in the 2008-2009 school year after that position was eliminated during a 2009 departmental reorganization. The alleged grounds for petitioner’s requested reinstatement are her contentions that in her second year of teaching, she was not evaluated in accordance with the procedures outlined in *N.J.S.A. 18A:27-3.1*. Respondent, however, asserts that petitioner’s non-renewal was not due to her performance, but was the result of restructuring and elimination of her part-time position. Since it is well-settled that a school board has virtually unlimited discretion in the hiring or renewal of non-tenured teachers, respondent urges affirmance of its decision not to renew petitioner.

The ALJ found that: the petitioner has not met the burden of establishing that respondent’s elimination of her non-tenured position was arbitrary, capricious, or unreasonable; the Board has virtually unlimited discretion in hiring or renewing non-tenured teachers; the Board’s decision was premised on the elimination of a part-time substance abuse counselor position as part of a restructuring, not on petitioner’s evaluations; and the Board’s determination is entitled to a presumption of correctness. Accordingly, the ALJ affirmed respondent’s non-renewal of the petitioner.

Upon a thorough and independent review of the record, the Deputy Commissioner concurred with the ALJ that respondent Board properly exercised its right to non-renew petitioner’s employment, rejected the petitioner’s exceptions, and adopted the Initial Decision with supplementation. 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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Petitioner Linda Minnella (Minnella), a non-tenured substance abuse counselor, asks for reinstatement to the part-time position she held during the 2008-2009 school year. The record indicates that Minnella’s employment was terminated when the respondent district eliminated her position, and that she was notified of same via a letter from the district superintendent, Karen Bilbao, dated May 8, 2009.

Bilbao’s letter informed petitioner that the nonrenewal of her contract was the result of a departmental reorganization. Further, in a June 23, 2009 letter of recommendation written by Bilbao for Minnella – also included in the record – Bilbao advised that “Minnella’s position was eliminated due to the district’s need to reorganize existing positions to support new initiatives.” It is undisputed that petitioner did not ask for a statement of reasons or a Donaldson hearing after receiving her notice of non-renewal.

The alleged grounds for petitioner’s request for reinstatement are her contentions that in her second year as a substance abuse counselor she was not evaluated in accordance with the procedures outlined in *N.J.S.A.* 18A:27-3.1.¹ More specifically, petitioner states that although three written

¹ She asserts no violations of *N.J.S.A.* 18A:27-3.1 in her first year as a substance abuse counselor in respondent’s district.

evaluations² of her were submitted in April 2009, she was not actually observed three times during 2008-2009 school year. She asserts that the Middletown High School South principal did not observe her for the evaluation he submitted on April 2, 2009 – which included negative comments – and the Assistant Superintendent of schools never observed her for the evaluation he submitted on April 27, 2009, which purportedly included a mixture of comments, good and bad, from the two other evaluations.³

The Administrative Law Judge (ALJ) correctly concluded in the Initial Decision of the Office of Administrative Law (OAL) that petitioner is not entitled to reinstatement. A long line of precedent, *see, e.g. Dore v. Bedminster Board of Education*, 185 N.J. Super. 447 (App. Div. 1982), instructs that boards of education have virtually unfettered discretion to decline to renew non-tenured employees. Further, there is nothing in the record to contradict respondent's position that the petitioner's non-renewal was the consequence of a reorganization driven by a change of priorities and initiatives. Under such circumstances, even tenured teaching staff may be let go. *N.J.S.A. 18A:28-9; see, also, Dennery v. Board of Educ. of Passaic County Regional High School Dist. No. 1, Passaic County*, 131 N.J. 626 (1993).

The Deputy Commissioner agrees with the ALJ that, since petitioner's performance was not the reason for her non-renewal, the nature and number of her evaluations is not material to same. Nor is the Deputy Commissioner persuaded by the argument in petitioner's exceptions that respondent perpetrated a fraud upon petitioner – by way of the evaluations that were allegedly submitted without prior observations of her work – and that the alleged fraud imposed obligations upon respondent that exceed those articulated in the statutes and cases cited above. As *Dore v. Bedminster Board of Education*, 185 N.J. Super. 447 (App. Div. 1982) instructs, *N.J.S.A. 18A:27-3.1* sets forth procedures to be followed for evaluating teachers but does not provide for any penalty in the event a local board fails to follow the proscribed procedures. *Dore, supra*, at 456. Thus, the fact that petitioner may not have

² None of the evaluations are in the record.

³ The evaluation submitted on April 3, 2009 from the Middletown High School North principal, who did observe her prior to her evaluation, allegedly gave her good marks.

received three evaluations and/or other considerations referenced in *N.J.S.A. 18A:27-3.1* does not signify that she must be reconsidered for renewal.

Further, it appears undisputed that there are now only two substance abuse counselor positions in respondent's district, and that they are both held by tenured employees. Thus, respondent could not reinstate petitioner without violating the statutes concerning the rights of tenured employees. *See, e.g. Prysiazny v. Board of Education of the Borough of Sayreville, Middlesex County, Commissioner Decision #165-80, May 5, 1980.*

A board of education's discretionary decisions are entitled to a presumption of correctness, and they will not be disturbed absent evidence that they are arbitrary, capricious or unreasonable. *Kopera v. West Orange Board of Education, 60 N.J. Super. 288, 294 (App. Div. 1960).* Under the circumstances of this case, the Deputy Commissioner cannot conclude that respondent was arbitrary or capricious in its reorganization, in the elimination of the part-time substance abuse counselor position, or in its placement of the two tenured counselors in the remaining positions. While respondent may have fallen short in its evaluations of petitioner in her second full year as a part time substance abuse counselor, there is no invocable statutory or regulatory penalty for such deficiencies.

Accordingly, the Initial Decision is adopted and the petition is dismissed.

IT IS SO ORDERED.⁴

DEPUTY COMMISSIONER OF EDUCATION⁵

Date of Decision: April 29, 2010

Date of Mailing: April 30, 2010

⁴ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.

⁵ This matter has been delegated to the Deputy Commissioner pursuant to *N.J.S.A. 18A:4-33*.