

JAMIE RUDD, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF VINELAND, CUMBERLAND :
COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – formerly a non-tenured social worker in respondent’s district – received notice on May 13, 2010 that she would be terminated from her employment as part of a reduction in force (RIF) at the end of the 2009-2010 school year. She challenged the Board’s determination not to reemploy her when she responded to a job posting for two social worker positions in July 2010. Petitioner was interviewed for these vacancies, but was notified during a meeting with the district superintendent on August 12, 2010 that she would not be offered reemployment because of concerns about her performance. At no point did petitioner request a written statement of reasons for her termination pursuant to *N.J.S.A. 18A:27-3.2* or an informal appearance before the Board as authorized under *N.J.A.C. 6A:32-4.6*. She filed her petition of appeal on October 14, 2010. The respondent Board contended that the petition must be dismissed as untimely.

The ALJ found, *inter alia*, that: the petitioner was not fully aware of the information forming the basis of her appeal at the time of the May 13, 2010 notification letter, because the letter did not mention any substantive cause for her non-renewal; consequently, petitioner could not have known that her non-renewal was performance-based until she was told so by the superintendent on August 12, 2010, and therefore her appeal was timely; petitioner, however, failed to seek a written statement of reasons clarifying the basis for her non-renewal and did not seek an informal appearance before the Board, but rather filed her appeal solely based upon the statements of the superintendent during her meeting on August 12, 2010 – which statements cannot be considered the reasons for the Board’s action, since the superintendent is not synonymous with the board of education; accordingly, since petitioner cannot establish the reason for the Board’s action, she cannot prove that the action was arbitrary and capricious. The ALJ ordered the petition dismissed.

Upon review, the Commissioner concurred with the ALJ that the petition should be dismissed, but noted that there were two different employment decisions made by the Board, constituting two separate Board actions; the instant petition was timely pursuant to the second Board action, but must fail because petitioner did not allege any violation of constitutional or legislatively-conferred rights and the Board was well within its rights to decline to rehire petitioner based upon performance concerns. Accordingly, the Commissioner 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.
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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 and the Board’s reply thereto.

The petitioner’s exceptions substantially reiterate the substance of her submissions at the OAL, recasting the arguments therein to support the contention that the Administrative Law Judge (ALJ) erroneously found that the petition should be dismissed. The petitioner contends that her petition of appeal was timely filed and that she has set forth a valid cause of action. The petitioner maintains that her performance was the real reason that the Board did not renew her, and as a result the Board acted in bad faith when it issued the non-renewal letter. Additionally, the petitioner points out that she had no reason to request a statement of reasons or a *Donaldson* hearing because she relied on the representations made in the May 13, 2010 non-renewal letter. Petitioner also takes exception to the ALJ’s determination that she should have requested a statement of reasons in August 2010, following her meeting with the superintendent. Finally, the petitioner takes exception to the ALJ’s determination that the superintendent and the Board of Education are not synonymous.

In reply, the Board urges the adoption of the Initial Decision asserting that the ALJ properly determined that the petition should be dismissed. The Board's exceptions are generally a replication of its motion for summary decision and other papers filed below in which it argued that the Board's decision not to renew the petitioner was based on a valid reduction in force, and the Board's decision not to re-employ the petitioner was not arbitrary, capricious or unreasonable. In its exceptions, the Board emphasizes that when challenging a non-reemployment decision, a non-tenured staff member must plead that the adverse action is in violation of a constitutional or some legislatively created right in order to avoid dismissal, which petitioner has not done in this case.

Upon a comprehensive review of the record in this matter, the Commissioner is in accord with the ALJ's determination that the instant petition of appeal should be dismissed. The Commissioner further finds, however, that the ALJ failed to properly articulate the distinction between the two different employment decisions made by the Board. In order to adequately evaluate the timeliness of the petition and whether the petitioner's claims should survive summary decision, it is important to recognize that the Board's decision not to renew the petitioner for the 2010-2011 school year was the first employment decision, and the Board's subsequent decision not to rehire the petitioner was a separate Board action.

It is undisputed that on May 13, 2010, petitioner – a non-tenured social worker – was notified that she would not be renewed for the 2010-2011 school year.¹ The notification letter was the general non-renewal letter that was sent to over 200 employees stating that the non-tenured professional staff members would not be renewed for the 2010-2011 school year due to reasons of economy and budgetary considerations. After the petitioner received the letter

¹ The facts related to the timeline of events are not in dispute.

she did not request a statement of reasons pursuant to *N.J.S.A.* 18A:27-3.2 or a *Donaldson* hearing under *N.J.S.A.* 18A:27-4.1.

In July 2010, petitioner discovered that the Board posted positions for social workers, and she informed the Board that she was ready to assume one of those positions. On August 9, 2010, the petitioner met with the Director of Special Education and other supervisors about the available social worker positions. On August 12, 2010, the petitioner attended a meeting with the superintendent during which she was informed that she would not be re-employed based on certain performance issues, and her failure to demonstrate significant improvement during her three years with the district.

Pursuant to *N.J.A.C.* 6A:3-1.3(i), a petition must be filed “no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party or agency, which is the subject of the requested contested case hearing.” With respect to petitioner’s non-renewal, the Commissioner finds that the 90-day statute of limitation period began to run on May 13, 2010 when the petitioner received notice that she would not be renewed for the 2010-2011 school year. See, *Middletown Education Assoc. on Behalf of Meredith McGee and Nicole Sansone v. Board of Educ. of the Township of Middletown, Monmouth County*, Commissioner Decision No. 328-07, decided August 16, 2007. The Commissioner is not persuaded by the exceptions filed by the petitioner in which she argues that despite having notice of the non-renewal in May 2010, it was the meeting in August 2010 with the superintendant that triggered the 90-day limitations period because that is when she learned that the Board believed she had performance issues. After the petitioner received the May 13, 2010 non-renewal letter, she did not avail herself of her statutory right to request a statement of reasons pursuant to *N.J.S.A.* 18A:27-3.2 or a *Donaldson* hearing before the Board

under *N.J.S.A.* 18A:27-4.1 – during which she could have challenged the validity of the reduction in force or the budgetary considerations, and she could have attempted to convince the members of the board to offer her reemployment. Instead, the petitioner waited until October 14, 2010 to file the instant petition of appeal challenging the validity of her non-renewal. Therefore, because the challenge to her non-renewal was filed outside the 90-day limitation period set forth in *N.J.A.C.* 6A:3-1.3(i), the Commissioner finds that the petitioner’s claim is time barred.

To the extent the petition of appeal challenges the Board’s decision not to rehire the petitioner, that claim is not untimely under *N.J.A.C.* 6A:3-1.3(i) because the petitioner did not receive notice of the Board’s decision until she met with the superintendent on August 12, 2010. Notwithstanding the timeliness of that challenge, the Commissioner fully recognizes that a district board has virtually unlimited discretion in terminating or reemploying non-tenured staff members. *Dore v. Bedminster Twp. Bd. of Ed.*, 185 *N.J. Super.* 447 (App. Div. 1982) “[A]bsent constitutional constraints or legislation affecting the tenure rights of teachers, local boards of education have an almost complete right to terminate the services of a teacher who has no tenure and is regarded as undesirable by the local board.” *Id.* at 456. As such, where a non-tenured teacher challenges a district board’s decision to terminate her employment on the grounds that the reasons provided by the board are not supported by the facts, she is entitled to litigate that question only if the facts she alleges, if true, would constitute a violation of constitutional or legislatively-conferred rights. *Guerriero v. Board of Education of the Borough of Glen Rock*, decided by the State Board of Education February 5, 1986, *aff’d*. Docket #A-3316-85T6 (App. Div. 1986).

In this case, the petitioner has not alleged a constitutional or legislatively-conferred right, but rather she purely argues that the Board did not rehire her for one of the available social worker positions based upon alleged performance issues. The Board was well within its rights to decline to rehire the petitioner based upon performance concerns, and as such – in the absence of the existence of any constitutional or legislatively-conferred right – the Board’s decision was not arbitrary, capricious or unreasonable. Accordingly, the Board is entitled to summary decision and the petition is dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 1, 2011

Date of Mailing: September 6, 2011

² 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.