

CHRISTINE TURCHIO, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF BARNEGAT, :
OCEAN COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a non-tenured teacher’s aide – challenged the determination of the respondent Board to non-renew her contract for the 2012-2013 school year, and sought re-employment in the school district. The Board asserted that petitioner’s non-renewal was recommended by the Superintendent of Schools based on performance, and noted that it is well-settled that a school board has virtually unlimited discretion in the hiring or renewal of non-tenured employees.

The ALJ found, *inter alia*, that: regarding untenured personnel, the Board has nearly unfettered discretion in determining who it wishes to employ; the Board’s decision to non-renew petitioner was based on ample and demonstrable evidence of performance concerns over the course of six years, and cannot be considered arbitrary, capricious or unreasonable. Accordingly, the ALJ concluded that the petitioner did not meet her burden of establishing that respondent’s action in non-renewing her contract was arbitrary, capricious, or unreasonable, and dismissed the petition.

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

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.

October 18, 2013

OAL DKT. NO. EDU 14393-12
AGENCY DKT. NO. 258-9/12

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed,¹ as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner, Christine Turchio, and the Board of Education’s (Board) reply thereto.²

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons stated in the Initial Decision – that the Board’s decision to non-renew the petitioner was not arbitrary, capricious or unreasonable. Moreover, despite the fact that the petitioner had the burden to prove that the Board’s decision was arbitrary, capricious or unreasonable, at the ALJ’s direction the Board provided a more than adequate basis for the superintendent’s recommendation not to renew the petitioner.

The Commissioner also notes that a district board has virtually unlimited discretion in hiring or renewing non-tenured staff members absent constitutional constraints or

¹ The record did not include a copy of the transcripts from the hearings conducted at the OAL on May 7, May 22, and May 30, 2012.

² In her exceptions, the petitioner substantially reiterated the substance of her submissions at the OAL, recasting the arguments therein to support the contention that the ALJ improperly dismissed the petition of appeal. In reply, the Board provided a specific response to the petitioner’s arguments, and urged the adoption of the Initial Decision. Following the receipt of the Board’s reply, on September 26, 2013, the petitioner filed a submission titled “amended exceptions/rebuttal brief.” There is no provision in *N.J.A.C. 1:1-18.4* that permits a response to reply exceptions, and as such the petitioner’s September 26th submittal was not considered by the Commissioner.

legislatively-conferred rights. *Dore v. Bedminster Twp. Bd. of Ed.*, 185 N.J. Super. 447, 456 (App. Div. 1982). As such, where a non-tenured staff member 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. Petitioner simply argues that her non-renewal was not based on her performance, but instead on various other factors including the improper placement of a special education student with whom she worked and conflicts that existed with certain members of the administration.

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

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: October 18, 2013

Date of Mailing: October 21, 2013

³ 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.