

#93-14 (OAL Decision: Not yet available online)

GABRIEL NAZZIOLA, :  
 :  
 PETITIONER, : COMMISSIONER OF EDUCATION  
 :  
 : DECISION  
 V. :  
 :  
 BOARD OF EDUCATION OF THE :  
 TOWNSHIP OF BELLEVILLE, :  
 ESSEX COUNTY, :  
 :  
 RESPONDENT. :  
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SYNOPSIS

Petitioner appealed the non-renewal of his employment contract as a principal in respondent's school district for the 2011-2012 school year, and sought reinstatement to that position. Petitioner had been appointed as principal in 2010 after many years of employment as a teacher in the district; the Board contended that petitioner's non-renewal was performance-based and linked to his alleged mishandling of an April 2011 incident in which a student brought a pellet gun to school. Petitioner asserted that the Board's actions in non-renewing his contract were driven by political motivations, and were specifically in response to petitioner's failure to follow an alleged patronage directive from a community leader.

The ALJ found, *inter alia*, that: in the course of his employment as principal, petitioner complied with requests made of him by community leaders regarding personnel recommendations, and modified his own personnel recommendations to his superintendent based on the choices of others; petitioner also supported community and political events he was encouraged to attend, and on one occasion in March 2011, failed to comply when requested not to attend a fundraiser for political reasons; although petitioner alleges that he felt his job security was threatened in retribution for not complying with a politically motivated directive, neither party presented testimony from the Board and community members who allegedly made the threats; unrelated to the foregoing, petitioner failed to follow district policy and procedures when a student brought a pellet gun to school in April 2011; such failure to follow the district's weapons policy was potentially harmful to students and staff, and was sufficient in and of itself to justify petitioner's non-renewal as principal; petitioner's three evaluations for the 2010-2011 school year documented declining confidence in his leadership as principal; and a school board has virtually unlimited discretion in hiring or renewing non-tenured staff. The ALJ concluded that the Board's action in non-renewing petitioner's contract for the 2011-2012 school year was not arbitrary, capricious or unreasonable, and petitioner was given a written statement of reasons why he was not offered another contract. Accordingly, the petition was dismissed.

Upon independent review, the Commissioner found no reason to reject the credibility determinations of the ALJ, and concurred with the ALJ that the Board's decision to non-renew petitioner's contract was not arbitrary, capricious or unreasonable given the missteps documented in petitioner's evaluations and other work related documents. The Commissioner also determined that petitioner failed to show a nexus between the community leader who made political requests of him and the district superintendent who recommended his non-renewal. 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.

January 31, 2014

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Petitioner in the instant controversy has challenged the respondent board of education’s decision not to renew his employment as principal of one of the district’s elementary schools. After a fact-finding hearing in the Office of Administrative Law (OAL), the Administrative Law Judge (ALJ) assigned to the case found that respondent’s decision was not arbitrary, capricious, unreasonable or – as petitioner alleged – improperly driven by political motivations. Upon review of the record, Initial Decision of the OAL, petitioner’s exceptions and respondent’s replies thereto, the Commissioner is constrained to agree with the findings and conclusions of the ALJ.

At the outset, the Commissioner notes that in a case – such as the instant one – where resolution of the controversy relies heavily on the analysis of the facts presented by the parties, the head of an agency must give substantial weight to the ALJ’s credibility determinations and to all findings based on these determinations, since it was the ALJ who had an opportunity to hear the testimony of the witnesses and to assess their demeanor. See *Clowes v. Terminix International, Inc.*, 109 N.J. 575, 587 (1988); *Renan Realty Corp. v. Department of Community Affairs*, 182 N.J. Super. 415, 419 (App. Div. 1981). The ALJ was further able to make determinations about the viability of each witness’s testimony and about both the overall internal consistency of witness testimony, and its

consistency with all of the evidence presented at the hearing. *See, e.g., Congleton v. Pura-Tex Stone Corp.*, 53 *N.J. Super.* 282, 287 (App. Div. 1958). Thus, the Commissioner will not reject the ALJ's determinations concerning the credibility of witness testimony in this controversy unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record. *S.D. v. Division of Medical Assistance and Health Services and Monmouth County Board of Social Services*, 349 *N.J. Super.* 480, 484 n.1 (App. Div. 2002). The Commissioner can make no such determination here.

To the contrary, the Commissioner's independent consideration of the facts of this case leads to the same conclusions as those drawn by the ALJ in the Initial Decision. First, it is undisputed that petitioner had already been warned in the second of three evaluations in his first year as a principal that he needed to improve his management and relationship skills. Second, shortly after that second evaluation, petitioner failed to properly handle an incident in which a student brought a weapon to school. Third, by the end of the school year, multiple parents had registered complaints about aspects of petitioner's performance as principal.

The above three factors present a reasonable basis for a non-renewal, but the pellet gun incident, in particular, lends legitimacy to respondent's non-renewal decision. At 9:30 a.m. on April 15, 2011, petitioner learned from a student's mother that her son had brought a pellet gun to school. Petitioner retrieved the gun from the student, gave it to his mother to bring home, and sent the student back to class. At least five hours passed before petitioner took the actions required by district policy, *i.e.*, notification of the police and the superintendent of schools, relinquishment of the gun to the police, and segregation of the student from the rest of the student body, pending a psychological evaluation.

In his exceptions, petitioner attacks the Initial Decision on two fronts. First, he minimizes respondent's stated reasons for the non-renewal. Petitioner attempts to minimize the significance of the pellet gun incident by 1) asserting that he had not been given the district policy on

weapons, and had not received training on same, and 2) alleging that the district superintendent was equally ignorant of the policy. Petitioner also casts aspersions on his third and final evaluation for the year by noting that it was “the mirror opposite” of his first evaluation, in which he was praised for sound judgment and ability to be a leader.

The latter argument is meritless, as certain flaws in petitioner’s performance only became apparent over the course of time, *e.g.*, the parent complaints and the pellet gun incident. Nor is the Commissioner persuaded by petitioner’s attempts to minimize the significance of the pellet gun incident. When an incident as grave as the discovery of a weapon in school comes to the attention of a school administrator, the prudent response is immediate notification of the district superintendent and authorities, and immediate reference to district policy if the administrator is not already familiar with that policy. Ignorance is not an acceptable excuse in regard to a policy as important as response to the discovery of a weapon in school. The onus is on the administrator to apprise himself of the relevant policy. Whether or not the district superintendent was familiar with the policy is not germane to the instant controversy, since petitioner waited over five hours to contact him. *See*, Petitioner’s Exhibit P-10.

Petitioner does not seem to appreciate the risk to student and staff safety posed by his actions. Giving the gun back to the student’s mother could have led to the student’s continued access to it. Failing to require the student to be evaluated left undetermined whether the student was experiencing difficulties that could pose a risk to other students – and staff. Failing to notify the authorities of a weapon opened the district to liability. In sum, petitioner’s actions and his lack of appreciation of the gravity of the incident demonstrate a lack of good judgment.

As regards petitioner’s alternate argument – *i.e.*, that political considerations had underlain his nonrenewal – initially, the Commissioner emphasizes that such political machinations have no place in the administration of public schools and notes that petitioner’s own cooperative behavior as a school administrator in that regard was contrary to the spirit and the letter of the School

Ethics Act. See *N.J.S.A.* 18A:12-22 and 12-24b. Review of the evidence as a whole, however, leads the Commissioner to the conclusion that petitioner did not make a showing that political motivations were a basis for the non-renewal. Most importantly, petitioner did not prove a nexus between political leader Yanuzzi and Superintendent Picardo, the individual who was responsible for making – and who did make – the non-renewal recommendation adopted by the respondent Board of Education. Petitioner had the right to call both Picardo and Yanuzzi to question them about their statements, actions and possible interactions, but did not do so. The Commissioner also notes that petitioner maintains that he did Yanuzzi’s bidding in all but one instance, *i.e.*, attendance at a fund raiser for the ailing mother of a student. Thus, the petitioner urges that he was non-renewed for one diversion from Yanuzzi’s directions. The Commissioner finds this to be a less likely explanation for the non-renewal than the missteps documented in petitioner’s evaluations and other work related documents.

Accordingly, the Commissioner adopts the Initial Decision of the OAL. The petition is herewith dismissed.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: January 31, 2014

Date of Mailing: February 6, 2014

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\* This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*