

#146-16 (OAL Decision: Not yet available online)

DANIEL ESTEVES, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWN OF KEARNY, HUDSON :
COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner challenged his removal – pursuant to *N.J.S.A.* 18A:12-3 – from the Board of Education of the Town of Kearny as the result of the Board’s finding that he had failed to attend three consecutive meetings of the Board without good cause. Petitioner contended that he had good cause to be absent from all but one of the meetings in question, as he was on duty as a Kearny police officer on those dates; further, petitioner asserted that he did not receive 72 hours of notice of the Board’s proposed action, as required in the Board’s bylaws.

The ALJ found, *inter alia*, that: *N.J.S.A.* 18A:12-3 provides that any member who fails to attend three consecutive meetings of the board without good cause may be removed from board membership; the respondent Board adopted bylaw number 0145, which provides that if a board member misses three consecutive meetings without good cause, the Board may remove that member provided that 1) such removal was proposed at the immediately preceding board meeting, and 2) the member be provided at least 72 hours’ notice of the removal meeting; in the instant matter, petitioner missed numerous board meetings during 2014 and 2015 following his appointment as a township police officer, including three consecutive meetings; petitioner’s many unexplained absences were contrary to the Board’s interests; petitioner received timely notice of the removal meeting via ordinary mail and email, and was in attendance at the meeting prior to the removal meeting, at which his removal was discussed – although he left prior to the adjournment of the meeting; petitioner attended the June 1, 2015 removal meeting, but made no statement opposing his removal and did not request additional time to prepare a response; rather, petitioner stated he had not received adequate notice of the meeting and questioned the Board about how it had noticed him; however, the burden of proof was on petitioner to demonstrate that the Board’s determination that his absences were without “good cause” was arbitrary, without rational basis or induced by improper motives. The ALJ concluded that petitioner received timely notice of the removal meeting, and has not sustained his burden to prove that the board’s actions were arbitrary, capricious or unreasonable. Accordingly, the petition was dismissed.

The Commissioner concurred with the findings and conclusions of the ALJ and adopted the Initial Decision of the OAL 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.

April 14, 2016

OAL DKT. NO. EDU 13424-15
AGENCY DKT. NO. 188-7/15

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ The parties did not file exceptions.

Upon such review, the Commissioner agrees with the Administrative Law Judge (ALJ) – for the reasons thoroughly set forth in the Initial Decision – that the Board did not act in an arbitrary, capricious, or unreasonable manner when it removed petitioner from the Board for failing to attend three consecutive Board meetings without good cause. *N.J.S.A. 18A:12-3*. Further, the Commissioner concurs with the ALJ’s finding that petitioner had 72 hours notice of the Board’s special meeting on June 1, 2015, in accordance with the Board’s Bylaw 0145. The Commissioner notes that the Board provided petitioner with the requisite notice by ordinary mail – in addition to electronic mail – thereby affording petitioner with the necessary notice and a fair opportunity to be heard. Indeed, petitioner attended the Board’s special meeting and did not make a statement or present any argument as to why he had good cause for his absences and should not be removed as a Board member.

¹ The Commissioner was not provided with a transcript of the November 23, 2015 hearing at the OAL.

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.²

COMMISSIONER OF EDUCATION

Date of Decision: April 14, 2016

Date of Mailing: April 14, 2016

² 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*).