

NORITZA ANDINO, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

STATE OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF JERSEY CITY,
HUDSON COUNTY [now Board of :
Education of the City of Jersey City],
HUDSON COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner – a long-time guidance counselor in respondent’s district who was promoted to assistant principal at the beginning of the 2006-2007 school year – challenged the Board’s decision to reassign her to her prior tenured position of guidance counselor after she had served two school years in the position of assistant principal, but before acquiring tenure in accordance with *N.J.S.A. 18A:28-6*. Petitioner alleged that the decision not to renew her contract as assistant principal was in retaliation for her having called attention to alleged administrative improprieties by the principal; petitioner also contended that the superintendent of schools acted wrongfully in denying her tenure in the position of assistant principal.

The ALJ found that: a board of education possesses broad discretion in renewing the contract of non-tenured teaching staff members; the burden of proof rests upon the petitioner to show that the Board’s non-renewal decision was arbitrary, capricious or unreasonable; and the petitioner did not meet her burden to prove that the District’s action was undertaken in bad faith or was arbitrary or capricious, or contrary to the dictates of *N.J.S.A. 18A:27-4.1*. The ALJ concluded that respondent’s non-renewal determination is supported by credible evidence and was not arbitrary or capricious, and recommended dismissal of the petition.

The Commissioner concurred with the Administrative Law Judge’s (ALJ) findings and conclusion, and adopted the Initial Decision as the final decision in this matter. 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>

OAL DKT. NO. EDU 9524-08
AGENCY DKT. NO. 237-8/08

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed by the Deputy Commissioner, to whom this matter has been delegated pursuant to *N.J.S.A. 18A:4-33*. Upon review of same, the Deputy Commissioner finds that petitioner has not met the burden to show that the respondent acted arbitrarily, capriciously or otherwise unlawfully in declining to renew her employment as an assistant principal.

At the outset, the Deputy Commissioner must defer to the credibility findings of the Administrative Law Judge (ALJ), unless they prove to be arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record. *See, e.g. N.J.S.A. 52:14B-10(c); D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 *N.J. Super.* 269, 273 (App. Div. 2004). In the present case, both the ALJ's credibility findings and his findings of fact are harmonious with the record provided to the Deputy Commissioner.

Further, the Deputy Commissioner agrees with the ALJ's conclusion that the record contains sufficient, explicit facts – conveyed through testimony and exhibits – to support a good faith determination by respondent that petitioner's performance did not warrant continuation in the position of assistant principal. A local school board has "virtually unlimited discretion in hiring or renewing the contracts of nontenured teachers." *Dore v. Board of Education of the Township of Bedminster, Somerset County*, 185 N.J. Super. 447, 453 (1982). The board is not restricted to acting only where its reasons for non-renewal are supported by evaluations, for, indeed, the board may reach its conclusion about a non-tenured teacher "on a broad base of input received from a variety of people. . . ." *Id.* at 454. The breadth of the board's discretion is so great that the Appellate Division has said, "absent 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. The board's decision will only be vacated where it acts in an arbitrary, capricious and unreasonable manner. *Kopera v. West Orange Board of Education*, 60 N.J. Super. 288, 294 (App. Div. 1960).

In the present case, the Deputy Commissioner cannot view respondent's decision not to renew petitioner's employment in the position of assistant principal as arbitrary, capricious or unreasonable, or made in bad faith, and she accordingly dismisses the petition.

IT IS SO ORDERED. *

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: March 24, 2010

Date of Mailing: March 25, 2010

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