

DOUGLAS E. WICKS, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF BERNARDS : DECISION

TOWNSHIP, SOMERSET COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioning resident and taxpayer contended that the Board’s bidding specifications for roof replacement for its schools were unduly restrictive in violation of *N.J.S.A. 18A:18A-1 et seq.*, the Public School Contracts Law. Petitioner further alleged that the Board violated *N.J.A.C. 6:22-1.7* by not having its plans for construction drawn to scale and approved by the local code official or the School Facility Planning Service. Petitioner withdrew from proceedings.

Since petitioner failed to produce competent evidence, testimonial or documentary, to support his allegations, the ALJ determined that petitioner did not demonstrate by a residuum of legally competent evidence that the Board advertised for bids without having specifications; that the Board violated some specific statute in *N.J.S.A. 18A:1-1 et seq.*, or any other state law it is bound to uphold by having “not to scale” drawings in its specifications; and, that the Board prepared specifications which inhibited free and open competitive bidding. The ALJ dismissed the petition and the amended petition.

The Commissioner adopted the findings and determination in the Initial Decision as his own, noting that it is well settled that boards of education in New Jersey have broad discretion with regard to the operation and management of a local district, pursuant to *N.J.S.A. 18A:11-1*. The amended petition was dismissed. However, because of the nature of the allegations raised, the Commissioner forwarded a copy of this decision to the Department’s Office of Compliance Investigation for review and such action, if any, as it deems necessary.

November 20, 2000

OAL DKT. NO. EDU 4006-00
AGENCY DKT. NO. 80-3/00

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Board’s reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4.

In his exception arguments, petitioner disputes the Administrative Law Judge’s (ALJ) statement that petitioner’s burden herein is to demonstrate by a preponderance of competent, credible evidence that the actions taken by the Board are arbitrary, capricious or unlawful. Instead, petitioner contends that he need only demonstrate the “*possibility* of fraud, favoritism or corruption,” which standard he argues was satisfied by the testimony of his witnesses. (emphasis in text) (Petitioner’s Exceptions at 2) Petitioner also objects to the ALJ’s summary of the testimony provided by Mr. Dass, a Licensed New Jersey Professional Engineer, maintaining such testimony properly established that scaled drawings *are* required for roofing projects. (*Id.* at 4) Finally, petitioner refutes the ALJ’s finding that his discovery problems were eventually corrected, (Initial Decision at 2, footnote 1) averring that there are still “public documents” which he has been denied for use as evidence. (Petitioner’s Exceptions at 4)

In reply, the Board argues that “[p]etitioner continues to insist that pure supposition and baseless allegations can form the basis of overturning an award under the Public Bidding Laws” (Board’s Reply at 2), and urges affirmance of the Initial Decision which was, in all respects, correct.

Upon careful and independent review of the record in this matter, the Commissioner finds no cause to disturb the factual findings and conclusions of the ALJ. As the ALJ properly noted, it is well settled that boards of education in New Jersey have broad discretion with regard to the operation and management of a local district, pursuant to *N.J.S.A. 18A:11-1*. When a local school board acts within its authority, its decision is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that the decision was arbitrary, capricious or unreasonable. *Thomas v. Bd. of Ed. of Morris Tp.*, 89 *N.J. Super.* 327, 332 (App. Div. 1965), *aff’d* 46 *N.J.* 581 (1966). Further, contrary to petitioner’s urging, it is his burden to so demonstrate by a preponderance of credible evidence, since “[in] the absence of any administrative rule or regulation to the contrary, the traditional preponderance of the evidence standard applies to administrative agency matters.” *SSI Medical Serv. v. State Dept. of Human Serv.*, 146 *N.J.* 614, 622 (1996). *See, also, In re Polk License Revocation*, 90 *N.J.* 550, 561(1982); *Atkinson v. Parsekian*, 37 *N.J.* 143, 149 (1962).

Like the ALJ, the Commissioner must find on the record before him that petitioner has not demonstrated by a preponderance of the competent, credible evidence that the Board’s specifications inhibited free and open competitive bidding in violation of state school bidding laws, that the Board improperly advertised for bids without specifications, or that the Board violated state education law or regulation with “not to scale” drawings in its specifications. (Initial Decision at 8, 9) To the extent petitioner challenges the facts determined

by the ALJ based on the testimony of the witnesses and the weight he ascribed to such testimony, the Commissioner notes that the record before him does not include transcripts of the hearing conducted at the OAL in this matter. *See In re Morrison*, 216 *N.J. Super.* 143, 158 (App. Div. 1987). In the absence of transcripts from the hearing, due regard should be given to the person who heard the live testimony and assessed the witnesses' behavior at the hearing. *Close v. Kordulak Bros.*, 44 *N.J.* 589, 599 (1965).

Finally, the Commissioner concurs with the ALJ's characterization of the Commissioner's role when called upon to adjudicate school law disputes pursuant to *N.J.S.A.* 18A:6-9. However, in the instant matter, although petitioner fails to meet his burden of proof in this forum, the Commissioner nonetheless concludes, based upon the nature of petitioner's allegations, that further review by the Department's Office of Compliance Investigation is appropriate.

Accordingly, the Initial Decision of the ALJ, dismissing the Amended Petition of Appeal, is adopted for the reasons expressed therein. A copy of this decision shall be forwarded to the Office of Compliance Investigation for review and such action, if any, as that office may deem necessary.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: November 20, 2000

Date of Mailing: November 20, 2000

* This decision, as the Commissioner's final determination, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.