

OAL DKT. NO. EDU 8068-03 (http://lawlibrary.rutgers.edu/oal/html/initial/edu08068-03_1.html)
AGENCY DKT. NO. 337-9/03

DAVID M. SHERIDAN,	:	
	:	
PETITIONER,	:	
	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE	:	COMMISSIONER OF EDUCATION
BOROUGH OF PITMAN, GLOUCESTER	:	
COUNTY, ROBERT CAMPBELL,	:	DECISION
SUPERINTENDENT, ESTHER PACITTI,	:	
ASSISTANT SUPERINTENDENT, AND	:	
MICHELLE ROEMER, BOARD	:	
SECRETARY,	:	
	:	
RESPONDENTS.	:	
	:	
_____	:	

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

The Board presents the following exceptions, *inter alia*, to the Initial Decision: (1) Petitioner at no time received a “distinguished” narrative on his teacher evaluations, notwithstanding that he was rated as “proficient”; (2) Inducting the additional 15 students into the National Honor Society (NHS) was not an error, but, rather, was required by the rules of the organization; (3) Petitioner was not, as the Administrative Law Judge (ALJ) observed, “the fall guy” in the situation, but was merely being held accountable for his actions; (4) The Board followed the proper procedures for the nonrenewal of a non-tenured teaching staff member, as per *N.J.S.A.* 18A:27-4.1(b); (5) Petitioner was advised to resign his position by his union, not by the Board, the Superintendent or anyone else; (6) The Superintendent did not recommend

petitioner for renewal and “[t]he Board of Education only in [the] most exceptional of circumstances” can override his recommendation; (7) The ALJ improperly substituted his judgment for that of the Board; (8) The Board neither “fired” petitioner, nor “terminated” him, as indicated in the Initial Decision at pages 13 and 14, respectively, but, instead, did not renew his teaching contract, as evidenced by the facts that petitioner worked until the last day of the 2002-2003 school year; and (9) Petitioner did not display the qualities and attributes of a professional, responsible teacher. (Board’s Exceptions at 2-11)

In reply, petitioner affirms that the ALJ’s findings, in large part, were based on uncontroverted evidence, and were fully supported by case law, as well as the ALJ’s ability to determine the credibility of the witnesses and the “feel for the case.” (Petitioner’s Reply)¹

Upon careful and independent review of the record in this matter, the Commissioner determines to modify the Initial Decision, as set forth below.

As the ALJ correctly notes, the review of a local board’s decision to nonrenew a non-tenured staff member is guided *Dore v. Bedminster Twp. Bd. of Ed.*, 185 N.J. Super. 447 (App. Div. 1982). The court therein determined that, “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.” *Dore, supra*, at 456 (emphasis added)

Notably, in none of the papers submitted by petitioner, neither initially as a *pro se* litigant, nor, later, by petitioner’s counsel, does petitioner assert such a constitutional or legislative right, notwithstanding that the Petition of Appeal alleges that the Board made procedural errors in the course of its nonrenewal actions. Therefore, as the ALJ’s Prehearing

¹ In his letter filed on November 12, 2004, petitioner’s counsel indicates that he “will be submitting a more detailed response” to the Board’s exceptions. However, inasmuch as the Board’s exceptions, which were duly copied to petitioner’s counsel, were dated November 3, 2004 and filed with the Bureau of Controversies and Disputes on November 5, 2004, further response beyond November 12, 2004 is prohibited by *N.J.A.C.* 1:1-18.4(d).

Order appropriately sets forth, the issues to be resolved herein were: whether petitioner was properly and timely notified by the district that it intended not to renew his teaching contract or position for the 2003-2004 school year and, if such notice was untimely or the district improperly “terminated” petitioner, what is the appropriate remedy? (Prehearing Order, January 6, 2004) In addition, even assuming, *arguendo*, that the ALJ reasonably deduced from this record that “Sheridan is asserting, in effect, his right pursuant to *N.J.S.A.* 18A:27-4.1(b),”² such a claim must fail for the reasons set forth below.

There appears to be no dispute that petitioner was duly notified on May 1, 2003 that his contract for the 2003-2004 school year would not be renewed. (Exhibit P-34) Thereafter, by letter dated May 2, 2003, petitioner requested a statement of reasons for the nonrenewal. (Exhibit P-35) The Superintendent responded in writing on May 6, 2003, setting forth the reason for the nonrenewal: “You have not met district professional performance expectations.” (Exhibit P-37) To the extent petitioner claims that this statement is vague or otherwise improper, however, the Commissioner underscores that although a non-tenured teacher is entitled to a statement of reasons for the board’s decision not to reemploy him, “the requirement that it provide such reasons does not limit its broad discretion in deciding whether to retain non-tenured teachers.” *Guerriero v. Board of Education of the Borough of Glen Rock*, decided by the State Board of Education, February 5, 1986, slip. op. at 7 Furthermore, although a Board *should* provide a nonrenewed teacher with the *true* reasons for its decisions, if it fails to do so, there is “no authority to impose a penalty for a board’s failure to provide accurate reasons

² Petitioner made the following legal arguments before the OAL: (1) That the Board breached his employment contract when it “terminated” him for reasons connected to his NHS activities, which were purely extracurricular and not included in his contract; (2) That the Board breached its obligation of good faith and fair dealing when it “terminated” him and accepted a “smear letter” written by the Superintendent prior to his informal appearance, yet denied petitioner the opportunity to show a videotape from his immediate supervisor at his informal appearance before the Board; and (3) That the Board violated petitioner’s due process rights by denying him a fair and impartial hearing when it failed to comply with the requirement to notify him, in writing, within three days following the informal appearance, of the Board’s determination, as per *N.J.A.C.* 6:3-4.2. (Petitioner’s Post-Hearing Brief at pp. 7-19)

unless it is established that the real reasons for the board's action [are] in violation of constitutional or legislatively conferred rights.****" (*Id.*) (citation omitted) Here, even assuming the statement of reasons is insufficient or inaccurate, there simply has been no such showing by petitioner.

Following receipt of the statement of reasons, by letter dated May 5, 2003, petitioner requested a private hearing before the Board. (Exhibit P-36) The Superintendent informed petitioner by letter dated May 12, 2003 that the Board agreed to meet with him. (Exhibit P-38) Prior to that meeting, the Superintendent prepared a memorandum to Board members which addressed "rumors" that were circulating regarding petitioner's appearance scheduled for June 10, 2003. That memorandum also set forth the Superintendent's reasons for recommending nonrenewal of petitioner's contract, noting that there were complaints "from respected parents about his teaching" and further noting that "while perhaps 'proficient', [petitioner's teaching] is not up to the high academic standards that we hold for all professional staff members. ****"³ (Exhibit P-39) Clearly, under these circumstances, because the Superintendent *did not* recommend the renewal of petitioner, petitioner's sole purpose for an informal appearance before the Board of Education could only be to attempt to convince the members of the board to offer him reemployment, which he failed to do. *Angelo Velasquez v. Board of Education of the Borough of Brielle, Monmouth County*, State Board, August 6, 1997; *N.J.S.A.* 18A:27-4.1(b); *N.J.A.C.* 6:3-4.2(c)

After petitioner's informal appearance before the Board on June 10, 2003, he was advised of the Board's decision not to overturn the Superintendent's recommendation to nonrenew him, albeit that such notice was not *yet* provided in writing. (Initial Decision at 6;

³ The Commissioner acknowledges that petitioner disputes the truth of the statements made by the Superintendent in his memorandum to the Board. (Petitioner's Post-Hearing Brief at 16) However, the Commissioner relies on this memorandum, not for the veracity of the Superintendent's statements, but rather to show that: (1) the Superintendent did not recommend petitioner for renewal and (2) the reasons for the recommendation of nonrenewal are not prohibited by *Dore, supra*.

Petition of Appeal at paragraph 12) The next day, June 11, 2003, petitioner tendered his resignation. (Exhibit P-41) That letter of resignation was acknowledged by the Superintendent on June 17, 2003 (Exhibit P-42), and accepted by the Board at its meeting on July 15, 2003. (Exhibit P-43)⁴ In this regard, the Commissioner recognizes that *N.J.A.C.* 6:3-4.2(i) provides:

Within three days following the informal appearance, the board shall notify the affected teaching staff member, in writing, of its final determination. Such notification may be delegated by the board to its superintendent or board secretary.

Under these circumstances, however, where petitioner readily admits that he was timely advised by the Superintendent of the Board's decision subsequent to his informal appearance and where petitioner tendered his resignation *the day after* that appearance, the Commissioner declines to find that the Board's failure to notify petitioner of its decision, in writing, within three days of the appearance, constitutes the "due process violation" that petitioner so urges. (Petitioner's Post-Hearing Brief at 15)⁵

Quite simply, even accepting that petitioner's nonrenewal was *solely and directly* attributable to the NHS controversy, and further accepting that the Superintendent's actions in connection with the controversy were tainted by "small town politics" (Initial Decision at 10), factual findings that are not wholly supported by even *petitioner's exhibits*,⁶ the Commissioner

⁴ The Board's acceptance of petitioner's resignation may fairly be read as its "consent" to permit petitioner to resign from his employment, notwithstanding that the terms of his contract require that he provide the Board with 60 days' notice of intent to terminate the agreement. (Exhibit P-47) *See, Victoria Carrelle v. Bd. of Ed. of the Township of Bloomingdale, Essex County*, Commissioner Decision February 29, 2004.

⁵ In this connection, the State Board has further instructed that "a non-tenured teacher does not have any protected interest in continued employment under the United States Constitution and, therefore, no right to due process protection under the Fourteenth Amendment. *Board of Regents of State Colleges et al. v. Roth*, 408 U.S. 564, 92 S. Ct. 2701 (1972). Nor do such teachers have a right to due process under the New Jersey Constitution. *Donaldson, supra.* ***" *Lydia Anderson v. State-operated School District of the City of Newark, Essex County*, State Board Decision, February 7, 2001, slip op. at 1-2.

⁶ Notably, the record indicates that the Superintendent informed the Board of Education by memorandum dated January 7, 2003 that, following an extensive review of parental concerns, NHS publications and district guidelines, the district's NHS selection committee, notwithstanding its honorable intent, had *not* been following NHS guidelines. The Superintendent therein states, in pertinent part, "The mistake that was made was that the selection team arbitrarily set a cutoff based on scores reported by teaching staff members. The cutoff varied from year to

must conclude that, pursuant to *Dore, supra*, petitioner fails to state a claim which would warrant any relief, let alone, the relief he seeks, which is reinstatement. Indeed, even assuming, *arguendo*, that: (1) Petitioner had sufficiently pled the applicability of *N.J.S.A.* 18A:27-4.1(b) and (2) *Dore* permits such a statutory provision, which establishes procedural standards for the renewal or nonrenewal of non-tenured employees, to suffice as “*legislation affecting the tenure rights of teachers*,” *Dore, supra* at 456, petitioner has failed to demonstrate that the Board’s actions violated this statute.⁷

Accordingly, the Petition of Appeal is dismissed.

IT IS SO ORDERED.⁸

COMMISSIONER OF EDUCATION

Date of Decision: December 1, 2004

Date of Mailing: December 1, 2004

year. This gave the unfortunate perception that there was a quota placed on the number of students allowed to be in the NHS. The NHS guidelines indicate a specific cutoff which does not change from year to year and allows for any number of students to qualify to enter the NHS. This means that the number of inductees will vary from year to year.*** The arbitrary setting of this standard is clearly the mistake made by the committee but it must be pointed out that they were merely repeating a process that had been used for many years. At no point was there any intent to eliminate certain students from induction. There are students who, if the NHS guidelines had been followed, would have been admitted this year.” (Exhibit P-17 at pp. 1-2) Indeed, later that month, Principal Grennor recommended amendments to the district’s NHS selection guidelines, which included, *inter alia*, establishing “a consistent set of standards for academics and teacher evaluations.” (Exhibit P-23)

Petitioner’s exhibits also include a memorandum confirming a conference held on April 7, 2003 with petitioner, his representative and the Superintendent. The Superintendent therein noted that they discussed “aspects of [petitioner’s] professional employment.” He states, “I did discuss concerns with you about statements which you apparently made at a meeting of the National Honor Society. I also echoed concerns which had been expressed by parents regarding the use of sparksnote.com in testing.” (Exhibit P-32)

⁷ Having so ruled, the Commissioner determines that it is not necessary to reach the ALJ’s finding that petitioner’s resignation “lacked factual and legal intent” so as to effectively render it a nullity. (Initial Decision at 15)

⁸ 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.*