

BEVERLY ASARO, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE BOROUGH : DECISION  
OF MOONACHIE, BERGEN COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioner – a former social worker and member of the Child Study Team in respondent’s district – alleged that the Board improperly eliminated her position in violation of her tenure rights. Petitioner also asserted that elimination of her position constituted a violation of the Board’s duty pursuant to N.J.A.C. 6A:14-3.1 (b) to utilize district employees to constitute its Child Study Team. Respondent contended that the abolition of petitioner’s position was pursuant to N.J.S.A. 18A29-9, and resulted in financial savings for the district.

The ALJ found, *inter alia*, that: although petitioner contended that the Board’s action in eliminating her position was a pretext – and that there were other, non-economic reasons for her termination – there was no credible evidence to indicate that the Board acted in anything but good faith; petitioner’s position was abolished for reasons of economy, which is entirely within the authority of the Board; and the method by which a district decides to staff a Child Study Team – whether by contracting out those services or by hiring staff – need not be permanent, so long as the provision of the required services comports with applicable law and regulations. Accordingly, the ALJ affirmed the Board’s abolishment of petitioner’s position.

Upon independent and careful review of the record, the Commissioner adopts the Initial Decision of the OAL for the reasons well stated therein. The instant Petition of Appeal is dismissed.

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.

December 22, 2006

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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 – filed in accordance with the requirements of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching her determination herein.

On exception, petitioner essentially recasts and reiterates her arguments advanced before the Administrative Law Judge (ALJ) below, *i.e.*, 1) the Board could have saved even more money than it did without eliminating her tenured position, therefore, saving money was not the “true motivation” for the Board’s abolishment of her position; and 2) there were reasons other than economic that led to her termination. (Petitioner’s Exceptions at 1-2) She charges that the ALJ failed to ascribe due credence, without explanation in his decision, to her testimony and that of her witness – a local union officer – in support of these contentions. (*Id.* at 2)

In response, the Board points out – as recognized by the ALJ – the purely speculative nature of petitioner’s argument that the Board could have saved even more money than it did, without eliminating her position, by taking the alternative steps she advocated. The Initial Decision additionally recognized that petitioner presented no legal authority which would obligate the Board to pursue petitioner’s suggested course of action. (Board’s Reply Exceptions at 1) As to petitioner’s

argument with respect to evidence she presented at hearing that she claims established the “pre-textual nature of the abolition of her position”, the ALJ clearly stated in his decision that he found petitioner failed to present any evidence of a “credible nature” in support of such a claim. (*Id.* at 2)

The Board therefore urges that the Commissioner adopt the decision of the ALJ “as the Petitioner has failed to provide any legal or factual basis that warrants a reversal of his decision.” (*Id.* at 1)

Upon an independent and careful review of the record in this matter and according due deference to the ALJ’s credibility determinations,<sup>1</sup> the Commissioner concurs with the ALJ that the Board’s action abolishing petitioner’s position and contracting with the South Bergen Jointure Commission for the provision of all its child study team services was proper under *N.J.S.A.* 18A:46-5.1, *N.J.A.C.* 6A:14-5.1 and existing case law.

Accordingly, the recommended Initial Decision is adopted for the reasons stated therein and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 22, 2006

Date of Mailing: December 26, 2006

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<sup>1</sup> Petitioner’s exceptions seek to have the Commissioner arrive at different conclusions from those of the ALJ as a consequence of testimony presented at hearing. It is noted that in challenging the credibility determinations of an ALJ, petitioner bears the burden of presenting transcripts relevant to the exceptions filed so that the Commissioner might assess the judge’s findings. Such is the case because the Commissioner “may not reject or modify any findings of fact as to issues of credibility of lay witness testimony 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.” *N.J.S.A.* 52:14B-10(c). The record before the Commissioner, which did not include transcripts of the hearing at the OAL, provides no cause for rejection or modification in this regard.

<sup>2</sup> 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.*