

LYDIA ANDERSON, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF IRVINGTON, ESSEX COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner, a non-tenured teacher formerly employed by the Board, challenged the determination of the respondent to not renew her contract for the 2002-2003 school year. She asserts the actual reason for non-renewal is her national origin, specifically that she is foreign born. Respondent Board asserts that petitioner's non-renewal was the result of budgetary concerns and unsatisfactory performance in the classroom.

The ALJ found, *inter alia*, that: petitioner's testimony regarding hearsay remarks of a discriminatory nature lacked credibility; petitioner failed to prove, by a preponderance of evidence, a *prima facie* case of discrimination; and respondent Board established a legitimate basis for non-renewal of petitioner based on budgetary reasons and performance reasons. The ALJ ordered that the determination of the respondent Board be affirmed, and dismissed the petition with prejudice.

Upon a thorough and independent review of the record, the Commissioner concurs with the findings and conclusions of the ALJ, and adopts the Initial Decision of the OAL as the final decision in this matter.

<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>

March 7, 2006

OAL DKT. NO. EDU 7641-03
AGENCY DKT. NO. 170-5/03

LYDIA ANDERSON, :
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 PETITIONER, : COMMISSIONER OF EDUCATION
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions submitted by petitioner and replies thereto by the Board of Education (Board).¹

Petitioner takes exception to the Administrative Law Judge's (ALJ) findings of fact, reiterating her contention that the evaluations on which the Board purportedly relied in determining not to renew her contract of employment were fabricated, and that these—together with the budget crisis on which the Board also purportedly relied—were nothing more than a pretense to cover the Board's real reason for nonrenewal, that is, discrimination based on petitioner's national origin. Petitioner also argues that the Board never voted on her nonrenewal, that she received communications from the district suggesting she was still employed for the following school year, that the statements treated as hearsay by the ALJ occurred exactly as petitioner reported them and should have been credited accordingly, and that certain arguments submitted in Board briefs should have been disregarded because they went

¹ It is noted that petitioner is no longer represented by counsel and submitted exceptions on her own behalf.

beyond the topic of briefing requested by the ALJ. Petitioner asks that her claim be remanded to the ALJ for “retrial as stated in Article 10 of the Universal Declaration of Human Rights,” since she did not receive the “fair hearing” to which she is entitled. (Petitioner’s Exceptions at 1-10, quotation at 13-10) In reply, the Board contends that petitioner’s exceptions provide no basis on which to upset the ALJ’s ruling, and that they further fail to comport with the requirements of *N.J.A.C. 1:1-18.4*. (Board’s Reply at 1-2)

Upon careful consideration of the record in light of arguments on exception, the Commissioner adopts the Initial Decision of the ALJ.

Initially, the Commissioner notes that virtually all of petitioner’s objections to the Initial Decision are fundamentally rooted in her disagreement with the ALJ’s credibility determinations and with the resultant weighing of testimonial and documentary evidence, including the extent to which the ALJ credited hearsay and written communications which petitioner claimed to have, but did not produce at hearing.

The standard of law with respect to objections of this type is well established,² and in the present instance, the Commissioner finds the ALJ’s credibility and fact determinations to be both clearly explained in the Initial Decision and sufficiently supported by the record. She further finds that petitioner has offered nothing in her exceptions that would warrant disturbing the deference to which the ALJ—as the

² *N.J.S.A. 52:14B-10(c)* states in pertinent part:

The agency head 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. In rejecting or modifying any findings of fact, the agency head shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent, and credible evidence in the record.

See also, *In the Matter of the Tenure Hearing of Tyler*, 236 *N.J. Super.* 478, 485 (App. Div.), *certif. denied*, 121 *N.J.* 615 (1990); *S.D. v. Div. Med. Assistance and Health Services*, 349 *N.J. Super.* 480, 485 (App. Div. 2002)

finder of fact who had the greatest opportunity to observe the demeanor of witnesses—is entitled in this regard. *In re Morrison*, 216 N.J. Super. 143, 158 (App. Div. 1987).

Additionally, to the extent that petitioner places import on the fact that the Board did not actually vote to nonrenew her employment, the Commissioner observes that no such vote is required, either initially upon the superintendent’s recommendation or following the employee’s informal appearance before the board. N.J.S.A. 18A:27-4.1(b);³ *Angelo Velasquez v. Board of Education of the Borough of Brielle, Monmouth County*, State Board of Education, August 6, 1997.

Finally, the Commissioner finds nothing in the record to suggest that petitioner was denied any right of due process to which she was entitled in the present proceeding, and, consequently, there is no basis on which to conclude that this matter should be remanded to the OAL for “retrial” as petitioner requests.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter, and the Petition of Appeal is dismissed.

IT IS SO ORDERED.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 7, 2006

Date of Mailing: March 7, 2006

³ The statute reads in pertinent part:

A board of education shall renew the employment contract of a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board. The board shall not withhold its approval for arbitrary and capricious reasons. *A nontenured officer or employee who is not recommended for renewal by the chief school administrator shall be deemed nonrenewed. (Emphasis supplied.)*

⁴ 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.*