

FRED ENGEL AND PHILIP MARAVIGLIA, :
PETITIONERS, : COMMISSIONER OF EDUCATION
V. : DECISION
STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF NEWARK, :
ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioning teaching staff members alleged that the respondent Newark School District unlawfully refused to promote them based on their prior histories, and, further, had unlawfully demoted petitioner Maraviglia in violation of his tenure rights.

The ALJ found that the District acted within its lawful discretionary authority in considering Maraviglia's entire employment background – which included a conviction for illegal activity related to the 1992 Newark school election, and sanctioning by the Commissioner and State Board of Examiners for the same conduct – in determining not to appoint him to the positions he sought. (Petitioner Engel withdrew his claim early in the proceedings.) The ALJ further found that the District did not violate Maraviglia's tenure rights by “demoting” him, since he had not been officially appointed to the position from which he claimed to have been unlawfully removed. The ALJ, therefore, recommended dismissal of the petition.

The Commissioner adopted the Initial Decision of the ALJ and dismissed the Petition.

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.
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September 28, 2006

OAL DKT. NO. EDU 1594-02
AGENCY DKT. NO. 485-11/01

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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 petitioner Maraviglia's exceptions and the reply of the Newark School District (District).¹

In his exceptions, petitioner reiterates his prior arguments before the Administrative Law Judge (ALJ), stressing that the ALJ failed to address his contention – based on *In the Matter of the Tenure Hearing of Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967) – that only the Commissioner can determine the appropriate penalty for unbecoming conduct by a teaching staff member, and local district officials may not usurp this authority by increasing the penalty imposed. According to petitioner, where – as here – the judgment of a local official is wrongly substituted for that of the Commissioner and the best qualified candidate is consequently kept from a district position, not only is the affected employee unfairly and unlawfully harmed, the district's provision of a thorough and efficient system of public education is also compromised. (Petitioner's Exceptions at 1-8) In reply, the District relies on its post-hearing

¹ The prior withdrawal of petitioner Engel's claim is noted and approved by the Commissioner.

submission and stresses that “at no time did the Commissioner of Education seek to limit the District’s discretion with regard to [petitioner’s] future employment requests.” (District’s Reply at 1-4, quotation at 4)

Upon review, the Commissioner fully concurs with the analysis and conclusions of the ALJ. Contrary to petitioner’s assertions on exception, the ALJ – while not mentioning the case by name – did address the contention for which *Fulcomer* is proffered, by recognizing in her discussion and conclusions that the District was entitled to exercise its lawful discretion in the selection of candidates – including petitioner – for appointment to District positions, and that such exercise constitutes neither a substitution of the District’s judgment for that of the Commissioner nor the imposition of a penalty beyond that prescribed by the Commissioner in petitioner’s prior tenure proceeding.

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.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 28, 2006

Date of Mailing: September 29, 2006

² 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.*