

MOHAMED EL-HEWIE, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE : DECISION  
 BERGEN COUNTY VOCATIONAL :  
 SCHOOL DISTRICT, BERGEN COUNTY, :  
 :  
 RESPONDENT. :

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SYNOPSIS

Petitioner appealed the non-renewal of his employment as an alternate route provisional teacher of mathematics at the end of his 10 month, non-tenured contract for the 2005-06 school year, claiming that the respondent Board violated laws and regulations governing provisional teachers, and discriminated against him. Respondent asserted that the non-renewal was performance based.

The ALJ found, *inter alia*, that: a board of education possesses broad discretion in renewing the contract of non-tenured teaching staff members, and the Board complied with all statutory requirements regarding non-renewal of a teacher; respondent's non-renewal determination is well-supported by substantial credible evidence and was not arbitrary or capricious; petitioner's claims regarding, *inter alia*, the Board's failure to adhere to regulations governing the provisional teacher program are without merit; and petitioner has failed to establish any claim of discrimination. The ALJ recommended dismissal of the petition.

Upon careful and independent review of the record, the Commissioner concurred with the ALJ and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

<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>
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April 10, 2008

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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.<sup>1</sup>

Petitioner’s exceptions begin by charging the Administrative Law Judge (ALJ), with, *inter alia*: 1) having a pre-set disposition to frustrate the petitioner; 2) prejudging – at the time of opening statements before hearing the evidence – petitioner’s claim of fraud against the Board; 3) refusing to heed petitioner’s pleas for her to adhere to her initial schedule order; 4) permitting counsel for respondent to go beyond the scope of direct testimony for the sake of not inconveniencing witnesses; 5) allowing counsel for the Board an extension for a sixth day of trial; 6) abusing her discretion by protracting the litigation process and requesting three extensions to issue her Initial Decision; 7) selectively crediting testimony and documentary facts favoring the Board while concealing the pervasive flaws in their mentoring, evaluation and

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<sup>1</sup> It is noted that petitioner filed replies to the Board’s reply exceptions. As *N.J.A.C. 1:1-18.4* makes no provision for such a submission, they were not considered herein.

support provided to alternate route teachers pointed out by petitioner; and 8) being overwhelmed by the details of evidence presented. (Petitioner's Exceptions at 3-11)

Petitioner's exceptions next object to certain of the ALJ's findings of fact, contending that these were adduced through the ALJ's erroneous adoption of fabricated versions of relative facts presented by some of the witnesses while wholly ignoring other relevant facts crucial to petitioner's case. In support of this assertion, petitioner presents snippets of hearing testimony of various witnesses and his analysis of what these testimonial advances signify or establish. (*Id.* at 11-85)

Finally, petitioner excepts to certain of the ALJ's conclusions of law, arguing that she clearly erred, *inter alia*, in: 1) applying irrelevant legal standards to her factual findings; 2) utilizing an improvised and unsubstantiated interpretation of the purposes of observation and evaluation of an alternate route teacher; 3) interpreting the regulatory framework with respect to the timing of evaluation for certification purposes; 4) favoring the Board by relieving it from its mentoring obligation to petitioner; 5) misinterpreting *Dore v. Bedminster Bd. of Ed.*, 185 N.J. Super. 447 (App. Div. 1982) vis-à-vis its relationship to this matter; and 6) misapplying the Supreme Court's burden-shifting framework in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) with respect to the analysis of discrimination claims. (*Id.* 85-90). Petitioner concludes by urging the Commissioner to reject the Initial Decision and order that he be reinstated to his employment.

In reply, the Board urges that petitioner's exceptions are improper, illogical and irrelevant and are not "exceptions" within the intendment of N.J.A.C. 1:1-18.4, which requires that specific findings of fact and legal conclusions to which exception is taken be set forth along with specific supporting reasons. Rather, it charges that petitioner's exceptions bear no relation

to the Initial Decision, but instead represent an attempt to re-litigate his case before the Commissioner and, therefore, it urges that these should be disregarded. (Board's Reply Exceptions)

After comprehensive consideration of the entire record – including hearing transcripts<sup>2</sup> and all evidentiary proofs – and exercising the requisite deference to the ALJ's assessment of the credibility of the witnesses,<sup>3</sup> the Commissioner concurs with the ALJ that petitioner has failed to sustain his burden of establishing that the Board's non-renewal of his employment for the 2006-2007 school year was arbitrary, capricious, unreasonable, or otherwise improper. The Commissioner further agrees that petitioner has failed to meet his burden of proof with respect to any claim of discrimination against him by the Board.

Accordingly, the recommended decision of the OAL is adopted for the reasons comprehensively presented therein and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>4</sup>

#### COMMISSIONER OF EDUCATION

Date of Decision: April 10, 2008

Date of Mailing: April 11, 2008

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<sup>2</sup> Hearing was conducted on July 24, 2006, January 26, March 19, March 27, April 16, April 17, April 23, and June 6, 2007.

<sup>3</sup> The applicable standard of review in this regard is clear and unequivocal – 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)*) A reasoned review of the record, with this governing standard in mind, provides absolutely no basis for concluding that the ALJ's credibility assessments and resultant fact finding were without the requisite level of support. To the contrary, the Commissioner is satisfied that the ALJ's recitation of testimony is both accurate and thorough and that she carefully measured conflicts, inconsistencies and potential biases in deciding what testimony to credit.

<sup>4</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.*