

2-09 (OAL Decision: Not yet available online)

DIANE DAVIDSON, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF : DECISION
THE CITY OF TRENTON, :
MERCER COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – who served as a non-tenured transportation supervisor in respondent’s district during the 2006-2007 school year – contests the Board’s decision to non-renew her annual contract for the 2007-2008 school year, claiming that such decision was the direct result of unethical interference by a Board member and contrary to the recommendation of district administrators. The Board filed a motion for summary decision, asserting its right to non-renew the petitioner, who had not attained tenure in the district. The ALJ determined to proceed with the hearing. Following completion of petitioner’s evidence, the Board moved for judgment.

The ALJ found, *inter alia*, that: the legal standard applicable for a motion for judgment at the end of a petitioner’s case had been met; the law provides the Board with broad discretion to determine whether to renew the contract of a non-tenured employee; and the burden to prove arbitrariness rests on the employee. The ALJ concluded, based on the evidence, that the Board did not act arbitrarily in non-renewing petitioner’s contract, granted the Board’s motion for judgment, and dismissed the appeal.

Upon a thorough and independent review of the record, the Commissioner concurred with the ALJ that respondent Board properly exercised its right to non-renew petitioner’s employment and adopted the Initial Decision 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>

January 5, 2009

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Petitioner, a non-tenured transportation supervisor, challenged the respondent board of education's decision – rendered against the recommendation of district administrators – not to renew her employment.¹ The record, including the exhibits entered into evidence during the hearing in the Office of Administrative Law (OAL),² and the Initial Decision have been reviewed.

For the reasons articulated by the Administrative law Judge (ALJ), including his credibility determinations, the Commissioner finds that petitioner failed to meet her burden under *Dore v. Bedminster Twp. Board of Education*, 185 N.J. Super. 447, 453-54 (App. Div. 1982) and the other cases cited by the ALJ to show that respondent's decision was arbitrary or capricious. Accordingly, a decision against petitioner at the close of her case was warranted. See, N.J.A.C. 1:1-1.3; R. 4:40-1; *Dolson v. Anastasia*, 55 N.J. 2, 5-6 (1969).

The petition is accordingly dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: January 5, 2009

Date of Mailing: January 6, 2009

¹ There is no indication in the record or Initial Decision that the petitioner alleged untimeliness of the provision to her of notice of respondent's decision.

² No hearing transcripts were provided to the Commissioner.

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.