

VICTOR EISENBERG, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF FORT LEE,
BERGEN COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – formerly employed as an English teacher in respondent’s school district – challenged the Board’s decision not to renew his non-tenured employment with the district for the 2001-2002 school year, claiming that his personnel file had been “papered” in order to justify the non-renewal. He also alleged that certain positive evaluations were missing from his file.

The ALJ found that: a board of education possesses broad discretion in renewing the contract of non-tenured teaching staff members; the burden of proof rests upon the petitioner to show that the Board’s non-renewal decision was arbitrary, capricious or unreasonable; the petitioner did not meet his burden to prove that there was manipulation of his personnel file; and respondent’s non-renewal determination is supported by credible evidence and was not arbitrary or capricious. The ALJ concluded that petitioner had failed to sustain his burden of proof, and recommended dismissal of the petition.

The Commissioner concurred with the Administrative Law Judge’s (ALJ) conclusion that petitioner did not meet his burden to prove that his personnel file was intentionally manipulated or that his non-renewal by the Board was arbitrary, capricious or unreasonable. Accordingly, the Commissioner adopted the Initial Decision 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>

March 11, 2010

OAL DKT. NO. EDU 3049-04
(EDU 9451-1 on remand)
AGENCY DKT. NO. 411-10/01

VICTOR EISENBERG, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 BOROUGH OF FORT LEE, :
 BERGEN COUNTY, :
 :
 RESPONDENT. :

This matter comes before the Commissioner as the result of a remand solely to determine whether petitioner's personnel file had been altered for the purpose of influencing the respondent board of education to terminate petitioner's employment and, if so, whether the respondent's decision not to renew petitioner's employment was arbitrary, capricious or unreasonable. Upon review of the Initial Decision of the Office of Administrative Law (OAL), the record on remand – including the hearing transcripts and exhibits – and the parties' exceptions, the Commissioner concurs with the Administrative Law Judge's (ALJ) conclusion that petitioner did not meet his burden to prove that his file was intentionally manipulated and that such alleged manipulation improperly served as the basis for the respondent board of education's decision not to renew his employment.

Petitioner contends that his personnel file was manipulated in two ways: 1) important documents were missing and 2) unfavorable documents were added. As to the first

allegation, the Commissioner is not persuaded that petitioner proved that there were any missing documents, and the Commissioner finds that the documents which were undisputedly included in his personnel file were sufficient for a good faith review by the respondent Board of Education (Board).

The alleged missing documents were primarily petitioner's second-year evaluations and his rebuttals to his third-year evaluations. At the outset, the Commissioner notes that the district superintendent, Dr. Richardson, testified that petitioner's file was complete when he reviewed it before making his non-renewal recommendation to the Board. Further, while petitioner complains that the second-year evaluations were not in the "board of education's" personnel files, the record shows that his evaluations were distributed to multiple recipients, including to him. Thus he could have – and did – obtain the documents from the principal, his supervisor, or his own files and present them to the Board. In point of fact, the record shows that petitioner and his counsel provided the purportedly missing documents to the Board at the July 2, 2001 hearing which petitioner requested, and at which he asked the Board to reconsider its decision not to renew him. Thus, the Commissioner cannot conclude that petitioner's second-year evaluations were missing from the district files or not considered by the superintendent and Board.

The Commissioner also declines to accept petitioner's contention that his file was "papered" with unnecessary memoranda that were meant to embarrass him. For the most part, petitioner does not deny the events that served as the basis for the memoranda – *e.g.* the emailing of students concerning cancellation of a play prior to consultation with his supervisors, damage done to the auditorium by students under his watch, and his failure to bring his grade book to a meeting with parents who were contesting their child's marks. Rather, he disagrees with what he

perceives as the authors' characterizations of the various incidents and with the authors' perceptions about his responsibilities and culpabilities. The Commissioner does not view as improper the inclusion of these documents in petitioner's personnel file. The memos served as documentation of petitioner's performance and supplemented the formal evaluations. No fabrication or animus was evident.

Petitioner placed great reliance on former Fort Lee High School principal Robert Taglieri's September 4, 2002 certification (P-28) suggesting that the district superintendent John Richardson ordered a campaign to get rid of petitioner by papering his file with negative memoranda. However, Taglieri denounced that certification by means of a subsequent certification (P-29) which specifically recanted any statements that had suggested such a conspiracy, and which further stated that petitioner was neither a good teacher nor a good drama supervisor. Taglieri's testimony at the hearing reaffirmed the content of P-29.

In sum, the Commissioner cannot reach the conclusion that petitioner's file was manipulated in a way that would prevent an adequate assessment by the superintendent or the Board of his performance as a teacher and drama director.

A local school board has "virtually unlimited discretion in hiring or renewing the contracts of nontenured teachers." [*Dore v. Board of Education of the Township of Bedminster, Somerset County, 185 N.J. Super. 447, 453 \(1982\)*](#). The board is not restricted to acting only where its reasons for non-renewal are supported by evaluations, for, indeed, the board may reach its conclusion about a non-tenured teacher "on a broad base of input received from a variety of people. . . ." [*Id. at 454*](#). The breadth of the board's discretion is so great that the Appellate Division has said, "absent constitutional constraints or legislation affecting the tenure rights of teachers, local boards of education have an almost complete right to terminate the services of a

teacher who has no tenure and is regarded as undesirable by the local board." Id. at 456. The board's decision will only be vacated where it acts in an arbitrary, capricious and unreasonable manner. Kopera v. West Orange Board of Education, 60 N.J. Super. 288, 294 (App. Div. 1960).

In the present case the Commissioner cannot view the Board's decision not to renew petitioner's employment in the district as arbitrary, capricious or otherwise unlawful. Accordingly, the petition is hereby dismissed in its entirety.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 11, 2010

Date of Mailing: March 15, 2010

¹ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.