

RICHARD SCHEMPP, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF CLAYTON, :
GLOUCESTER COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner challenged the respondent Board's determination not to renew his contract as an assistant principal after employment in that position during the 2009-2010, 2010-2011, and 2011-2012 school years. Petitioner argued that the Board violated procedures during his performance evaluations, and contended that its action in failing to renew his employment was arbitrary, capricious and unreasonable. The Board filed a motion for summary decision, which was opposed by the petitioner.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact in this case, and the matter is ripe for summary decision; the sole issue in this matter is whether the Board's action in not renewing petitioner's non-tenured employment for the 2012-2013 school year was arbitrary, capricious or unreasonable; the petitioner bears the burden of proving by competent and credible evidence that the Board's non-renewal decision was arbitrary, capricious or unreasonable; absent constitutional constraints, local boards of education have an almost complete right to terminate the services of a non-tenured employee; in the instant case, the respondent Board based its decision upon input from administrators with personal knowledge of petitioner's work performance, including the Superintendent of Schools, as well as parental complaints regarding petitioner's administrative style and abilities; despite his allegation that the Board's non-renewal decision included retaliation for the filing of a discrimination complaint by his former principal, petitioner failed to raise a material question of fact as to other bona fide reasons for the Board's non-renewal action. Accordingly, the ALJ granted the respondent Board's motion for summary decision and dismissed the petition.

Upon comprehensive review, the Commissioner concurred with the ALJ's findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

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.

May 12, 2014

OAL DKT. NO. EDU 11881-12
AGENCY DKT. NO. 219-8/12

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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 the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner, Richard Schempp, and the Board of Education’s (Board) reply thereto.¹

In his exceptions, the petitioner argues that the Administrative Law Judge (ALJ) erroneously decided this matter on summary decision. The petitioner takes exception to certain findings of facts made by the ALJ, and he further argues that there are genuine issues of material fact in dispute that require a testimonial hearing. Since the ALJ deemed true for purposes of summary decision his claim that he was non-renewed in retaliation for the discrimination complaint filed against the Board by his principal, who supported him and regarded him highly, the petitioner contends that a genuine issue of material fact was raised to warrant a hearing. The petitioner also maintains that other genuine issues of fact exist which lend credence to his argument that the Board acted with retaliatory motives and/or arbitrarily or capriciously towards him. Therefore, the petitioner contends that this matter must be remanded to the OAL for a hearing on the merits.

¹ Petitioner filed a reply to the Board’s reply exceptions that was not considered by the Commissioner because there is no provision under the regulations for filing a reply to reply exceptions. See, *N.J.A.C.* 1:1-18.4.

In reply the Board reiterates the standard for reviewing a board of education's decision concerning the non-renewal of non-tenured employees, stressing that a board of education has almost a complete right to terminate the services of a non-tenured teacher. Despite the fact that the ALJ accepted all of the allegations of the petitioner as the non-moving party, the petitioner failed to refute the reasonable basis for the Board's non-renewal decision, which included the Superintendent's written reprimand of the petitioner as well as two written parental complaints filed against him. As a result, the Board argues that this matter was appropriately decided by summary decision, and the Initial Decision should be adopted as the final decision.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons thoroughly set forth in the Initial Decision – that the Board's decision to non-renew the petitioner for the 2012-2013 school year was not arbitrary, capricious or unreasonable. The Commissioner also finds that the ALJ properly applied the standard for summary decision, giving all legitimate inferences to the petitioner as the non-moving party, to determine that there was no genuine issue of fact that required an evidentiary hearing. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 12, 2014

Date of Mailing: May 14, 2014

² Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.