

New Jersey Commissioner of Education

Final Decision

Kenya Moncur,

Petitioner,

v.

Board of Education of the City of East Orange
Essex County,

Respondent.

Synopsis

Petitioner, formerly employed by the respondent Board as a non-tenured Supervisor of Mathematics, appealed the non-renewal of his employment. Petitioner contended that the Board's stated reasons for his termination were specious, rendering its actions arbitrary, capricious, and unreasonable, and sought reinstatement and back pay. Specifically, petitioner argued that the Board failed to properly and timely conduct state-mandated evaluations of his performance, and that evaluations that were completed rated his work as effective and never addressed the issue of low student test scores. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; pursuant to *N.J.S.A.* 18A:28-5(b)(1), a teaching staff member earns tenure upon completion of four years of consecutive employment, together with reemployment for the fifth year; petitioner had not yet earned tenure when his employment was terminated; it is well established that a local school board has virtually unlimited discretion in hiring or renewing non-tenured teaching staff; and the Board has engaged in no conduct that violated petitioner's constitutional or legislatively conferred rights. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon comprehensive review of the record, the Commissioner concurred with the ALJ that summary decision is appropriate, and that petitioner is not entitled to the relief he sought because the Board's actions did not violate petitioner's rights. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and 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.

New Jersey Commissioner of Education

Final Decision

Kenya Moncur,

Petitioner,

v.

Board of Education of the City of
East Orange, Essex County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the exceptions filed by petitioner pursuant to *N.J.A.C. 1:1-18.4* have been reviewed.¹

Petitioner, a former non-tenured Supervisor of Mathematics, alleges that his non-renewal by the East Orange Board of Education (Board) was improper. Following the Board's motion for summary decision, the Administrative Law Judge (ALJ) concluded that the Board's actions did not violate petitioner's constitutional or legislatively-conferred rights. The ALJ further concluded that even if petitioner was correct that the Board failed to properly or timely complete petitioner's evaluations, petitioner would not be entitled to reinstatement or a financial award.

In his exceptions, petitioner argues that the Board gave a reason for his non-renewal – his failure to improve math scores on standardized assessments – that was not

¹ The Board did not file a reply to petitioner's exceptions.

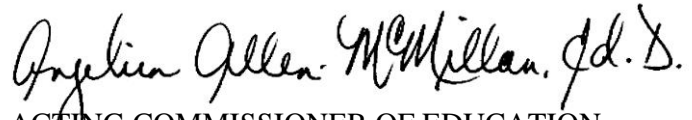
supported by the facts and was, therefore, arbitrary and capricious. Petitioner claims that he was not charged with improving test scores and that no concerns were ever raised by the administration regarding test scores during his employment; in fact, he received evaluations indicating that he was highly effective. Petitioner asserts that summary decision was inappropriate because of this dispute regarding the facts, and that he should have the opportunity to rebut the Board's stated reason for his non-renewal.

Upon a comprehensive review of the record, the Commissioner concurs with the ALJ that summary decision is appropriate, and that petitioner is not entitled to relief because the Board's actions did not violate petitioner's rights. A board of education has virtually unlimited discretion in hiring or renewing non-tenured staff members absent constitutional constraints or legislatively-conferred rights. *Dore v. Bedminster Twp. Bd. of Ed.*, 185 N.J. Super. 447, 456 (App. Div. 1982). Accordingly, when a non-tenured staff member challenges a board's decision to terminate his employment on the grounds that the reasons provided by the board are not supported by the facts, he is entitled to litigate that question only if the facts he alleges, if true, would constitute a violation of constitutional or legislatively-conferred rights. *Jamie Truncellito v. Bd. of Educ. of the Twp. of Lyndhurst, Bergen Cty.*, Commissioner Decision No. 271-19+ (December 3, 2019) (citing *Guerriero v. Bd. of Ed. of the Borough of Glen Rock*, decided by the State Board of Education February 5, 1986, *aff'd* Docket #A-3316-85T6 (App. Div. 1986)). As the ALJ noted, petitioner has not asserted any constitutional claims or alleged a violation of legislatively-conferred rights. Furthermore, any violations by the Board regarding petitioner's evaluations do not entitle him to the relief he is seeking. *Dore, supra*. The Commissioner does not find petitioner's exceptions persuasive, as they improperly attempt to place the burden on the Board to demonstrate a justification for the non-renewal, when the well-established standard

clearly requires petitioner to demonstrate a violation of his constitutional or legislatively-conferred rights – which he has failed to do.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. The Board’s motion for summary decision is granted and its decision to not renew petitioner’s contract is affirmed.

IT IS SO ORDERED.²


ANGELICA ALLEN-McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 12, 2021
Date of Mailing: July 19, 2021

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 10105-2020

AGENCY DKT. NO. 135-6/20

KENYA MONCUR,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF
EAST ORANGE, ESSEX COUNTY,**

Respondent.

Robert M. Schwartz, Esq., for petitioner (Schwartz Law Group, attorneys)

Ramon Rivera, Esq., for respondent (Scarinci and Hollenbeck, attorneys)

Record Closed: May 14, 2021

Decided: May 26, 2021

BEFORE **ELLEN S. BASS**, ALJ:

STATEMENT OF THE CASE

Petitioner, Kenya Moncur, a former non-tenured Supervisor of Mathematics for the East Orange School District, challenges the non-renewal of his employment. He urges that the reasons offered for his termination were specious, rendering the actions of the East Orange Board of Education (“the Board”) arbitrary, capricious, and unreasonable. Moncur seeks reinstatement and back pay.

PROCEDURAL HISTORY

This matter arose with the filing of a petition of appeal with the Commissioner of Education (“the Commissioner”) on June 19, 2020. An answer was filed by the Board on September 18, 2020, and the matter was transmitted to the Office of Administrative Law (“OAL”) as a contested case on October 20, 2020. The Board filed a Motion for Summary Decision on April 15, 2021. Moncur opposed the Motion via brief and certification filed on April 22, 2021. The Board replied to the opposition on May 14, 2021, at which time the record closed.

FINDINGS OF FACT

The salient facts are uncontroverted, and I **FIND**:

Moncur began his employment with the Board in or about August 2016, when he was retained to serve as an Elementary Math Supervisor. He remained continuously employed in this capacity through the end of the 2019-2020 school year. On April 27, 2020, Moncur received a letter from Assistant Superintendent of Schools, Anita Champagne advising that a recommendation for nonrenewal had been forwarded to Labor Relations “based on but not limited to your overall performance, professionalism, and/or attendance.” On April 28, 2020, Superintendent of Schools Kevin West wrote to Moncur and advised that his employment would not be renewed. On May 1, 2020, in response to Moncur’s request for a statement of reasons for his nonrenewal, West advised that District mathematics scores under Moncur’s leadership had “not shown significant improvement on State Standardized Assessments aligned to the [District’s] expectations and standards of excellence.” Moncur requested and was granted an appearance before the Board. By letter dated May 14, 2020, he was advised that the Board had declined to overturn the Superintendent’s decision to non-renew his employment.

A chart attached to the Board’s submission reveals that in the third, fourth and fifth grades, grades under Moncur’s leadership, the percentage of students who met or exceeded expectations on Standardized Tests remained low; less than 50% in all the

grades, and as low as 38% in third grade.¹ Moncur does not challenge these figures, but argues that he received no indication that his supervisors were dissatisfied with his performance generally; or were specifically unhappy with that performance relative to the test scores achieved by elementary age students in East Orange. Moncur notes that throughout his employment with the Board he received evaluations that rated his work as effective or highly effective; none contained any criticism of his work relative to student test scores. And he points out that Standardized Test Scores remain unimproved in East Orange in the higher grades as well.

In March 2020, schools throughout New Jersey moved to remote instruction due to the COVID-19 pandemic. East Orange closed its doors to in-person instruction effective March 17, 2020. Guidance from the Department of Education provided that non-tenured educators were to earn a summative evaluation rating based only on observations completed prior to school closure. The guidance document also provided for a minimum of two observations; if two were not completed prior to COVID, the district was to reach out to the Department for further guidance. Although Moncur urges that he received no evaluations or observations for 2019-2020 school year prior to the closing of school in March 2020, he did receive an evaluation for the period from July 1, 2019 through November 30, 2019, although it was finalized on March 20, 2020. And on March 20, 2020, he also received a composite evaluation score for the period ending on December 5, 2019. Moncur likewise received an observation finalized on April 7, 2020, for the period ending on March 24, 2020, thus encompassing a few days after school was closed.

CONCLUSIONS OF LAW

N.J.A.C. 1:1-12.5(b) provides that summary decision should be rendered “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Our regulation mirrors R. 4:46-2(c), which

¹ The Board’s brief cites different, lower percentages. I have relied on the figures in the exhibit attached to the Board’s submission, which counsel certifies is an accurate copy of an excerpt from the 2018-2019 New Jersey School Performance Report for the East Orange schools.

provides that “[t]he judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.”

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Our courts have long held that “if the opposing party . . . offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘Fanciful, frivolous, gauzy or merely suspicious,’ he will not be heard to complain if the court grants summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 75 (1954)).

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 252. I **CONCLUDE** that this matter is ripe for summary decision, and that the Board is entitled to judgment as a matter of law.

In accordance with N.J.S.A. 18A:28-5(b)(1), a teaching staff member will earn tenure upon employment for four consecutive years, together with reemployment for the fifth year. Moncur had not yet earned tenure when his employment was terminated. But having commenced his employment with the 2016-2017 school year, he would have done so had he been reemployed for the 2020-2021 school year. Moncur’s demand for reinstatement is thus tantamount to a request that the Commissioner afford him that which the Board declined to give, tenured employment in the East Orange Public Schools.

It is axiomatic that a local school board has virtually unlimited discretion in hiring or renewing non-tenured teaching staff members. RaShawn Adams v. Trenton Board of Educ., Comm'r (August 13, 2008), <<http://njlaw.rutgers.edu/collections/oal/>>, citing Dore v Bedminster Bd. of Educ., 185 N.J. Super. 447 (App. Div. 1982). As the Appellate Court held in Dore, "absent constitutional constraints or legislation affecting the tenure rights of [teaching staff members], local boards of education have an almost complete right to terminate the services of a [teaching staff member] who has no tenure and is regarded as undesirable by the local board." Dore v. Bedminster Bd. of Educ., 185 N.J. at 456. Indeed, "a non-tenured teaching staff member challenging a board's decision to terminate his employment on the grounds that the reasons given by the board are not supported by the facts is entitled to litigate that question only if the facts he alleges, if true, would constitute a violation of constitutional or legislatively conferred rights." Adams v. Trenton Bd. of Educ., citing Guerriero v Board of Education of the Borough of Glen Rock, State Board, (February 5, 1986), aff'd Docket #A-3316-85T6 (App. Div. 1986) <<http://njlaw.rutgers.edu/collections/oal/>>; John Kufel, Jr. v Board of Education of the Union County Vocational-Technical School District, 96 N.J.A.R. 2d (EDU) 446; Randy Pratt v Board of Education of the Borough of Butler, Morris County, State Board, (January 6, 1999) <<http://njlaw.rutgers.edu/collections/oal/>>.

Moncur has raised no claims of constitutional dimension, nor has he alleged a violation of legislatively conferred rights. Rather, he is aggrieved because he was terminated after receiving good evaluations, none of which raised a concern about low test grades. I **CONCLUDE** that even if the allegations of the petition are true, the Board has engaged in no conduct that allegedly violated Moncur's constitutional or legislatively conferred rights. The Board is entitled to the relief it seeks via this Motion.

The argument that some relief should flow from the Board's failure to comply with either statute, regulation, or informal Department of Education guidance relative to the evaluations and observations of Moncur's performance is a nonstarter. The school laws include requirements for evaluation of staff. See: N.J.S.A. 18A:27-3.1; N.J.A.C. 6A:10-2.4; N.J.A.C. 6A: 10-6.2. But it is well-established that a lack of strict compliance with these requirements does not give rise to reinstatement or a financial award. Dore v.

Bedminster Bd. of Educ., 185 N.J. at 455. See also: Tuck-Lynn v. The State Operated School District of the City of Newark, 201 NJ Unpub. LEXIS 518 (App. Div., March 3, 2011). I thus **CONCLUDE** that, even if assuming for argument's sake that the Board, through its administration, failed to properly or timely complete Moncur's evaluations, such a failure would not give rise to the relief sought by Moncur via this petition.

ORDER

Based on the foregoing, it is **ORDERED** that Summary Decision is granted in favor of the Board, and that the petition of appeal is **DISMISSED**.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

May 26, 2021



DATE

ELLEN S. BASS, Acting Director & Chief ALJ

Date Received at Agency:

May 26, 2021

Date Mailed to Parties:

May 26, 2021

sej