

New Jersey Commissioner of Education

Final Decision

Jayanthi Ramaswamy,

Petitioner,

v.

Board of Education of the City of Englewood,
Bergen County,

Respondent.

Synopsis

Petitioner, a non-tenured chemistry teacher employed by the respondent Board from the 2019-2020 through 2022-2023 school years, did not receive a renewal contract at the end of her third year of teaching with the school district. Petitioner contended that she had positive performance evaluations and had been recommended for renewal by the school principal and the Acting Superintendent. The Board filed a motion for summary decision, arguing that: petitioner was non-renewed because of lack of engagement with the students she taught; that she had received proper notice that she was not going to be renewed at the end of the 2022-2023 school year and failed to request public discussion of her employment at a board meeting; petitioner also failed to request a *Donaldson* hearing after the Board's unanimous vote to non-renew her contract. 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; boards of education have great latitude in making determinations regarding the renewal of a non-tenured teacher's contract; the Board in this matter complied with the statutory notice requirements for non-renewals; petitioner's personnel records supported the Board's stated reason for petitioner's non-renewal; petitioner failed to prove discrimination on the part of the Board; and further failed to prove that the Board's actions were arbitrary, capricious or unreasonable. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ's findings and conclusion, and adopted the Initial Decision of the Office of Administrative Law as the final decision in this matter. The Board's motion for summary decision was granted, 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.

210-24
OAL Dkt. No. EDU 08534-23
Agency Dkt. No. 215-8/23

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Board of Education of the City of Englewood,
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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 and considered.

Petitioner, a non-tenured chemistry teacher, challenges the decision of the Englewood Board of Education (Board) not to renew her contract. Following the Board's motion for summary decision, the Administrative Law Judge (ALJ) found that petitioner received *Rice*¹ notices on April 27 and May 3, 2023, informing her that her employment would be discussed by the Board at an upcoming meeting. The Board voted unanimously not to renew petitioner's employment on

¹ An employee is entitled to advance notice when a board of education intends to discuss in closed session a personnel matter that could adversely affect the employee. *Rice v. Union County Reg'l High Sch. Bd. of Educ.*, 155 *N.J. Super.* 64, 73 (App. Div. 1977).

² A *Donaldson* hearing is the colloquial name for the informal appearance before the Board in which a teaching staff member may discuss the statement of reasons for non-renewal and attempt to persuade the Board to renew the staff member's contract. *Donaldson v. Bd. of Educ. of N. Wildwood*, 65 *N.J.* 236 (1974).

May 11, 2023, but petitioner did not request a *Donaldson* hearing.² The Board provided petitioner with a Statement of Reasons on May 26, 2023, indicating that the reason for her non-renewal was lack of communication³ with students.

The ALJ denied petitioner's motion to compel discovery, noting: 1) that petitioner did not formally request discovery from the Board; 2) the Board provided its executive session minutes in response to petitioner's Open Public Records Act request for them; and 3) while petitioner also requested notes from the executive session, no such notes existed. The ALJ found that petitioner did not prove that any discrimination occurred or identify how the Board's actions were arbitrary, capricious, or unreasonable. The ALJ further found that petitioner's personnel records supported the Board's stated reason for petitioner's non-renewal. Accordingly, the ALJ granted the Board's motion for summary decision.

In her exceptions, petitioner argues that she was not required to make a formal discovery request. Petitioner argues that she repeatedly requested the reason for her non-renewal and received nothing from the Board; she indicates that the minutes of the Board meeting do not include the reason for the non-renewal, and the Board has not produced any documents stating the justification for its decision. Petitioner contends that she cannot effectively challenge the non-renewal without knowing the reasons for it.

Upon review, the Commissioner concurs with the ALJ that the Board is entitled to summary decision. A board of education's non-renewal decision is afforded discretion and will only be overturned if it is arbitrary, capricious, or unreasonable, or if it violates constitutional or legislatively conferred rights. *N.J.S.A. 18A:27-4.1; Dore v. Bedminster Twp. Bd. of Educ.*, 185 N.J. Super.447, 456 (App. Div. 1982). Despite petitioner's exceptions to the contrary, the Board provided a justification

³ The term used in the Statement of Reasons is "engagement," rather than communication.

for petitioner’s non-renewal in its May 26, 2023 Statement of Reasons, consistent with its obligations under *N.J.S.A.* 18A:27-3.2. The Board further explained its position in subsequent correspondence to petitioner, indicating that “her particular area of weakness, despite overall positive evaluations, was at odds with the Board’s goals in improving the educational quality within the district.” June 7, 2023 letter, attached as Exhibit D to the petition of appeal. Petitioner’s dispute appears to arise from the fact that she received positive performance evaluations, was recommended for renewal by the Acting Superintendent, and was allegedly never told that she needed to improve her student engagement skills. However, the fact that the Board made a different decision than the district’s administration does not make its decision arbitrary, capricious, or unreasonable.

The Commissioner further concludes that the ALJ properly denied petitioner’s motion to compel discovery. The record is clear that the Board has provided the minutes from its executive session and that notes from the executive session do not exist.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The Board’s motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁴


ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 30, 2024
Date of Mailing: May 31, 2024

⁴ 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 08534-23

AGENCY DKT. NO. 215-8/23

JAYANTHI RAMASWAMY,

Petitioner,

v.

**BOARD OF EDUCATION OF
THE CITY OF ENGLEWOOD,
BERGEN COUNTY,**

Respondent.

Evan L. Goldman, Esq., and Kelly A. Smith, Esq., appearing for petitioner
(Goldman, Davis, Krumholz, and Dillon, attorneys)

R. Scott Eveland, Esq., appearing for respondent (Inglesino Taylor, attorneys)

Record closed: January 16, 2024

Decided: April 22, 2024

BEFORE **JOSEPH A. ASCIONE**, ALJ (Ret., on recall):

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The respondent, Englewood City Board of Education (Englewood), hired the petitioner, Jayanthi Ramaswamy, for the 2019–2020 school year as a teacher of

chemistry. She continued in the employ of Englewood from year to year through the 2022–2023 school year. Petitioner received Rice¹ notices on April 27, and May 3, 2023, informing her that her contract would be considered by the respondent. Petitioner did not avail herself of her rights under the Rice notice. On May 11, 2023, her annual contract was not renewed. Petitioner did not request a Donaldson² hearing subsequent to learning of the failure to renew the contract. On or about May 19, 2023, counsel for petitioner requested a Statement of Reasons. On or about May 26, 2023, counsel for respondent responded to that request. On August 4, 2023, the petition in this matter was filed with the Commissioner of Education. On August 30, 2023, the New Jersey State Department of Education, Bureau of Controversies and Disputes, transmitted the matter to the Office of Administrative Law (OAL) pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13; N.J.A.C. 1:1-8.2. On November 2, 2023, the respondent moved for summary decision dismissing the petition. The petitioner opposed said motion after obtaining consent to extend her time to respond to December 19, 2023. Petitioner also moved for discovery seeking the “executive session notes” of the May 11, 2023, executive session. The executive-session minutes had already been requested by an Open Public Records Act (OPRA) request and supplied on July 25, 2023. No discovery request was formally made, nor included with the application for discovery. Counsel for respondent represents that no such “executive session notes” exist. The record on the application for summary disposition closed on January 16, 2024.

FACTUAL DISCUSSION

Petitioner, an untenured teacher, did not receive a renewal contract after her fourth year of service to Englewood. The Board of Education provided petitioner with a Rice notice prior to the agenda and regular meeting on May 11, 2023. Ramaswamy did not request a public discussion. The determination not to renew was made by unanimous vote, in executive session, at the May 11 meeting. Ramaswamy did not request a Donaldson hearing after the adverse vote. Counsel for Englewood provided

¹ Rice v. Union Cnty. Reg'l High Sch. Bd. of Educ., 155 N.J. Super. 64 (1977), certif. denied, 76 N.J. 238 (1978).

² Donaldson v. Bd. of Educ. of N. Wildwood, 65 N.J. 236 (1974).

the reason for non-renewal in a timely fashion, on request of counsel for Ramaswamy. The reason, lack of communication with students. An OPRA request was made for the minutes of the executive session, which were provided. Counsel for Ramaswamy requested executive-session notes, but the existence of such notes has been denied by counsel for Englewood. Englewood also maintains that if any notes existed, they are part of the deliberative process and are exempt from any discovery. Ramaswamy's petition does not allege any denial of a constitutional right. Englewood acknowledges that the principal and superintendent submitted Ramaswamy for renewal of contract. Ramaswamy's relief sought is an appeal of her denial of tenure/renewal, and a hearing to determine the validity of the Board's decision to deny her tenure.

LEGAL DISCUSSION

Summary decision, or as it is known in judicial matters, summary judgment, is a well-recognized procedure for resolving cases in which the facts that are crucial to the determination of the matters at issue are not actually in dispute and the application to that set of material facts of the applicable law and standard of proof lead to a determination of the case without the necessity of a hearing at which evidence and testimony need be taken. The procedure is equally applicable in judicial and executive-branch administrative cases. N.J.A.C. 1:1-12.5. The standards for deciding motions for summary decision are contained in Judson v. People's Bank and Trust Co. of Westfield, 17 N.J. 67, 74-75 (1954). The Supreme Court later elaborated on the motion and its standard in Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995). Under the Brill standard, as in Judson, a motion for summary decision may only be granted where there is no "genuine issue" of "material fact." The determination as to whether genuine issues of material fact exist is made after a "discriminating search" of the record, consisting as it may of affidavits, certifications, documentary exhibits, and any other evidence filed by the movant and any such evidence filed in response to the motion, with all reasonable inferences arising from the evidence being accorded to the opponent of the motion. In order to defeat the motion, the opposing party must establish the existence of "genuine" issues of material fact. The facts upon which the party opposing the motion relies to defeat the motion must be something more than "facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful,

frivolous, gauzy or merely suspicious'" Judson, 17 N.J. at 75 (citations omitted). The Brill decision focuses on the analytical procedure for determining whether a purported issue of material fact is "genuine" or is of an "insubstantial nature." Brill, 142 N.J. at 530. Brill concludes that the same analytical process used to decide motions for a directed verdict is used to resolve summary-decision motions. "[T]he essence of the inquiry in each is the same: 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Id. at 536 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251–52 (1986)). In searching the proffered evidence to decide the motion, the judge must be guided by the applicable substantive evidentiary standard of proof, that is, the "burden of persuasion" that would apply at trial on the merits, whether that is the preponderance-of-the-evidence standard or the clear-and-convincing-evidence standard. If a careful review under this standard establishes that no reasonable fact finder could resolve the disputed facts in favor of the party opposing the motion, then the uncontradicted facts thus established can be examined in the light of the applicable substantive law to determine whether or not the movant is clearly entitled to judgment as a matter of law. However, where the proofs in the record are such that "reasonable minds could differ" as to the material facts, then the motion must be denied, and a full evidentiary hearing held. Id. at 535.

In this case, Ramaswamy disputes the validity of the Board's decision to deny her tenure. The challenging party bears the burden of proving that the agency action was arbitrary, capricious, and unreasonable by the preponderance of the credible evidence. J.P. & M.P. v. Bd. of Educ. of S. Brunswick, Middlesex Cnty., 2002 N.J. AGEN LEXIS 952 at *10-12 (Dec. 17, 2002); New Jersey Soc'y for Prevention of Cruelty to Animals v. New Jersey Dep't of Agric., 196 N.J. 366, 385 (2008); In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 415, 432 (2004); New Jersey State League of Municipalities v. Dep't of Cmty. Affairs, 158 N.J. 211, 222 (1999); In re the 1999–2000 Abbott v. Burke Implementing Regulations, 348 N.J. Super. 382, 395 (App. Div. 2002). An action is determined to be arbitrary and capricious based on four inquiries: 1) was the action in violation of the State or Federal Constitution; 2) did it violate any express or implied legislative policies; 3) does the record contain substantial evidence to support the findings on which the agency based its action; and, 4) when applying the legislative

policies to the facts, did the agency clearly err in reaching a conclusion that couldn't reasonably have been made on a showing of the relevant factors? Brady v. Bd. of Review, 152 N.J. 197, 210–11 (1997); see also In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 385–86 (2013).

Here, Ramaswamy did not take advantage of a Rice or Donaldson hearing, allegedly relying on the recommendation of the principal and superintendent. Rice and Donaldson hearings are intended to afford the teacher the opportunity to present her position as to why she should be renewed. Instead, petitioner comes to this tribunal with a petition limited to the review of the actions of the Board, with no presentation of any claim of discrimination or violations of constitutional or legislative policy. The petition is not even verified by Ramaswamy. Ramaswamy's counsel claimed at the initial conference that the minutes of the meeting were not provided, when in fact they had been. Counsel was unsatisfied with the pro-forma minutes. Apparently, he was seeking further explanation of the determination, which was provided, but was still not acceptable to counsel. Counsel was fishing for something to provide him with a case, but did not zealously represent his client by formally requesting the limited discovery provided in this tribunal. Instead, he requested additional time to respond to the summary-decision motion and cross-moved seeking discovery, which was never specifically demanded, and refused to accept Englewood's counsel's representation that such additional documentation did not exist.

Englewood's counsel, on the other hand, relied on Dore v. Board of Education of Bedminster, Somerset County, 185 N.J. Super. 447 (App. Div. 1982), a case that predates the 1995 legislation, N.J.S.A. 18A:27-4.1(b), which provides,

A board of education shall renew the employment contract of a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board. The board shall not withhold its approval for arbitrary and capricious reasons. A nontenured officer or employee who is not recommended for renewal by the chief school administrator shall be deemed nonrenewed. Prior to notifying the officer or employee of the nonrenewal, the chief school administrator shall notify the board of the

recommendation not to renew the officer's or employee's contract and the reasons for the recommendation. An officer or employee whose employment contract is not renewed shall have the right to a written statement of reasons for nonrenewal pursuant to section 2 of P.L.1975, c.132 (C.18A:27-3.2) and to an informal appearance before the board. The purpose of the appearance shall be to permit the staff member to convince the members of the board to offer reemployment. The chief school administrator shall notify the officer or employee of the nonrenewal pursuant, where applicable, to the provisions of section 1 of P.L.1971, c.436 (C.18A:27-10).

Englewood's counsel also relies on Truncellito v. Board of Education of Lyndhurst, Bergen County, 2019 N.J. AGEN LEXIS 643 (Sept. 18, 2019), rev'd, 2019 N.J. AGEN LEXIS 1093 (Dec. 3, 2019), rev'd and remanded, 2022 N.J. Super. Unpub. LEXIS 92 (App. Div. Jan. 24, 2022). Accordingly, the reversal does not support the position of Englewood.

This tribunal recognizes that the Department of Education's position is that there is great latitude in a board's determination regarding the renewal of a teacher's contract. This tribunal relies on the positions stated by the Department of Education in the Truncellito matter, despite the reversal by the Appellate Division. This tribunal also relies on Hubbard v. Springfield Board of Education, 80 Fed. Appx. 757 (3d Cir. 2003). The Hubbard case deals with a claim of discrimination. It places the burden of proof on the party claiming the discrimination. Here, Ramaswamy has not satisfied the burden of proof that any discrimination occurred. Nor has Ramaswamy identified where the actions of Englewood are arbitrary, capricious, or unreasonable. Englewood provided the reasons for the non-renewal. The personnel records appearing in the District's papers, support the deficiency Englewood relied upon. There are areas of Ramaswamy's performance where there was only partial competency. Ramaswamy's principal's own recommendation acknowledged the deficiency. One would think Ramaswamy would have appeared to present why the deficiencies should not result in denial of her renewal.

CONCLUSIONS

After reviewing the papers and arguments of petitioner and respondent and considering the documents and certifications submitted,

I **CONCLUDE** that petitioner has not shown by a preponderance of the evidence that the Department has acted unreasonably, arbitrarily, or capriciously in the denial of the renewal of Ramaswamy's contract for school year 2023–2024.

I further **CONCLUDE** that the petitioner's motion to compel discovery was never formally made, and it appears the requested discovery is non-existent.

I further **CONCLUDE** that the Board of Education has shown by a preponderance of the evidence that the Board is entitled to prevail in its application for summary decision.

ORDER

It is hereby **ORDERED** that petitioner's request for a review of the actions of Englewood is **DENIED**.

It is further hereby **ORDERED**, that petitioner's undocumented motion to compel discovery is **DENIED**.

It is further hereby **ORDERED** that respondent's motion for summary decision is **GRANTED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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**. Exceptions may be filed by email to **ControversiesDisputesFilings@doe.nj.gov** or by mail to **Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.

April 22, 2024
DATE



JOSEPH A. ASCIONE, ALJ (Ret., on recall)

Date Received at Agency:

April 22, 2024

Date Mailed to Parties:

April 22, 2024

APPENDIX

LIST OF EXHIBITS

For Petitioner:

P-1 Answering and Moving papers on Cross motion 5 pages double sided

P-2 Reply papers – 4 pages

For Respondent:

R-1 Moving papers – 17 pages plus exhibits A-J

R-2 Reply papers – 13 pages plus exhibits A-D

R-3 Correspondence of January 3, 2024