

IN THE MATTER OF THE TENURE :
HEARING OF ADAM MUJICA, : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF PATERSON, PASSAIC :
COUNTY. :

SYNOPSIS

Board certified tenure charges against respondent teacher alleging that he had, on numerous occasions, made sexually inappropriate remarks and gestures to students including commenting on female students' bodies, discussed his personal sex life, discussed the sexual aspects of a television program and addressed female students by the name of the title character, made sexual gestures and squeezed a sexual toy during class. Respondent denied all charges, and argued that the charges and testimony against him were motivated by a plot conceived by the physical education department to have him terminated from his position.

After hearing extensive testimony and argument and assessing the credibility of the witnesses, the ALJ concluded that the Board's witnesses were credible and that it had proven Charges one through five and eight, that Charge seven had been partially proven, and that Charges six and nine should be dismissed. The ALJ further determined that the charges that were sustained constituted conduct unbecoming a teaching staff member and, because of the nature of the charges, recommended dismissal of respondent.

The Commissioner adopted the determination of the ALJ that the Board had sustained most of its charges by a preponderance of the evidence and ordered that respondent be dismissed from his position. The State Board of Education affirmed the Commissioner's Decision.

The Appellate Division affirmed that the District had proven its charges of unbecoming conduct, but remanded the decision for reconsideration of the penalty.

On remand, the Commissioner reiterated that, even without giving weight to respondent's past, undetermined accusations, the unbecoming established herein warranted his dismissal as a tenured teacher.

September 2, 2003

OAL DKT. NO. EDU 10130-00
AGENCY DKT. NO. 417-11/00
STATE BOARD NO. 36-01

IN THE MATTER OF THE TENURE :
HEARING OF ADAM MUJICA, : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION ON REMAND
OF THE CITY OF PATERSON, PASSAIC :
COUNTY. :

For the Petitioner: Gregory Johnson, Esq.
For the Respondent: John H. Norton, Esq.

The Commissioner decided this matter on September 7, 2001, adopting the Administrative Law Judge's (ALJ) conclusion that respondent, a tenured teacher in the State-operated School District of the City of Paterson, was guilty of conduct unbecoming a teaching staff member.¹ The Commissioner ordered that respondent be dismissed from his employment as of the date of that decision. The State Board of Education affirmed the Commissioner's decision on February 6, 2002. On appeal, the Appellate Division affirmed the State Board's decision that the evidence supported the seven charges of unbecoming conduct, but remanded the matter for reconsideration of the penalty. The Court therein stated:

In disciplinary actions against public employees, under *West New York v. Bock*, 38 N.J. 500, 524 (1962), the employee's past disciplinary record may be considered at the penalty phase only if it resulted in a formally adjudicated action or if the charge was admitted by the employee. Accord, *In re Wenderwicz*, 195 N.J.

¹ The Commissioner agreed that the District had proven Charges One, Two, Four, Five and Eight and had partially proven Charges Three and Seven.

Super. 126, 134 (App. Div. 1984) *State-operated School District of the City of Paterson v. Adam Mujica*, Appellate Division, A-3610-01T5, slip op. at 12

Because the Court determined that the ALJ and the Commissioner “utilized earlier alleged misconduct” against respondent in deciding to dismiss him from his tenured teaching position, (*id.* at 11), and since neither of the past charges had been adjudicated against respondent at the time of his hearing on the tenure charges, the Court remanded this matter for reconsideration of respondent’s penalty, “without any weight given to the past, undetermined accusations.” (*Id.* at 13)

Upon reconsideration of the appropriate penalty in this matter, and mindful that the Appellate Division clearly affirmed that respondent was guilty of conduct unbecoming a teaching staff member, the Commissioner maintains that respondent’s pattern of unprofessional conduct, as demonstrated by the District herein, was sufficient to warrant his dismissal. *See In the Matter of the Tenure Hearing of Roberts, School District of the City of Trenton, Mercer County*, 94 N.J.A.R. (EDU) 284; *In the Matter of the Tenure Hearing of Sheridan*, 92 N.J.A.R.2d (EDU) 257, *aff’d* State Board 92 N.J.A.R. 2d (EDU) 393; *In the Matter of the Tenure Hearing of Van Gilson*, 93 N.J.A.R.2d (EDU) 378, 382, 385, *aff’d* State Board 93 N.J.A.R.2d (EDU) 630; *In the Matter of the Tenure Hearing of Henry Komorowski, State-operated School District of the City of Jersey City, Hudson County*, decided by the Commissioner July 27, 2000, *aff’d* State Board December 6, 2000, *aff’d* Appellate Division, A-2486-00T2; and *In the Matter of the Tenure Hearing of Ward Campbell*, 93 N.J.A.R.2d (EDU) 196, *aff’d* State Board 93 N.J.A.R.2d (EDU) 604, *aff’d* App. Div. 95 N.J.A.R.2d (EDU) 211.

Accordingly, without any weight given to his past, undetermined accusations, the Commissioner concludes that respondent's unbecoming conduct necessitates his dismissal as a tenured teacher.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: September 2, 2003

Date of Mailing: September 3, 2003

² This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*