4-04S Link to OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu03688-03_1.html)

IN THE MATTER OF THE TENURE	:	
HEARING OF MARTIN ROSENCRANZ,	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BERGEN	:	DECISION
COUNTY VOCATIONAL SCHOOL DISTRICT,	:	
BERGEN COUNTY.	:	

SYNOPSIS

The Board certified tenure charges of unbecoming conduct against respondent Culinary Arts teacher for allegedly exercising poor judgment during an overnight school-sponsored trip.

During the course of the hearing, respondent moved for dismissal of two of the five charges; the Board consented to their dismissal. As to the remaining charges, in light of the testimony of witnesses and the record, the ALJ found that although some photos showed respondent in a questionable position, the ALJ was convinced that respondent's action was inadvertent and, as such, did not rise to the level of unbecoming conduct constituting just cause for dismissal. As to the charge of consuming alcohol on the trip, although the testimony indicated that respondent, along with the other two chaperones, consumed wine at dinner, the District's policy on field trips does not forbid the consumption of alcohol by adult chaperones. The ALJ found that petitioner failed to sustain the burden of proof on the charges. The ALJ ordered respondent reinstated with compensation.

The Commissioner concurred with the ALJ's credibility determinations and adopted the findings and determination in the Initial Decision as his own.

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.

January 8, 2004

OAL DKT. NO. EDU 3688-03
AGENCY DKT. NO. 85-3/03

IN THE MATTER OF THE TENURE	:	
HEARING OF MARTIN ROSENCRANZ,	:	COMMISSIONER OF EDUCATION
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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The Board's exceptions and respondent's reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4.

The Board objects to the ALJ's findings and conclusions with respect to Counts 1 and 2 of the tenure charges.[1] In so doing, the Board maintains that "respondent did, in fact, 'stage' and 'pose' for photographs P1 and P9 ***." (Board's Exceptions at 3) That "the scene may not have been staged and/or prepared in the immediate presence of student[s] should not be determinative of the issue of respondent's unbecoming conduct," according to the Board. Instead, respondent's intent to be seen by the students, the Board reasons, may be *implied* from Exhibits P1 and P9 and from the context in which the photographs were taken. (*Id.* at 4)

Moreover, the Board objects to the ALJ's characterization of the event as being brief in duration. Rather, it contends that "the scene was of sufficient duration" to permit 7 students to witness it and for two of those students to take photographs. (*Id.*) Quite simply, the Board finds incredible respondent's claim that he was unaware of how he looked when the towel was positioned between his legs. (*Id*. at 5) Instead, the Board maintains that although "no student suffered physical harm, touching

[1] Notably, although Count 4 also survived respondent's motion to dismiss, the Board does not challenge the ALJ's determination that it failed to sustain this charge.

or corruption of morals ***," the photographs prove that respondent was making a sexually suggestive joke, which constituted unbecoming conduct and warrants his dismissal. (*Id.*)

In reply, respondent counters that it is "desperate to try to have [him] found guilty of something [where the Board] asks the Commissioner to *imply* intent from the record," when, in reality, the record supports no such implication. (emphasis in text) (Respondent's Reply at 3) He argues that although the students were laughing about the incident, there is no evidence that he was involved in that joking and there is no basis to conclude that their joking encouraged him to continue the humor by posing for Exhibits P-1 and P-9. (*Id* at 4)

> Although there was ample evidence that Mr. Rosencranz liked to make exaggerated faces when his picture was taken in other instances ***, a review of P-1 and P-9 shows no Cheshire grin or clowning face such as might be expected in the "posed" picture the Board alleges. If Mr. Rosencranz was as immature as the Board asserts, and if he was allegedly posing, why would he be opening his mouth to eat chocolate? *** Why wouldn't he be playing to his audience to enhance the joke?" (*Id.* at 5, 6)

Furthermore, the testimony of four of the seven student witnesses was that the duration of the incident was less than one minute. (*Id.* at 5) Respondent, therefore, views these pictures as "an unintended embarrassment, but not unbecoming conduct." (*Id.*)

Upon careful and independent review of the record, the Commissioner appreciates that this is a serious matter which turns on the credibility of the witnesses and, in particular, the credibility of respondent. In this regard, the Commissioner also recognizes that the ALJ's credibility determinations are entitled to his deference. "The reason for this rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses, and, consequently, is better qualified to judge their credibility. *In the Matter of Tenure Hearing of Tyler*, 236 *N.J. Super*. 478, 485 (App. Div.) *certif. denied*, 121 *N.J.* 615 (1989)." *In the Matter of the Tenure Hearing of Frank Roberts*, 96 *N.J.A.R.* 2d (EDU) 549, 550. The Appellate Division has affirmed this principle, underscoring that "[u]nder existing law, the [reviewing agency] must recognize and give due weight to the ALJ's unique position and ability to make demeanor based judgments." *Whasun Lee v. Board of*

Education of the Township of Holmdel, Docket No. A-5978-98T2, decided by the New Jersey Superior Court, Appellate Division, August 7, 2000, slip op. at 14. Indeed, the Commissioner

> *may not* reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record. (emphasis added) *N.J.S.A.* 52:14B-10(c).

Here, upon review of the full record, which included transcripts from four days of hearing, together with exhibits, post-hearing briefs, exception and reply arguments, the Commissioner determines that the ALJ's finding that respondent's conduct was inadvertent (Initial Decision at 10) *is* supported by sufficient, competent and credible evidence in the record and, therefore, he may not disturb this finding.

Accordingly, the Initial Decision is adopted for the reasons expressed therein.[2]

IT IS SO ORDERED.[3]

COMMISSIONER OF EDUCATION

Date of Decision: January 8, 2004

Date of Mailing: January 9, 2004

[2] The Commissioner notes that, pursuant to a motion to seal the record, (Tr. August 26, 2003 at 50) the ALJ recommended that the record *and* Initial Decision be sealed pursuant to *N.J.S.A.* 9:6-8.10a and *N.J.A.C.* 1:1-14.1. (Initial Decision at 3) However, the record does not include any evidence of a DYFS investigation in this matter, as appears to be contemplated by *N.J.S.A.* 9:6-8.10a. Additionally, there is no articulated basis for sealing the Initial Decision. Therefore, although the Commissioner determines to seal the record in this matter pursuant to *N.J.A.C.* 1:1-14.1, he declines to seal the Initial Decision.

[3] 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.*