

#382-09+

IN THE MATTER OF THE TENURE :
HEARING OF SHAWN F. JOHNSON, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY OF : DECISION
ASBURY PARK, MONMOUTH COUNTY. :
_____ :

SYNOPSIS

Petitioning Board filed tenure charges of neglect, misbehavior and conduct unbecoming against respondent, a tenured custodian, and sought his removal from employment in the Asbury Park School District. Neither respondent nor any attorney acting on his behalf filed an answer to the petition following notice pursuant to *N.J.A.C.* 6A:3-5.3 and 6A:3-5.4. Consequently, on November 18, 2009, the Commissioner issued a decision deeming the charges against respondent to be admitted and sufficient to warrant removal of the respondent from his tenure position.

Subsequently, on November 20, 2009, respondent's attorney filed an answer to the charges, together with an explanation for its late filing, and moved for reconsideration of the Commissioner's prior decision. Accordingly, the Commissioner vacated her decision of November 18, 2009, and – having found that the charges against respondent are sufficient, if true, to warrant his dismissal from tenured employment – directed that the matter be transmitted to the OAL for an expedited hearing pursuant to *N.J.S.A.* 18A:6-16 and *N.J.S.A.* 52:14B-10.1, P.L. 1998, c. 42.

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.

December 9, 2009

AMENDED DECISION

IN THE MATTER OF THE TENURE :
 HEARING OF SHAWN F. JOHNSON, : COMMISSIONER OF EDUCATION
 SCHOOL DISTRICT OF THE CITY OF : DECISION
 ASBURY PARK, MONMOUTH COUNTY. :
 _____ :

For the Petitioner, Douglas J. Kovats, Esq. (Kenny, Gross, Kovats & Parton)

For Respondent, Stephen B. Hunter, Esq. (Detzky & Hunter)

This matter was opened before the Commissioner of Education on October 22, 2009, through the filing of tenure charges of neglect, misbehavior and conduct unbecoming certified by the Secretary of the Asbury Park Board of Education (Board), together with supporting evidence against respondent Shawn F. Johnson, a tenured custodian in the petitioner’s employ. Petitioner provided respondent with written notice of such certification via certified mail sent on or about October 16, 2009.

On October 22, 2009, the Commissioner directed respondent – via both certified and regular mail – to file an answer to the charges.¹ This communication clearly provided notice to respondent that, pursuant to *N.J.A.C.* 6A:3-5.3 and 6A:3-5.4, an individual against whom tenure charges are certified “*shall have 15 days from the day such charges are filed with the Commissioner to file a written response to the charges with the Commissioner,*” and that failure to answer within the prescribed period would – absent granting of an extension for good cause shown – result in the charges being deemed admitted. However, although respondent received the certified mailing before the end of October 2009 – as evidenced by his signature on the return

¹ This directive was also provided to the attorney identified by the Board as respondent’s attorney.

receipt (“green card”)² – and the regular mailing was not returned as undeliverable, no reply was received from or on behalf of respondent.

Consequently, on November 18, 2009, the Commissioner issued a decision deeming the charges against respondent to be admitted, finding that they warranted his dismissal from tenured employment, and dismissing him from his position with the district.

However, on November 20, 2009, respondent’s attorney filed an answer to the charges and moved for reconsideration of the Commissioner’s prior decision, certifying that: 1) his client had not advised him of receipt of a notice acknowledging the filing of charges with the Commissioner and directing an answer; 2) the copy of such notice sent to him – although located in his office subsequent to issuance of the Commissioner’s decision – was inadvertently not reviewed by him or “calendared” by his secretary; and 3) the Board did not object to reopening this matter so as to enable him to file an answer on behalf of respondent.

Accordingly, counsel for respondent having now filed an answer on his behalf and the interests of justice requiring its acceptance as if timely filed, the Commissioner hereby VACATES her decision of November 18, 2009 and – having found that the charges against respondent are sufficient, if true, to warrant his dismissal from tenured employment or reduction in his salary – directs that this matter be transmitted forthwith to the Office of Administrative Law for expedited hearing pursuant to *N.J.S.A. 18A:6-16* and *N.J.S.A. 52:14B-10.1*, P.L. 1998, c.42.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2009

Date of Mailing: December 11, 2009

² The numerical portion of the date stamped on the return receipt card is unreadable, although “October” and “2009” are clearly visible.

³ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Appellate Division of the Superior Court.