

IN THE MATTER OF THE TENURE :  
HEARING OF DOMINIC COSTANZO, : COMMISSIONER OF EDUCATION  
SCHOOL DISTRICT OF THE BOROUGH : DECISION  
OF LEBANON, HUNTERDON COUNTY :

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SYNOPSIS

The Board certified tenure charges of conduct unbecoming against Dominic Costanzo – then employed as the tenured Superintendent of the Lebanon School District – on the basis of alleged retaliation and intimidation directed against his former administrative assistant – Leah Driscoll – after she allegedly lodged a harassment complaint against him. The charges also claim that respondent subsequently sought to deceive the Board of Education in connection with letters of support which respondent allegedly co-authored and pressured Driscoll to sign. The Board sought removal of the respondent from his tenured position.

The ALJ found, *inter alia*, that: respondent and Ms. Driscoll worked together amicably from the date of her hire in March 2008 until June 2011, during which time they became good friends who routinely joked and bantered with one another regarding each other’s physical appearance or condition; the charges herein stem from a single verbal exchange in June 2011, to which Driscoll took offense and became upset; an administrative investigation was subsequently launched after Driscoll confided in another staff member, who then reported the incident to the President of the Board of Education; the Board bears the burden of proving by a preponderance of credible evidence that the respondent is guilty of conduct unbecoming a teaching staff member; in this matter, the Board failed to demonstrate sufficient credible evidence that respondent engaged in either retaliation or dishonesty as charged; Driscoll never filed a complaint against respondent and suffered no adverse consequence with regard to her position, salary or benefits; after the investigation ensued, respondent followed the advice of counsel to conduct himself in a business-like manner at the office, and his behavior did not constitute harassing, retaliatory, threatening, or intimidating conduct. Accordingly, under the specific charges, facts, and circumstances of this matter, the Board did not prove by a preponderance of credible evidence any of the allegations contained in the tenure charges. The ALJ ordered that the tenure charges be dismissed in their entirety.

Upon consideration and review of the full record of this matter, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter. The Commissioner ordered that Dominic Costanzo be reinstated to tenured employment, together with any back pay and emoluments that are due him, less mitigation.

<p>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.</p>
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April 4, 2014

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The record of this matter and the Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. The District's exceptions and respondent's reply thereto, filed in accordance with *N.J.A.C. 1:1-18.4*, were fully considered by the Commissioner in reaching his determination herein.

This matter involves tenure charges alleging unbecoming conduct brought by the Lebanon Borough School District against Dominic Costanzo, former Superintendent of Schools for the District. The charges allege that, between July and October 2011, respondent engaged in conduct unbecoming a teaching staff member when he undertook a pattern of actions designed to intimidate and retaliate against Leah Driscoll, his administrative assistant, for allegedly lodging a harassment complaint against him. The charges further allege that respondent thereafter sought to deceive the Board of Education, intending that it believe that Ms. Driscoll had written letters in support of respondent when, in fact, he had co-authored the letters and pressured her to sign them. The Administrative Law Judge ("ALJ") found that the District failed to prove any of the charges by a preponderance of the credible evidence and, therefore, dismissed the charges.

On exception, the District challenges each of the ALJ's factual findings, as well as the credibility determinations upon which they are based. The District maintains that the ALJ failed to fulfill his duties as an impartial fact finder, virtually ignoring Driscoll's testimony and relying entirely on the testimony of respondent's witnesses. The District further maintains that the ALJ

incorrectly attributed testimony to Driscoll, mischaracterized her testimony, took her testimony out of context, and overemphasized Driscoll's lapse of memory respecting trivial details. The District contends that Driscoll's testimony was generally consistent and was corroborated by the testimony of other witnesses and reliable circumstantial evidence. Finally, the District argues that, contrary to the ALJ's finding that respondent's testimony was "forthright," respondent's answers were evasive and inconsistent.

In reply, respondent urges the Commissioner to adopt the Initial Decision as the final agency decision in this matter. Respondent underscores that the ALJ's factual findings were largely driven by his credibility determinations, and that such determinations are entitled to the Commissioner's deference absent a finding that they are arbitrary, capricious, unreasonable, or unsupported by the record. Respondent argues that the ALJ's credibility determinations cannot be found to have been arbitrary, capricious, or unreasonable, since he painstakingly detailed his method for making credibility determinations. Respondent further argues that each of the ALJ's factual findings is supported by ample evidence in the record. Moreover, respondent identifies specific evidentiary support in the record for each of the ALJ's findings of fact.

Upon careful and independent review of the record of this matter, which included transcripts of the hearing conducted at the OAL between August 14, 2012 and June 7, 2013, the Commissioner concurs with the ALJ that the District has failed to establish that respondent is guilty of unbecoming conduct. The Commissioner finds the ALJ's fact-finding analysis and conclusions to be fully supported by the record and consistent with applicable law.

The Commissioner finds the District's exceptions unpersuasive, largely reflecting disagreement with the ALJ's credibility determinations. The ALJ had the opportunity to assess the credibility of the various witnesses who appeared before him, and made findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

The agency head 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. [*N.J.S.A.* 52:14B-10(c)].

The Commissioner's considered review of the entire record – which includes transcripts of nine days of hearing – provides no basis for alteration of the ALJ's factual determinations. Rather, the Commissioner is satisfied that the ALJ appropriately measured the plausibility of content in deciding the credibility of witnesses, as well as the proper weight to assign to testimony and documentary evidence in reaching his factual findings and conclusions. Notwithstanding the District's contentions to the contrary, the Commissioner finds no basis in the record to reject either the ALJ's recitations of testimony or his determinations of witness credibility. Moreover, the Commissioner concurs with the ALJ's conclusion that the record as a whole does not support a finding of unbecoming conduct.

Accordingly, the Initial Decision of the OAL, finding that the District did not prove by a preponderance of the credible evidence that respondent engaged in unbecoming conduct is adopted for the reasons stated therein. It is hereby ordered that Dominic Costanzo be reinstated to tenured employment, with any back pay and emoluments that are due him, less mitigation.

IT IS SO ORDERED.<sup>1</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 4, 2014

Date of Mailing: April 4, 2014

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<sup>1</sup> Pursuant to *P.L.* 2008, c. 36 (*N.J.S.A.* 18A:6-9.1), Commissioner decisions are appealable to the Superior Court, Appellate Division.