

#178-16

IN THE MATTER OF THE TENURE HEARING :  
OF DAVID SHIFFER, SCHOOL DISTRICT : COMMISSIONER OF EDUCATION  
OF THE TOWNSHIP OF WEST ORANGE, : DECISION  
ESSEX COUNTY. :

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SYNOPSIS

Petitioning Board filed tenure charges of insubordination and other just cause against respondent, a tenured custodian, and sought to terminate his employment with the 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.

The Commissioner concluded that, pursuant to *N.J.A.C.* 6A:3-5.4(g), the allegations – which respondent has chosen not to deny – may be deemed admitted and are sufficient to warrant termination of the respondent from his tenured position. Accordingly, the Commissioner granted summary decision to the petitioner and dismissed the respondent from his tenured custodial position in petitioner’s school district.

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.
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May 9, 2016

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For the Petitioner, Matthew J. Giacobbe, Esq.

No appearance by or on behalf of Respondent, David Shiffer

This matter was opened before the Commissioner of Education on March 21, 2016, through tenure charges of insubordination certified by Jeffrey Rutzky, Superintendent of the West Orange School District (“District”), together with supporting evidence against respondent, David Shiffer, a tenured custodian in the District’s employ. The District provided respondent with written notice of such certification at the respondent’s last known address, via hand delivery, on March 15, 2016. The District also served a copy of the tenure charges on the respondent’s union representative.

On March 22, 2016, the Commissioner directed the respondent – via both certified and regular mail – to file an answer to the charges. 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. The certified mail return

receipt card indicates that the March 22, 2016 notice was delivered to the respondent on March 26, 2016. No reply to the tenure charges was received from or on behalf of respondent.

The certified tenure charges and statement of supporting evidence filed by the petitioner in this matter indicate the respondent has been employed by the District as a tenured custodian since January 2006. In accordance with *N.J.S.A. 18A:17-41* and Article XIII of the Collective Bargaining Agreement (CBA)<sup>1</sup> between the District and the Union, the District may terminate an employee who does not secure a Black Seal License<sup>2</sup> within 24 months of permanent employment. The job description for the Custodian position, approved by the District on June 21, 2010, also provides that the possession of a Black Seal License is a qualification of employment.

On January 18, 2011, the District provided the respondent with notice that he was required under the CBA to obtain a Black Seal License. Despite several additional notices from the District, the respondent failed to obtain a Black Seal License.<sup>3</sup> Therefore, on February 21, 2014, the District provided the respondent with written notice advising him that, based on his failure to secure a Black Seal License, he was being assessed a one day suspension and that he would not be entitled to overtime until he secured the requisite license. Again, the respondent failed to secure a Black Seal License and on May 1, 2014, the District provided the respondent with written notice advising him that, based on his failure to secure a Black Seal License, his salary increment was being withheld. The respondent was also advised that the failure to secure a Black Seal License by January 1, 2015 would result in his termination. To

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<sup>1</sup> The CBA covered the period between July 1, 2011 and June 30, 2015.

<sup>2</sup> It appears that the Black Seal License is a type of Fireman's License that is also referred to as a low pressure boiler operator's license.

<sup>3</sup> The Statement of Evidence outlines several occasions upon which the District provided the respondent with notice that he was required to obtain a Black Seal License, and that his failure to do so would jeopardize his employment status. All of the notice dates will not be repeated here.

date, the respondent has failed to obtain the required Black Seal License, despite the District having provided him with ample notice and opportunities to secure the license.

Deeming the allegations to be admitted, and noting that respondent has failed to respond to the charges certified against him, the Commissioner finds that the District's charges of insubordination and other just cause against the respondent have been proven and warrant respondent's dismissal. The respondent's repeated failure to obtain the requisite Black Seal License despite numerous warnings and directives from the District demonstrates egregious insubordination and inability to fulfill the requirements of his position as a custodian in the District. Accordingly, summary decision is hereby granted to the petitioner, and the respondent is dismissed from his tenured position with the District.

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 9, 2016

Date of Mailing: May 9, 2016

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<sup>4</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36. (*N.J.S.A.* 18A:6-9.1)