

181-99

IN THE MATTER OF THE TENURE :
HEARING OF GREGORY VEREEN, :
SCHOOL DISTRICT OF THE TOWNSHIP :
OF LAWRENCE, MERCER COUNTY. : COMMISSIONER OF EDUCATION
AND : DECISION
IN THE MATTER OF THE TENURE :
HEARING OF THEODORE PRUSAKOWSKI, :
SCHOOL DISTRICT OF THE TOWNSHIP :
OF LAWRENCE, MERCER COUNTY. :
_____ :

SYNOPSIS

Board certified tenure charges of incapacity and excessive absenteeism against respondent custodians.

The ALJ found that the stipulated absences of respondents have adversely affected the Board's ability to provide sanitary, clean and secure facilities and created a morale problem for other custodial staff who are subject to reassignment or demands for overtime or both. ALJ further found that respondents were incapacitated from performing their duties.

The Commissioner affirmed the initial decision of the ALJ. Respondents were dismissed from their positions as tenured custodians.

June 9, 1999

OAL DKT. NOS. EDU 8969-98 AND 10489-98, CONSOLIDATED
AGENCY DKT. NOS. 464-10/98 AND 463-10/98

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondents' exceptions and the Board's reply thereto were considered by the Commissioner in his determination of this matter.

Upon review of the record in this matter, the Commissioner determines to affirm the initial decision of the Administrative Law Judge (ALJ). Initially, the Commissioner notes that Respondent Prusakowski was injured in December of 1994, has not returned to the District, and cannot forecast a return date. (Initial Decision at p. 6) The Board has also demonstrated a negative effect from Prusakowski's prolonged absence.¹ (*Id.* at p. 4) Similarly, the Commissioner notes that Respondent Vereen was injured in June of 1996, and has not returned

¹ In this regard, the Commissioner notes that Respondent Prusakowski himself stipulated that his extended absence "has affected the Board's ability to provide sanitary and secure physical facilities." (Stipulation of Facts/Prusakowski at p. 2)

to the District in full capacity, although he is, apparently, back at work, “on a modified or work hardening schedule to determine whether he will be able to return to his full time duties.”² (Respondents’ Letter Memorandum, March 10, 1999 at p. 1) There is no indication in the record when, or even whether, Respondent Vereen will be able to resume his duties in full capacity. As with Respondent Prusakowski, the Board has demonstrated a negative effect from Vereen’s prolonged absence.³ (Initial Decision at pp. 2-4) Thus, the Commissioner concurs with the ALJ that the appropriate penalty under such circumstances is dismissal for both Respondents Prusakowski and Vereen, notwithstanding that their absenteeism constituted a legitimate use of sick leave and the possibility remains that one, or both, of them might ultimately, at some point not presently foreseeable, once again become physically capable of performing their duties.⁴ (Initial Decision at p. 7)

Accordingly, the initial decision of the ALJ is affirmed for the reasons expressed therein. Respondents are dismissed from their positions as tenured custodians as of the date of this decision.⁵

IT IS SO ORDERED.⁶

COMMISSIONER OF EDUCATION

June 9, 1999

² Although the record does not indicate exactly when Respondent Vereen resumed some of his duties, it can be deduced from the record that he returned sometime after the parties filed their Stipulation of Facts on December 9, 1998 (which affirmed that Vereen had not performed any duties in the District since June 1996) and before March 10, 1999, the date of respondents’ letter brief to the ALJ informing him of Vereen’s return.

³ The Commissioner notes that Respondent Vereen also stipulated that his extended absence “has affected the Board’s ability to provide sanitary and secure physical facilities.” (Stipulation of Facts/Vereen at p. 2)

⁴ Although the ALJ appears to equate excessive absenteeism with unbecoming conduct (Initial Decision at p. 8), the Commissioner specifically notes that the Board did *not* charge respondents with unbecoming conduct.

⁵ The Commissioner herein understands the ALJ’s statement that “[n]othing in this decision should be construed as interfering with Vereen’s modified work schedule to determine whether he will be able to return to his full-time duties” (Initial Decision at p. 10), to refer to the period between issuance of the initial decision and the Commissioner’s final ruling in this matter.

⁶ This decision, as the Commissioner's final determination in the instant matter, 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. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.