

18-00

IN THE MATTER OF THE TENURE :
HEARING OF DONALD PANTALONE, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE SOMERSET : DECISION ON REMAND
COUNTY VOCATIONAL SCHOOL, :
SOMERSET COUNTY. :
_____ :

SYNOPSIS

Board certified tenure charges of inefficiency and other just cause against respondent teacher. The Commissioner rejected a previously proposed settlement for failure to comply with the *Cardonick* standards for review of settlements in tenure matters and remanded the matter to the OAL.

On remand the parties drafted an amended settlement agreement which respondent refused to sign because it contained the disputed charges against him which he felt placed an aura of inappropriate guilt upon him, notwithstanding that the charges were unproven and the settlement expressly stated he disputed the charges. Finding that respondent disputed the format, but not the substance, of the settlement agreement, the ALJ deemed that respondent signed the agreement and ordered the matter settled.

The Commissioner did not accept the ALJ's resolution to respondent's failure to sign the amended settlement agreement. Upon review of the record, it was determined that, notwithstanding that the Commissioner had rejected the prior settlement and remanded the matter to the OAL, the parties had impermissibly executed the terms of the rejected settlement, which resulted in respondent's resignation effective June 30, 1998 and the Board's payment of salary and benefits. It was also determined that the modified settlement agreement still did not document that respondent was advised that the matter would be transmitted to the State Board of Examiners; thus, the matter remains subject to remand to the OAL on this point. However, in light of respondent's resignation from the district in 1998 and his refusal to sign the modified settlement agreement, the Commissioner determined that remanding the matter again to OAL would not, at this juncture, be in the public interest. The Commissioner, therefore, determined that the matter would be deemed withdrawn and no longer in controversy before him. A copy of the decision shall be transmitted to the State Board of Examiners.

January 13, 2000

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The record and Initial Decision on Remand issued by the Office of Administrative Law (OAL) in the form of a Settlement Agreement have been reviewed. No exceptions were filed by the parties.

A review of the record in this tenure charge matter indicates that on April 28, 1998, a settlement entered into by the parties was rejected by the Commissioner because, contrary to the standards for review of a settlement in a tenure hearing matter as articulated in *Cardonick, supra*, the settlement failed: (1) to explain why the charges could no longer be pursued or why it was in the public interest not to pursue them, and (2) to document that respondent was advised of the Commissioner's duty, pursuant to *N.J.A.C. 6:11-3.6*, to refer tenure hearing determinations to the State Board of Examiners for possible revocation of certification. Among the terms of the rejected settlement were a stipulation that, by execution of the Settlement Agreement, respondent would be deemed to have resigned as of June 30, 1998

¹ It is noted for the record that there is an error in the Agency Docket Number cited on the Initial Decision and transmittal form to the OAL. The correct Agency Docket Number is 135-4/97.

and an agreement that the Board would provide to him one year's salary, less all sums already paid for the 1997-98 school year, and benefits from September 1, 1997 to June 30, 1998.

Notwithstanding the fact that the Commissioner expressly rejected the Settlement Agreement and remanded the matter to the OAL, and in contravention of the legal principle that a settlement agreement may not be executed until approved by the Commissioner (*Cardonick, supra*), respondent, pursuant to the terms of the rejected settlement, resigned his teaching position effective June 30, 1998 and the Board paid him his salary and benefits in accordance with the settlement terms.

As set forth in the Initial Decision on Remand, respondent refused to sign the revised settlement presented herein because, *inter alia*, he felt that by listing the charges against him in the settlement agreement, it would place an aura of inappropriate guilt on him, notwithstanding that the charges were unproven and the settlement expressly stated he disputed the charges.

Further, the Affidavit which sets forth respondent's reasons for refusing to sign the agreement conveys that he believed that the settlement was to remain confidential.² (Affidavit at p. 2) This is, however, a misconception concerning the confidentiality of the tenure charges and terms of a settlement agreement. By law, the entire record of any proceeding adjudicated before the Commissioner pursuant to *N.J.S.A. 18A:6-9* and *N.J.A.C. 6:24-1.1 et seq.* is a matter of public record, unless for good cause the record is ordered sealed. Thus, tenure charges and settlement terms, such as herein, are matters of public record.

² The Commissioner notes that Term 5 of the rejected settlement states that respondent "agrees to keep all terms of this Agreement confidential and shall not disclose any terms of this Agreement to any employees of the School District." Such term speaks only to *Mr. Pantalone's* disclosure of information. It does not in any way alter the fact that the tenure charges themselves and any record of or determination related to same are a matter of public record.

Upon review of the record and Initial Decision on Remand, the Commissioner first notes that while the modified settlement appears to be in accord with the *Cardonick* standards for approval of the settlement of tenure charge matters, it still does not document that respondent was advised that the matter would be transmitted to the State Board of Examiners; thus, the revised settlement remains subject to remand to the OAL on this point.

Secondly, upon review of the record, the Commissioner agrees with the finding of the Administrative Law Judge (ALJ) that “[respondent’s] dispute with the format of the settlement is not with the substance, not with the terms of the agreement, not with the underlying reasons for resolving the matter, but simply with a document that says more than he would like about why this case was before the Commissioner.” (Initial Decision on Remand at p. 3) The Commissioner does not, however, accept the ALJ’s resolution to respondent’s failure to sign the modified settlement agreement, *i.e.*, deeming the settlement as having been signed by Mr. Pantalone.

Upon consideration of the factual circumstances of this matter where the respondent has so vigorously refused to sign the proposed revised settlement agreement, the Commissioner is disinclined to approve it. On the other hand, however, the Commissioner does not believe that the public interest would be served by remanding the matter for plenary hearing³, given that respondent resigned from the District effective June 30, 1998 and the Board avowed that it would be costly and difficult to proceed with the matter because (1) the charges were filed in April 1997, thus, many of the students needed to testify no longer attend the Somerset County Vocational School and (2) the Board, in accordance with statute, would have to continue to pay

³ In the Commissioner’s decision of April 28, 1998, which rejected the proposed settlement and remanded it to the OAL, it is expressly stated that if the parties are unwilling or unable to reach accord on a modified agreement for submission to the Commissioner, the matter shall proceed to a hearing on the merits.

respondent until a final decision on the merits of the tenure charges was issued by the Commissioner. Therefore, the Commissioner determines that the disposition of this matter shall be construed as a withdrawal of the tenure charges by the Board, not as a settlement.

Accordingly, the matter is deemed withdrawn and no longer in controversy before the Commissioner. A copy of this decision shall be transmitted to the State Board of Examiners for review and such action, if any, as it deems appropriate.⁴

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

January 13, 2000

⁴ 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.