

IN THE MATTER OF THE TENURE :
HEARING OF ARDEENA LONG, : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF PATERSON, :
PASSAIC COUNTY. :

SYNOPSIS

Petitioning school district certified fifteen tenure charges of conduct unbecoming and insubordination against respondent – a tenured language arts teacher – for actions which included, *inter alia*: theft of District property; conducting personal business during instructional time; improper entry into a supervisor’s personal portfolio and taking of personal material; possession of stolen items; and dishonesty.

The ALJ found insufficient proofs to sustain several of the tenure charges, but determined that nine of the charges were sustained, in whole or in part, by testimony and evidence presented at hearing. The sustained charges involved acts of theft and dishonesty intended to cover up respondent’s unprofessional conduct, including, *inter alia*: entering a supervisor’s personal file cabinet and removing items; making personal copies and trying to pass them off as part of a lesson plan; conducting private business at the classroom computer during instructional time; improperly entering her supervisor’s personal portfolio, taking personal material, and possession of the stolen items; and theft of the staff sign-out book. The ALJ concluded that the sustained charges do not rise to the level sufficient to revoke respondent’s tenure and determined that the appropriate penalty is a six-month suspension and loss of pay, as well as withholding of increments for two years beyond the period of her suspension.

The Commissioner adopted in part, and rejected in part, the Initial Decision of the OAL. The Commissioner concurred with the ALJ regarding the sustainable charges, but categorically disagreed with the ALJ’s penalty recommendation, determining that the charges sustained necessitate respondent’s removal from her tenured position. In so deciding, the Commissioner concluded that the multiple charges of unbecoming conduct and dishonesty amply demonstrate respondent’s unfitness to discharge the duties of her teaching position.

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.

October 26, 2006

OAL DKT. NO. EDU 1998-06
AGENCY DKT NO. 33-1/06

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The record of this matter and Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of the District and those of respondent, dated and filed October 5, 2006 and October 6, 2006, respectively, were untimely pursuant to *N.J.S.A. 1:1-18.4*.¹ As such, these and both parties' reply exceptions were not considered herein.

Upon careful and independent review of the record of this matter, which includes transcripts of the 5 days of hearing at the OAL,² the Commissioner adopts in part, and rejects in part, the recommended decision of the Administrative Law Judge (ALJ). Initially, the Commissioner concurs with the ALJ, for the reasons detailed in her Initial Decision, that the District has established – by a preponderance of the credible evidence – charges 4, 6, part of 7³, 8, 9 10, 11 and 12. She further agrees, again for the reasons set forth in the decision, that charges

¹ *N.J.S.A. 1-1-18.4(a)* specifies: “Within 13 days from the date the judge’s initial decision was mailed to the parties, any party may file written exceptions with the agency head.***” OAL papers indicate that the instant Initial Decision was mailed to the parties on September 18, 2006. This mailing date was subsequently confirmed via telephone communication with both counsel for the District and that of respondent. It is further noted that neither party requested an extension of time within which to file exceptions.

² Hearing was held on March 27, 29, 30, 31 and April 11, 2006.

³ Sustained is that portion of the charge “dealing with Ms. Long exercising a significant lack of judgment and concern for the proper education of her students by using the copy machine to make personal copies of a form and then attempting to cover the infraction by integrating the form into the lesson.” (Initial Decision at 31)

1, 2, 3, 5, 13 and 14 have not been sustained. In so determining, the Commissioner has given full consideration to all evidentiary proofs comprising the record, and recognizes that the ALJ's assessment of the credibility of the witnesses is of particular importance. In this regard, the Commissioner is mindful that the ALJ's credibility determinations are entitled to deference. "The reason for this rule is that the administrative law judge, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is better qualified to judge their credibility." *In the Matter of Tenure Hearing of Tyler*, 236 N.J. Super. 478, 485 (App. Div. 1989), *certif. denied*, 121 N.J. 615 (1989). Indeed, with the 2001 amendment to the Administrative Procedure Act (*P.L. 2001, c.5, §4*), the Commissioner's standard of review in this regard is clear and unequivocal – she "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)*) A reasoned review of the record, with this governing standard in mind, provides no basis for concluding that the ALJ's credibility assessments and resultant fact finding were without the requisite level of support.

Turning to the appropriate penalty in this matter, although clearly recognizing in her decision the gravity of the established charges against respondent, the ALJ inexplicably concludes that these charges do not rise to the level so as to warrant the loss of her tenured position. The Commissioner is compelled to categorically disagree and, therefore, rejects the recommended penalty of the ALJ and, rather, determines that the nature of the charges sustained here necessitates respondent's removal from her tenured position.⁴

⁴ It is noted that the ALJ's reference on page 35 of her decision to limitations on suspensions and fines for civil service employees set forth in *N.J.A.C. 4A:2-2.4* is wholly inapplicable in this matter. Rather, dismissal or reduction

Although the term “unbecoming conduct” may, at times, appear to be a somewhat amorphous concept, as put forward by the ALJ, prior education law cases have provided definitional clarification to assist in recognizing the applicability of this term to specific behavior:

“[u]nbecoming conduct” is an elastic term broadly defined to include any conduct “which has a tendency to destroy public respect for [government] employees and competence in the operation of [public] services.” *Karins v. City of Atlantic City*, 152 N.J. 532, 554 (1998) Behavior rising to the level of unbecoming conduct “need not be predicated upon a violation of any particular rule or regulation, *but may be based merely upon a violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as a upholder of what is morally and legally correct.* Despite the apparent vagueness of this standard, “it fairly and adequately conveys its meaning to all concerned.” *Laba v. Newark Bd. of Educ.*, 23 N.J. 364, 384 (1957). In the context of a school tenure case, “*the touchstone is fitness to discharge the duties and functions of one’s office or position.*” *In re Tenure Hearing of Grossman*, 127 N.J. Super. 13, 29 (App. Div. 1974, *certif. denied*, 65 N.J. 292 (1974) (Initial Decision at p. 25, quoting *In the Matter of the Tenure Hearing of Motley, State-Operated School District of Newark, Essex County*, decided by the Commissioner August 4, 1999, *aff’d*. State Board of Education December 1, 1999) (emphasis supplied)

The District has proven multiple charges of unbecoming conduct against respondent which, the Commissioner concludes, amply demonstrate respondent’s unfitness to discharge the duties of her position. Initially, charges 6, 9, 10 and 11 of the District’s proven charges establish that respondent, on more than one occasion, engaged in an act of theft. It is by now well-recognized in school law that even one act of theft, irrespective of the value of the item taken, is sufficiently flagrant – in and of itself – to require a school district employee’s removal from his or her tenured position. *In the Matter of the Tenure Hearing of DePasquale*, 92

of salary for teaching staff members for inefficiency, incapacity, conduct unbecoming a teacher, or other just cause is governed by subarticle B of article 2 of chapter 6 of N.J.S.A. 18A, not rules and regulations of civil service.

N.J.A.R. 2d (EDU) 537, aff'd. by the Appellate Division, Dkt. No. A-4236-92 (1994); In the Matter of the Tenure Hearing of Alan P. Tighe, decided by the Commissioner May 3, 1999. Such is the case because “there was an unlawful taking, however brief. This cannot be condoned. A board of education has the right to presume the basic honesty of its employees. A dishonest act by a public employee violates the public trust.” (*DePasquale, supra* at 540) Respondent’s difficulty with the concept of honesty – demonstrated by her engaging in theft – is further manifested by her continued prevarication with respect to the charges against her. As pointed out by the ALJ:

[w]hen confronted with the charge that she had entered Mr. Moody’s file cabinet, Ms. Long denied doing so, despite overwhelming evidence that she had entered the cabinet. Again, when she was confronted by Mr. Moody at the copy machine, she denied making personal copies and then concocted a lesson plan to cover her dishonesty. She also denied writing a personal memo to Mr. Moody, even when Ms. Gina saw the memo on the computer screen. Ms. Long’s rendition of what occurred during the observation with Ms. Gina involved a number of fabrications, including her denying that the pre-observation form discovered by Ms. Gina was the same one that she had filled out a short time before and her denying that she had the materials to teach English IV, even though Ms. Gina found the materials in Ms. Long’s closet. I also found her testimony that Mr. Robina initiated the telephone call rather than her responding to his telephone message to be disingenuous and an attempt by her to reconcile her story, that she could not speak with the administration because of the October letter from the superintendent, with what actually occurred. (Initial Decision at 34-35)

Moreover, respondent’s flagrant dishonesty cannot be ascribed to impulsive indiscretions or momentary lapses in judgment. Her vociferous denial of obviously demonstrated facts was exhibited not only at the time of the occurrence of the events at issue here but persisted up to and including the hearing in this matter, conducted some 1-1/2 years later. The Commissioner is left

with the obvious conclusion that respondent is either incapable of recognizing truth or she recognizes it but has absolutely no hesitation to lie repeatedly in order to avoid the consequences of her actions. In either event, such behavior is directly contrary and inimical to the expectations placed on teaching staff members, most particularly an educator in an alternative school which serves an already troubled student population.

Although duly considering all of the factors which ordinarily could serve to militate against respondent's dismissal – specifically, that the events giving rise to the charges against respondent occurred over a short period of time, *i.e.*, September 8, 2004 through October 6, 2004; that prior to this time respondent had positive evaluations and a discipline-free work record for over 20 years; and that respondent's transgressions were committed in an environment marked by an escalating acrimonious relationship with the school principal, Mr. Moody, who also on this record can be found to have conducted himself at times in a less than exemplary fashion – the Commissioner determines that these factors are greatly outweighed by the seriousness of her conduct in this matter. It is axiomatic “that teachers carry a heavy responsibility by their actions and comments in setting examples for the pupils with whom they have contact.” *In the Matter of the Tenure Hearing of Blasko, School District of the Township of Cherry Hill*, 1980 *S.L.D.* 987, 1003. There are some actions which are “so foreign to the expectations of the deeds and actions of a professionally certificated classroom teacher as to raise manifest doubts as to the continued performance of that person in the profession.” (*Ibid.*) The Commissioner concludes that such is the case here.

Accordingly, the Initial Decision of the OAL, with respect to the sustained charges of unbecoming conduct, is adopted for the reasons well expressed therein but rejected as to penalty, as set forth above. Respondent is hereby dismissed from her teaching position in the

State-Operated School District of Paterson as of the date of this decision. This matter shall be transmitted to the State Board of Examiners for action, as that body deems appropriate, against respondent's certificate in accordance with *N.J.A.C. 6A:9-17.6(a)1*.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: October 26, 2006

Date of Mailing: October 26, 2006

⁵ This decision 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. 6A:4-1.1 et seq.*