

#299-06 (No OAL Initial Decision)

IN THE MATTER OF THE TENURE :
HEARING OF JAMES DULACK, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF UNION : DECISION
CITY, HUDSON COUNTY. :

SYNOPSIS

In July 2006, petitioning school district certified tenure charges against respondent, a tenured custodian, alleging excessive absenteeism and insubordination. The respondent failed to file an answer to the tenure charges against him; therefore all charges are deemed admitted.

The Commissioner's review of the tenure charges indicates that between 1994 and 2006, respondent's absenteeism has been excessive; that he has been given numerous notices, warnings, disciplinary actions and penalties, including a 60-day period to improve attendance in the 2005-2006 school year.

In view of the nature of the charges presented, noting that respondent has chosen not to deny the allegations against him and thus deeming the charges admitted, the Commissioner concludes that summary decision is granted to the petitioner, and James Dulack shall be dismissed from the District's employ as of the date of this decision.

<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>

IN THE MATTER OF THE TENURE :
HEARING OF JAMES DULACK, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF UNION : DECISION
CITY, HUDSON COUNTY. :

For Petitioner, Chasan Leyner & Lamparello

This matter was opened before the Commissioner of Education on July 31, 2006, through the certification of tenure charges against respondent, a tenured custodian. Petitioner alleges excessive absenteeism and insubordination.

By notice dated August 1, 2006, the Bureau of Controversies and Disputes (the Bureau) directed respondent, via both certified and regular mail, to file an answer to the tenure charges against him. The certified copy was received by respondent and signed for on August 3, 2006. On that same date, August 3, 2006, the Bureau received from petitioner supplementary proof that the charges, certificate of determination and all accompanying documents had been served upon the respondent. Accordingly, on August 3, 2006, the Bureau directed respondent for a second time, via both certified and regular mail, to file an answer to the tenure charges against him. Neither the certified notice nor the notice sent by regular mail has been returned.

The communications from the Bureau clearly provided respondent with notice 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 date such charges are filed with the Commissioner* to file a written response to the charges, and that failure to answer within the prescribed period, where no extension has been applied for and granted, will result in the charges being deemed admitted by the charged employee. The Bureau has received neither an answer to the charges from the respondent nor from any attorney purporting to represent respondent. Consequently, each count of the charges shall be deemed admitted. *N.J.A.C. 6A:3-5.3(c)*.

The Commissioner's review of the tenure charges certified against respondent and the supporting statement of evidence indicates that respondent commenced employment with petitioner in January 1991. Beginning in the 1994-1995 school year and continuing through to 2006, respondent's absenteeism has been excessive, ranging from 50 days in the 1994-1995 school year, 36.5 days in the 1995-1996 school year and 44.5 in the 1996-1997 school year, to over 145 days in the 2004-2005 school year and 141 days in the 2005-2006 school year. During his employment in petitioner's school district, respondent has been given numerous notices, warnings, disciplinary actions and penalties, to no avail.

In the course of the 2005-2006 school year, respondent asserted that his high rate of absenteeism was due to poor health, medication and the care of elderly parents. He was given a 60-day period to improve his attendance, but did not. Additionally, respondent engaged in insubordination by refusing to acknowledge the receipt of notices advising him of the deductions in his salary caused by his absences.

Petitioner urges that respondent's high rate of absenteeism has adversely affected the efficient running of the schools, since he has been unavailable to perform the daily tasks necessary for the safety, cleanliness and operation of the facilities to which he was assigned. In view of the nature of the charges presented, noting that respondent has chosen not to deny the

allegations against him, and thus deeming the charges admitted, the Commissioner concludes that petitioner's request for the termination of respondent's employment may be granted.

IT IS ORDERED this 1st day of September, 2006, that summary decision shall be granted to petitioner, and James Dulack shall be dismissed from his tenured position as a custodian in petitioner's employ as of the date of this order.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 1, 2006

Date of Mailing: September 5, 2006

¹ 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.*