

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE LICENSES OF : STATE BOARD OF EXAMINERS
FRED ENGEL : ORDER OF SUSPENSION
_____ : DOCKET NO. 426-12/96-149

At its meeting of December 12, 1995, the State Board of Examiners reviewed information received from the Division of Criminal Records Research in the Division of Criminal Justice indicating that Fred Engel, who is the holder of Teacher of General Business Studies and Principal/Supervisor licenses, pled guilty in September, 1996 to charges of disturbing an election, a fourth degree offense. He was sentenced to two (2) years' probation and fined.

At that meeting, the State Board of Examiners voted that the conviction constituted sufficient grounds for issuing an Order to Show Cause. Thereafter, Fred Engel was served with the Order to Show Cause by regular and certified mail on or about January 21, 1997. On or about February 3, 1997 an Answer to the Order to Show Cause was forwarded by Sanford R. Oxfeld, Esq., on behalf of his client, Fred Engel.

Mr. Engel's Answer denies that he pled guilty to violating N.J.S.A. 2C:2-6, but admits to having pled guilty to violating N.J.S.A. 18A:14-65. He acknowledges in his Answer that he was sentenced to two years' probation, community service and received fines. He adds as affirmative defenses that he is guilty of no conduct warranting the revocation of his licensure and states that he was directed to undertake all activities and did so at the direction of the principal of his high school. He submits in his Answer that he faced repercussions if he did not accede to the demands of his administrators.

By letter dated April 10, 1997, the Secretary of the State Board of Examiners directed submission of exhibits supporting Mr. Engel's denial that he pled guilty to violating N.J.S.A. 2C:2-6 but instead admitting he plead guilty to violating N.J.S.A. 18A:14-65. By letter dated April 30, 1997, Mr. Engel's attorney forwarded the indictment, plea, sentence and administrative report. By letter dated May 27, 1997, Mr. Engel's attorney forwarded a letter explaining his understanding that, while he pled guilty to N.J.S.A. 18A:14-65, disturbing the results of an election, N.J.S.A. 2C:2-6 is not an additional criminal offense to which he pled guilty. Rather, he avers, the latter offense is entitled Liability for the Conduct of Another. His counsel submits that Mr. Engel could not place a factual basis on the record for disturbing the results of an election. He claims the fact that he was present when certain election fraud allegedly took place indicates he aided and abetted in the commission of this offense. He avers the lack of his direct involvement in this offense makes him guilty of aiding and abetting the underlying offense of disturbing the results of an election. He submits that N.J.S.A. 2C:2-6 allows the prosecution to take the plea of guilty to disturbing the results of an election without Mr. Engel's direct involvement.

Pursuant to N.J.A.C. 6:11-3.6(a)1, on March 13, 1998, a hearing notice was mailed by certified mail to Mr. Oxfeld. A regular mail copy was forwarded to Mr. Engel. The notice explained that, it appearing that no material facts were in dispute, Mr. Engel was provided an opportunity to offer legal argument on the issue of whether his conviction constituted conduct unbecoming a teacher. On March 30, 1998, a response to the hearing notice was received from Mr. Engel's attorney expressing his concern as to how to answer the hearing notice, insofar as no hearing had been conducted before an Administrative Law Judge nor before the Commissioner of Education to establish the material facts in question.

The response to the hearing notice on behalf of respondent submits, nevertheless, that he was initially employed in the Newark School District in 1968 and for the ensuing twenty-eight years had an exemplary record. While he admits guilt to a misdemeanor offense of disturbing the results of a school board election, he claims the statute has now been repealed, and that many others were also involved in the 1992 school board election. He claims others pled guilty to similar offenses and that the penalties imposed on the other were much less severe. Mr. Engel submits that the question of forfeiture was within the province of the criminal court judge. Respondent also notes that in the one case that the State Board has already decided, In the Matter of the Licensure of Gregory Palumbo, Dkt. No. 325-12/95-101, decided by the State Board of Examiners October 9, 1997, Mr. Palumbo's certificate was suspended for a period of one year. He states he was already suspended by the school district for a period of greater than one year and received no income or other fringe benefits during that time, so that he has already lost approximately \$85,000 in salary and benefits, coaching and other stipends. If the appropriate penalty, assuming identical records between Mr. Palumbo and his own, is a one-year suspension of licensure, Mr. Engel submits he should be found to have served that time already. He adds that due to his cooperation with the probation office, his probationary period was reduced from two years to one. Finally, he contends that in the Palumbo case, the State Board relied upon In Re Otto Krupp, 3 N.J.A.R. 285 (1981), in which Mr. Krupp's conviction of murder in the first degree was found to be conduct unbecoming a teacher. Respondent claims the conviction for first-degree murder is of a wholly different nature than a guilty plea to a statute under the school laws which no longer exist.

Thereafter, pursuant to N.J.A.C. 6:11-3.6, the Commissioner of Education forwarded to the State Board of Examiners a tenure case captioned, In the Matter of the Tenure Hearing of Fred Engel, State-Operated School District of the City of Newark, Essex County, Agency Dkt. NO. 554-11/96. In that case, the State-Operated School District of the City of Newark certified tenure charges against Mr. Engel, a tenured teaching staff member following his September, 1996 guilty plea to one count of disturbing the results of an election, in violation of N.J.S.A. 2C:2-6, and N.J.S.A. 18A:14-65, a fourth degree offense. As noted above, in the criminal matter, Mr. Engel was sentenced to two (2) years' probation, 120 hours of community service and fined.

The Commissioner of Education decided the tenure matter on Motion for Summary Decision on April 22, 1998, after the State Board of Examiners issued the Order to Show Cause to Respondent. He found Mr. Engel guilty of conduct unbecoming teacher for fraudulently casting and aiding others in the casting of illegal votes at the Newark School Board election held on April 7, 1992. Finding Mr. Engel's conduct egregious and unprofessional, the Commissioner directed a seven-month unpaid suspension from Mr. Engel's tenured teaching position, which period shall include the 120-day unpaid suspension already served, and forfeiture of his increments for the 1998-99 and 1999-2000 school years. The Commissioner directed a copy of the decision be forwarded to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6, noting the matter was already under the Board's consideration, and he further directed that the penalty in the tenure matter be in addition to any penalty which the State Board of Examiners may ultimately choose to impose.

At its meeting of June 18, 1998, the State Board of Examiners reviewed the charge against Mr. Engel as well as his responses to the Order to Show Cause and the hearing notice. After its review, the State Board of Examiners determined that no material facts related to Mr. Engel's offense were in contest, and that the matter could, therefore, proceed to a determination as to whether the criminal charges proven against him constitute conduct unbecoming a license holder pursuant to N.J.A.C. 6:11-3.6(a)1.

School law cases have traditionally recognized the right of the State Board of Examiners to revoke licenses where the teacher was involved in criminal activities, even if the activities were not related to the classroom. See Cox v. State Board of Examiners (App. Div. Docket No. A-3527-81T3) (November 18, 1993); State Board of Examiners v. Krupp, 3 N.J.A.R. 285 (1981). In this case, Mr. Engel has been found guilty of crimes of dishonesty. The State Board of Examiners takes judicial notice of the, Commissioner Decision, Engel, supra, at 3. He admits he knowingly and willingly engaged in a course of conduct intended to interfere with the conducting of a school election in the City of Newark.

The Commissioner has determined in the past that such guilty pleas involving dishonesty do constitute conduct unbecoming a teaching staff member sufficient to warrant dismissal. See, e.g., In the Matter of the Tenure Hearing of Emil J. Guasconi, School of the Town of West New York Hudson County, 1977 S.L.D 513. It is the conclusion of the State Board of Examiners that the offense to which Mr. Engel herein pled guilty discredits his professional stature. The Board further finds that such offense, tampering with the outcome of a school election, affects his credibility as a role model to his pupils. It is well established that teachers are holders of the public trust and are held to the highest standards of good conduct. See, Tenure Hearing of Sammons, 1972 S.L.D. 302, 321. It is particularly troublesome that a teacher would seek to

subvert a school election. Mr. Engels illegal conduct cannot be excused or blamed on the undue influence of others or on political pressure.

In considering the record as a whole in this matter, the Board determines that the appropriate penalty for Mr. Engel unbecoming conduct is the suspension of respondent's licensure for the same period of time that the courts assessed as a period of probation, one year. The State Board of Examiners emphasizes that this sanction is in addition to the penalty imposed in the tenure matter. In that case, Mr. Engel was found guilty of conduct unbecoming a teacher employed by The School District of Newark. In this matter, he is being sanctioned for conduct unbecoming a license holder. A sanction for improper conduct in a tenure case does not preclude a sanction for improper conduct in a licensure case.

It is, therefore, ORDERED that the charge to which Respondent pled guilty warrants suspension of Fred Engel's licensure. Mr. Engel's Teacher of General Business Studies and Principal/Supervisor licenses are hereby suspended on this 18th day of June, 1998 until one year from this date, June 18, 1999.

It is, therefore, further ORDERED that Fred Engel return his licenses to the Secretary of the State Board of Examiners, Office of Licensing, P.O. Box 500, Trenton, NJ 08625-0500 within fourteen (14) days of receipt of this letter for the period of suspension.

Ida B. Graham, Secretary
State Board of Examiners

Date of Mailing: July 23, 1998

Appeals may be made to the State Board of Education pursuant to the provisions of N.J.S.A. 18A:6-28.

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