

IN THE MATTER OF THE TENURE :
HEARING OF SABINO VALDES, : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY : DECISION
OF UNION CITY, HUDSON COUNTY. :
_____ :

SYNOPSIS

Petitioning Board certified tenure charges of unbecoming conduct and insubordination against respondent plumber.

Following 25 days of hearing and the testimony of many witnesses, the ALJ determined that on a variety of occasions between April 1999 and extending into early 2002, respondent acted in an unbecoming manner, was insubordinate to his superiors by failing to comply with their lawful directives, abused sick leave and, with his lies and unsubstantiated charges of discrimination and corrupt behavior against the Board, became an obstacle to the efficient operation of the School District. The ALJ concluded that the Board proved by a preponderance of credible evidence that respondent was guilty of the tenure charges and ordered his removal from his tenured position.

Having reviewed the record, including the transcripts of the hearing and the ALJ's credibility determinations and judgments concerning the witnesses, the Commissioner adopted the findings and determination in the Initial Decision as his own. The Commissioner concurred that the appropriate penalty was dismissal. He ordered respondent dismissed from his position 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>

June 24, 2003

IN THE MATTER OF THE TENURE :
HEARING OF SABINO VALDES, : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY : DECISION
OF UNION CITY, HUDSON COUNTY. :
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent’s exceptions and the Board’s reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4.¹

Respondent submits extensive objections to the Administrative Law Judge’s (ALJ) findings of fact, as well as the ALJ’s failure to include a summary of the testimony from respondent’s witnesses who showed him to be “a gentleman that displayed absolutely no signs of a disgruntle [sic] employee***” (Respondent’s Letter Memorandum/Exceptions dated May 28, 2003 at 4), or who otherwise corroborated respondent’s position (Respondent’s Exceptions). With respect to the ALJ’s recitation of excerpts from respondent’s letters, respondent contends that, in general, the ALJ was either inaccurate in his presentation, or he “withheld all of the relevant evidence” that would tend to prove respondent’s allegations. (Respondent’s Letter Memorandum/Exceptions dated May 28, 2003 at 5-14) Respondent claims that the “OAL omitted all of the relevant evidence and testimony from [his] witnesses. This action by OAL totally disguised the case by concealing the motive and execution of Petitioner’s plot to terminate Respondent’s employ.” (*Id.* at 15)

¹ Although respondent filed an “answer” to the Board’s reply, it was not considered by the Commissioner since there is no provision in regulation for such a submission.

The Board counters that respondent's exceptions attempt "to break down each incident and attack the weight of the evidence by focusing on extraneous details, which are irrelevant to the charges at issue." (Board's Reply at 3) Once again, the Board avers that respondent attempts to blame everyone else for the two years of disruption he caused the facilities department. (*Ibid.*) With respect to how the ALJ weighed the evidence, the Board underscores that

Valdes had approximately twenty days of testimony, multiple witnesses, and the Board's objections were overruled time and time again. Judge Weiss provided Valdes with [every] opportunity to present his case, and Judge Weiss should be deferred to in assessing the credibility of the witnesses. He was present at all the hearings and observed the witnesses testifying. He was obviously influenced not only by the witnesses' character and demeanor, but by common human experience not transmitted by the record. *** (citation omitted) (*Id.* at 13)

As to respondent's contention that there were errors in the ALJ's recitation of excerpts from respondent's letters, the Board argues that such allegations exemplify the non-substantive distinctions respondent attempts to draw to support his exceptions, a characteristic defense strategy for him. (*Id.* at 7) Finally, to the extent the ALJ did not, in his decision, account for the evidence relating to every event alleged in the tenure charges, the Board asserts that there is no requirement that it must prove every incident asserted in its charges. "In fact," the Board reasons, "there were so many incidents over such a long period of time, that to dwell on each and every one would be overkill." (*Id.* at 14-15) Thus, the Board urges the Commissioner to adopt the Initial Decision.

Upon careful and independent review of the complete record in this matter, including transcripts from 18 days of hearing,² together with exhibits, post-hearing briefs,

² The record includes transcripts from the following hearing dates in 2002: May 6, 8, 13, 16, 17, 23, 29, June 14, July 22, 23, 25, 26, 30, August 1, 2, 7, 16 and 20.

exception and reply arguments, the Commissioner determines to adopt the Initial Decision of the ALJ. In so doing, the Commissioner first notes that the factual findings issued by the ALJ are each supported by sufficient, credible evidence in the record.³ In this connection, the Commissioner recognizes that “the ultimate determination of the agency and the ALJ’s recommendations must be accompanied by basic findings of fact sufficient to support them.” *State, Dept. of Health v. Tegnazian*, 194 N.J. Super. 435, 442-443 (App. Div. 1984). The purpose of such findings “is to enable a reviewing court to conduct an intelligent review of the administrative decision and determine if the facts upon which the order is grounded afford a reasonable basis therefor.” (*Id.* at 443) Here, the factual findings issued by the ALJ readily provide the Commissioner with a sufficient basis for reviewing his conclusions and recommendations.

Further, the ALJ’s credibility determinations and judgments concerning *whose* testimony is to be accorded weight are entitled to the Commissioner’s deference. *N.J.S.A.* 52:14B-10(c) “The reason for the 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).” *In the Matter of the Tenure Hearing of Frank Roberts, School District of the City of Trenton*, 96 N.J.A.R2d (EDU). 549, 550. Contrary to respondent’s allegations, the ALJ fairly summarized the testimony and evidence before him, notwithstanding that he did not recapitulate the testimony of *each and*

³ With respect to Factual Finding No. 11 at page 5 in the Initial Decision, the record herein did not include a transcript of Joseph Chieco’s testimony. To the extent petitioner challenges this factual finding, the Commissioner notes that challenges to the factual findings predicated upon credibility determinations made by an ALJ require the party to supply the agency head with the relevant and necessary portion of the transcript. See *In re Morrison*, 216 N.J. Super. 143, 158 (App. Div. 1987).

every witness. Moreover, a complete review of this extensive record leaves the Commissioner with no doubt that respondent “received a hearing conforming to principles of fundamental fairness.” *In re Kallen*, 92 N.J. 14, 26 (1983).

The Commissioner, therefore, concurs with the ALJ’s conclusion that the Board has proven that: respondent has engaged in a pattern of conduct that demonstrates a consistent, obstructive and defiant attitude toward Board policies, personnel and particularly a hostile attitude toward his supervisors; that respondent has demonstrated insubordinate conduct; respondent has, on occasion, neglected his duties, thereby demonstrating insubordination; respondent abused his sick leave and was otherwise absent (leaving early) without authorization; and respondent has demonstrated conduct unbecoming an employee for engaging in general harassment and interference with the proper discharge of supervisors’ and other employees’ duties. (Statement of Charges at 1-13; Exhibit P-1a)

The Commissioner further agrees that the appropriate penalty in this matter is dismissal, noting that tenured custodians have been terminated from employment for conduct that included abusive language and hostile behavior toward supervisors and colleagues in those instances where respondents were found to have exhibited a pattern of belligerent and offensive conduct. *See, In the Matter of the Tenure Hearing of John De Maio, School District of the Borough of Elmwood Park, Bergen County*, decided by the Commissioner June 3, 1998, *aff’d* State Board November 4, 1998; and *In the Matter of the Tenure Hearing of Saad Radwan, School District of the Borough of Carteret, Middlesex County*, decided by the Commissioner January 14, 1999, *aff’d* State Board May 3, 2000, *aff’d* 347 N.J. Super. 451 (App. Div. 2002). As the ALJ herein eloquently stated:

[O]ver time, Valdes’ job became primarily about him, not the school district. That is an intolerable situation. Perhaps none of

the incidents, standing alone, or even some in combination with others justify removal. But, when all of his acts are put together, his abuse of sick leave, his insubordinate behavior, his scurrilous written diatribes and his confrontational attitude and demeanor, he so compromised his position as, in my judgment, to compel his removal. School employees like Valdes first and foremost are public servants whose performance must be devoted to the efficient carrying out of their assigned duties[.] Self-aggrandizement, belligerence, disdain of authority and constant verbal and written false charges [constitute] conduct which patently is inimical to the interests of the public school district and its employees, be they administrators, supervisors, teaching staff members or plumbers. They are not permitted to conduct themselves at work in such manner as constantly to interfere with the operations of the district.*** (Initial Decision at 22-23)

Accordingly, the Initial Decision is adopted as set forth herein, and respondent is dismissed from his tenured position with the Board as of the date of this decision.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: June 24, 2003

Date of Mailing: June 25, 2003

⁴ 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.*