

IN THE MATTER OF THE TENURE :
HEARING OF RALPH McCULLOUGH : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY : DECISION
OF TRENTON, MERCER COUNTY. :
:

SYNOPSIS

In August 2003, the Trenton Board of Education certified tenure charges of unbecoming conduct and incapacity against respondent, a tenured school custodian. Hearings were held at the OAL in late 2003 and early 2004, after which the presiding judge was recused from the proceedings following a motion from respondent's counsel. The case was reassigned to another ALJ, additional hearings were held, and the record closed on November 7, 2005. Respondent vigorously argued that an entire new hearing was necessary to prevent any undue influence on the new judge as a result of the previous judge's actions.

The ALJ found, *inter alia*, that: respondent was rude and abusive during a January 2003 meeting with his supervisors, during which respondent made it clear that he was capable of violence; and there is enough in the record – and the respondent's documented history of conduct in the workplace – to suggest that he could be a potential danger if he returned to work. Thus, the ALJ concluded that respondent's conduct was unbecoming and insubordinate, and the Board has established that respondent represents a potential danger if he is returned to work. The ALJ ordered that tenure be removed.

Upon a full and independent review of the record, the Commissioner concurs with the ALJ that the charges against respondent have been sustained by a preponderance of the credible evidence and that the proven charges warrant respondent's removal from his tenured position; accordingly, the Initial Decision of the OAL is hereby adopted. In so deciding, the Commissioner emphasizes that it cannot be credibly advanced that the ALJ's March 2005 letter order decision – which concluded that a whole new hearing was unnecessary, but, rather, the matter could proceed based on his review of prior hearing transcripts and forthcoming testimony – in any way compromised the fair discharge of his judicial duties or resulted in prejudice to the respondent.

<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>

February 17, 2006

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The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions, dated and filed January 24, 2006 in response to an Initial Decision mailed to the parties on January 10, 2006, were untimely pursuant to *N.J.A.C.* 1:1-18.4 and, therefore, these and the Board's reply exceptions were not considered herein.¹

Upon full and independent review of the record in this matter, which included transcripts of the hearing at the OAL,² the Commissioner concurs with the Administrative Law Judge (ALJ), for the reasons clearly set forth in his decision, that the charges against respondent have been sustained by a preponderance of the credible evidence and that the proven charges warrant respondent's removal from his tenured position.

At this point, the Commissioner is compelled to elaborate and comment on a prior Order of the Administrative Law Judge (ALJ) in this matter, discussed briefly at pages 1-2 of the Initial Decision. Subsequent to the reassignment of this case to ALJ Masin as a consequence of ALJ Schuster's

¹ Respondent's exception submission included the following introductory colloquy: "Although the decision certifies that it was mailed to the undersigned on January 10th, it was not received in this office until January 17, 2006, when my next door neighbor brought it over and indicated that it had been put in their mail box on Saturday the 14th. We were closed on January 16th in observation of Martin Luther King day." It is specifically noted that, notwithstanding what respondent views as valid justification for the filing of his late exceptions, *at no time subsequent to his receipt of the Initial Decision and prior to the expiration of the regulatory timeline for the filing of exceptions did he seek an extension of time within which to file.*

² Hearing in this matter was conducted on November 10, 2003, January 7, 8, and 30, 2004, February 20, 2004, April 4, 2005 and June 27, 2005.

recusal mid-trial, two options were available to him: 1) conduct a complete re-presentation of all testimony from the beginning or 2) review the transcripts of the testimony already taken and continue the hearing from that point. Respondent McCullough vigorously argued for an entire new trial, contending that such was necessary for an assessment of credibility and to preclude bias from existing transcripts where – respondent charged – ALJ Schuster engaged in excessive questioning of Board witnesses. By letter-order dated March 10, 2005, ALJ Masin concluded that this matter could proceed based upon his review of the prior hearing transcripts and additional forthcoming testimony and it was not necessary to recall the prior witnesses and re-present the entire hearing. In so determining, ALJ Masin stated that, after a review of the transcripts to-date, he could “state without any doubt that there is nothing in those transcripts which interferes with my ability to fairly and impartially assess the testimony of the witnesses and determine the facts in the case.” (ALJ Masin letter-order dated March 10, 2005). The Commissioner’s comprehensive consideration of the hearing transcripts and the Initial Decision persuades her that it cannot be credibly advanced that the ALJ’s March 10, 2005 letter order decision in any way compromised the fair discharge of his judicial duties or resulted in prejudice to the respondent.

Accordingly, the Initial Decision of the OAL is adopted for the reasons articulated therein. The Commissioner hereby directs that Ralph McCullough be dismissed from his employment as a tenured custodian with the School District of the City of Trenton as of the date of this decision.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 17, 2006

Date of Mailing: February 17, 2006

³ 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.*