

IN THE MATTER OF THE TENURE HEARING :
OF CYNTHIA PERELLA, SCHOOL DISTRICT : COMMISSIONER OF EDUCATION
OF THE CITY OF BRIDGETON, : DECISION
CUMBERLAND COUNTY. :

SYNOPSIS

The petitioning Board certified charges of conduct unbecoming against respondent – a tenured secretary employed by the district since 2001 – for allegedly stealing cash and checks in the amount of \$250 from a classroom in December 2010, and for breaking and entering a secured office for improper purposes in October 2010. Respondent denied the charges. The Board sought respondent’s removal from her tenured position.

The ALJ found, *inter alia*, that: witnesses for the petitioning Board presented credible and believable testimony, while respondent’s testimony was incredible and unbelievable; based on the security videotape entered into evidence, the missing funds were taken either by the respondent or by the ninth grade special education teacher who had been collecting the money in question for a school fundraising activity, as they were the only two persons in the classroom during the period in which the money went missing; respondent’s excuse for entering the locked classroom sounded like an effort to create an alibi; the theory of respondent’s counsel that a student had somehow gained access to the money – which was in a locked closet, inside a locked classroom – is unlikely; and without question, theft constitutes unbecoming conduct. The ALJ concluded that, based on the credible evidence and testimony presented at hearing – which included testimony regarding an October 2010 incident, which indicated that respondent had been searching in a file cabinet in a place where she did not belong – respondent is guilty of petty theft. Accordingly, the ALJ ordered that respondent be dismissed from her tenured employment.

Upon independent review and consideration, the Commissioner concurred with the ALJ’s findings and determination, noting that the overall record supports the Board’s charges. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the respondent was dismissed from her tenured position.

<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>

January 11, 2012

OAL DKT. NO. EDU 4694-11
AGENCY DKT NO. 75-4/1

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the respondent. Board of Education (Board) did not file a reply thereto.¹

In her exceptions, the respondent argues that the Administrative Law Judge (ALJ) erroneously sustained the Board's charge of unbecoming conduct and that the evidence is insufficient to warrant termination of respondent's employment and forfeiture of her tenure rights. Respondent maintains her innocence and contends that the Board did not do enough to investigate the theft. She asserts that no effort was made to search her pocketbook, home, or person, nor was any inquiry made to determine if the checks were cashed or if stop payments were effected. Respondent opines that without such an investigation there is inadequate proof that a theft actually took place or that she is responsible.

In support of this, she posits that the Board's main witness, Ms. Vargas, could have made a mistake and taken the envelope with the money in it, placing it in her pocketbook since she was going to the bank to make a deposit. At that point, someone other than the respondent could have taken the money during the 23-minute period the purse was in

¹ The record contains no transcripts from the hearings conducted at the OAL on September 29, October 14 and October 27, 2011.

Ms. Vargas' possession. Respondent further argues that anyone entrusted with a key can enter any locked room twice and a locked closet at any time since there is no policy or protocol prohibiting such a practice.

Upon full review and consideration, the Commissioner finds and concludes that in the absence of any basis in the record on which to dispute the fact-finding and credibility determinations of the ALJ pursuant to *N.J.S.A. 52:14B-10(c)*, *In re Morrison*, 216 *N.J. Super.* 143, 158 (App. Div. 1987), the Commissioner concurs with the ALJ that the Board has established that respondent is guilty of unbecoming conduct for the petty theft of \$250.00. The Commissioner finds respondent's exceptions unpersuasive, largely reflecting arguments and objections based on conjecture and surmise, and he further concludes that the overall record supports the Board's charges.² The Commissioner also finds no basis in the record to reject either the ALJ's recitations of testimony or his determinations of witness credibility. The ALJ found that the respondent was not credible, and that he did not believe her testimony. In contrast, the ALJ found that Ms. Vargas was credible and "answered all questions without equivocation" and "seemed to take no pleasure in offering her testimony against the respondent." The ALJ had the opportunity to assess the credibility of the witnesses who appeared before him and made findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Commissioner's review is:

The agency head 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)*].

² Another incident occurred on October 13, 2010 in which a set of keys to filing cabinets containing confidential school information went missing under suspicious circumstances. Respondent reported that she had found the keys in an area previously searched by other staff. Testimony revealed that the respondent had been observed looking in the filing cabinets behind the owner's desk. The ALJ could not make a finding that respondent committed another theft, but he did find that "she was in a place where she did not belong."

Moreover, the Commissioner fully concurs with the ALJ's assessment of respondent's conduct in light of applicable law and prior decisional precedent, and agrees that the conduct proven in this proceeding amply warrants respondent's dismissal and forfeiture of her tenure rights.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter. Respondent is hereby dismissed from her tenured position with the Bridgeton Board of Education.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 11, 2012

Date of Mailing: January 12, 2012

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*)