

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
ROBERT VITACCO : ORDER OF REVOCATION
_____ : DOCKET NO: 705-04/02-299

At its meeting of April 11, 2002, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Robert Vitacco from his tenured position with the Board of Education of Lincoln Park for charges of unbecoming conduct. In the Matter of the Tenure Hearing of Robert Vitacco, Docket No. 253-6/94 (Commissioner's Decision, March 24, 1997). Vitacco currently holds a Secondary School Teacher of Social Studies certificate issued in October 1967, a Secondary School Teacher of Earth Science certificate issued in October 1967 and a School Administrator certificate issued in December 1974.

This case originated on June 20, 1994, when the Lincoln Park Board of Education certified tenure charges against respondent, Robert Vitacco. Vitacco had been the superintendent of schools in Lincoln Park. The district charged him with unbecoming conduct for, among other things, misappropriation of public funds, misuse of vacation days, and financial mismanagement. The Commissioner transmitted the case to the Office of Administrative Law (OAL). During the pendency of the tenure proceedings, Vitacco pled guilty to two counts of tax evasion in federal court.

In a decision dated March 24, 1997, the Commissioner of Education disagreed with the Administrative Law Judge's (ALJ) conclusion that Vitacco had forfeited his public position by virtue of his guilty plea and that the Commissioner could order such forfeiture. (Commissioner's Decision, slip op. at 18-20). The Commissioner did agree with the ALJ that Vitacco's tenure case was not moot since issues remained in the case, including one of back pay. The Commissioner also ruled that the conduct established by Vitacco's guilty plea was conduct unbecoming a teaching staff member and warranted his removal from his tenured employment with the Lincoln Park Board of Education.

(Commissioner's Decision, slip op. at 20- 24). Accordingly, the Commissioner ordered that Vitacco "be deemed dismissed from his tenured employment with the Lincoln Park Board of Education" and transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Vitacco's certificates.¹ (Commissioner's Decision, slip op. at 25).

Vitacco appealed the Commissioner's decision to the State Board of Education. In the Matter of the Tenure Hearing of Robert Vitacco, Docket No. 41-97 (St. Bd. of Ed. April 5, 2000). He subsequently appealed the State Board's decision to the Appellate Division of the Superior Court of New Jersey. In Re Vitacco, 347 N.J. Super. 337 (App. Div. 2002). Both tribunals affirmed the decision below with regard to Vitacco's loss of tenure. Thereafter, on April 11, 2002, the State Board of Examiners issued Vitacco an Order to Show Cause as to why his certificates should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board sent Vitacco the Order to Show Cause by regular and certified mail on May 31, 2002. The Order provided that an Answer must be filed within 20 days. Vitacco filed an Answer on June 18, 2002. In his Answer Vitacco admitted that he pled guilty to tax evasion after his contract with the district expired. He claimed that he was therefore not a district employee at the time of his guilty plea. (Answer, ¶ 2.) Vitacco also claimed that there was no connection between his personal income tax and his position with the Lincoln Park Board of Education. (Answer, ¶ 3.) He also stated that he posed no danger to students, faculty or members of the community and had retired and had no plans to return to employment. (Answer, ¶¶ 4-5.) In the remainder of his Answer,

¹On January 20, 2004, the State Board of Education adopted a new administrative code governing professional licensure and standards. N.J.A.C. 6A:9-1 et seq. Although this decision was mailed after the effective date of the new code, the Board of Examiners' decision in this case predates the effective date of the new code and was therefore decided under the old code. All citations in this decision therefore are to the prior administrative code.

Vitacco added that there was no reason to revoke or suspend his license and asked if this was another punitive measure by the Lincoln Park Board of Education. (Answer, ¶ 6.)

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on June 27, 2002, the Board sent a hearing notice by regular and certified mail to Vitacco. The notice explained that, since it appeared no material facts were in dispute regarding the tenure charges, Vitacco was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder. It also explained that, upon review of the charges against him and the legal arguments tendered in his defense, the State Board of Examiners would determine if his offense warranted action against his certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any. The certified mail copy of the hearing notice was signed and returned. The regular mail copy was not returned. Vitacco did not respond to the hearing notice.

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Vitacco's conduct constitutes conduct unbecoming a certificate holder. At its meeting of December 12, 2002, the State Board of Examiners reviewed the charges and papers Vitacco filed in response to the Order to Show Cause. After reviewing his response, the Board of Examiners determined that no material facts related to Vitacco's offense were in dispute since he admitted to pleading guilty to tax evasion. Thus, Vitacco has not denied the charges in the Order to Show Cause. Accordingly, his actions regarding his criminal conviction constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Vitacco's offense as set forth in the Order to Show Cause, represents just cause to act against his certificates pursuant to N.J.A.C. 6:11-3.6(a)1. We find that it does.

The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. N.J.A.C. 6:11-3.4. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Board of Education, 130 N.J.L. 369, 371 (S. Ct. 1943), aff'd., 131 N.J.L. 326 (E & A 1944). “Teachers... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.” Tenure of Sammons, 1972 S.L.D. 302, 321. There can be no dispute that Vitacco’s conviction for tax evasion negates any claim he can have to being a role model for children. His inability to comport himself in an honest way speaks volumes about his suitability to be an educational leader. Thus, the only proper response to Vitacco’s breach is revocation.

Accordingly, it is therefore ORDERED that Robert Vitacco’s Secondary School Teacher of Social Studies, Secondary School Teacher of Earth Science and School Administrator certificates be revoked on this 12th day of December 2002. It is further ORDERED that Vitacco return his certificates to the Secretary of the State Board of Examiners, Office of Licensing, PO Box 500, Trenton, NJ 08625-0500 within 15 days of receipt of this decision.

Michael K. Klavon, Acting Secretary
State Board of Examiners

Date of Mailing: January 31, 2005

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