

IN THE MATTER OF THE TENURE :
HEARING OF JOHN HOVINGTON, : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY : DECISION ON REMAND
OF CAMDEN, CAMDEN COUNTY. :
_____:

SYNOPSIS

Board certified tenure charges of unbecoming conduct against respondent teacher and coach for allegedly engaging in inappropriate sexual relationship or touching with minor students. Citing *In re Fulcomer*, *In re Beam*, *In re Tordo*, *In re Mantone* and *In re Galla*, the Commissioner concurred with the ALJ's conclusion that respondent's actions with student P.B. constituted unbecoming conduct and warranted removal of his tenured employment as a teacher. State Board remanded matter to the Commissioner for consideration of respondent's exceptions, which Commissioner had found to be untimely filed, and to determine issues relating to back pay and indemnification raised in a Complaint in Lieu of Prerogative Writ (Complaint) filed in Superior Court, Law Division, in August 1995 and later transferred to the Commissioner.

On remand, the Commissioner found nothing in respondent's exceptions that would warrant the Commissioner to reverse his prior determination with regard to the finding that respondent's actions, as proven, constituted unbecoming conduct for the reasons expressed in the initial decision of the Office of Administrative Law (OAL), as further explicated in the Commissioner's prior decision. Commissioner affirmed his previous decision finding that the Board did prove its tenure charges and that the doctrine of laches did not apply herein. Commissioner further concurred with the ALJ that the tenure charges, as proven, were sufficient to warrant respondent's termination from employment. Commissioner remanded the matter to the OAL for further proceedings on the issues raised in the Complaint, and, in that the pleadings before the Court were not a part of the within record, the parties were directed to reconstruct such record. Additionally, the matter was transmitted to the State Board of Examiners for further appropriate action as a result of the Commissioner's determination on the tenure charges.

AUGUST 5, 1997

OAL DKT. NOS. EDU 4318-95S & 225-96S (CONSOLIDATED)
AGENCY DKT. NOS. 66-3/95 & 484-12/95

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This dispute was heard before the Office of Administrative Law (OAL) and by decision dated October 2, 1996, the Administrative Law Judge (ALJ) recommended that respondent be dismissed from his tenured position as a teacher, finding that the tenure charges of unbecoming conduct proven by the Board were sufficient to warrant respondent's termination from employment pursuant to *N.J.S.A.* 18A:6-10 and 11. The Commissioner, by decision dated November 18, 1996, affirmed the initial decision. The State Board of Education, by decision dated April 2, 1997, remanded the matter, determining:

to set aside the Commissioner's decision on the merits of the tenure charges and to remand this matter to the Commissioner for consideration of respondent's exceptions in determining those charges. (State Board Decision, Slip Opinion at p. 2)

Additionally, in that the Commissioner had not determined the issues raised in a Complaint in Lieu of Prerogative Writ in Superior Court, Law Division in August 1995, in which respondent sought indemnification and back pay from the Board, the State Board directed that the Commissioner undertake further proceedings and issue a final determination on those claims. (State Board Decision, Slip Opinion at pp. 2-3)

In considering this matter in accordance with the State Board's directive, the Commissioner has reviewed the record, including transcripts of the hearing, and the initial decision of the Office of Administrative Law, as well as respondent's exceptions and the Board's replies.

Respondent sets forth a list of exceptions which generally deny that he committed the offenses as charged. Therein, he avers that he should not have been removed from his position as a teacher, that he should not have an increment withheld, and that the equitable doctrine of laches should apply to bar the Board from filing tenure charges seven years after it became aware of the allegations which formed the basis for the tenure charges. (Respondent's Exceptions at p. 1)

Respondent then sets forth specific arguments to support each exception. With regard to the allegations of sexual intercourse, he contends that P.B. was not specific in nature as to the location and dates of these encounters. (Respondent's Exceptions, Exhibit A, at p. 1) He notes that there is testimony in the record that directly disputes the claims of P.B. Respondent then offers a general denial of P.B.'s accusations and presents arguments questioning the credibility of P.B.'s testimony concerning certain alleged sexual encounters. (Respondent's Exceptions, Exhibit A, at pp. 1-10) He urges the Commissioner to reject all of P.B.'s claims if he finds any of these specific incidents to refute her testimony, pursuant to the doctrine of "false in one, false in all."

Respondent next generally denies improperly touching P.B. and A.T., questioning the credibility of both witnesses. (*Id.* at p. 13)

Lastly, respondent contends that the ALJ erroneously concluded that the doctrine of laches does not apply herein in that the Board officials have known of these allegations since 1988. (*Id.* at pp. 13-14)

In reply, the Board argues that respondent's exceptions were untimely and otherwise improperly filed in that they do not conform to the specifications set forth in *N.J.A.C.:1-18.4 et. seq.* As to the contention that the credibility of the Board's witnesses was questionable, the Board notes that it is not the role of the reviewing body to draw inferences and conclusions, or to resolve conflicts therein. Rather, citing *Nesmith v. Walsh Trucking Co.*, 247 *N.J. Super.* 360, 365 (App. Div. 1989), the Board contends that the Commissioner must give deference to the trial judge's view of the intangibles such as witness credibility, demeanor and the "feel of the case." (Board's Exceptions at p. 5)

With respect to the remaining issues, the Board asserts that the ALJ's initial decision was correct and should be adopted in its entirety. (*Id.* at p. 9)

Initially, the Commissioner finds that he need not reach to the issue of timeliness of respondent's exceptions, based on the State Board's decision directing that such exceptions be considered.¹

Moreover, upon careful review and in consideration of the State Board's directive, the Commissioner finds nothing in the parties' exceptions that would warrant the Commissioner to reverse his prior determination with regard to the finding that respondent's actions, as proven, constitute unbecoming conduct for the reasons expressed in the initial decision of the OAL, as further explicated in the Commissioner's prior decision. Therefore, in reiterating his satisfaction that the ALJ considered all testimony and weighed its content according to the credibility of the witnesses and evidence in the record, and in finding no basis to challenge the ALJ's findings and resultant conclusions, the Commissioner affirms his previous decision finding that the Board proved its tenure charges against respondent and that the doctrine of laches does not apply herein. *In the Matter of Raymond Morrison*, 216 N.J. Super. 143 (App. Div. 1987). The Commissioner further concurs with the ALJ that the tenure charges, as proven, are sufficient to warrant respondent's termination from employment pursuant to N.J.S.A. 18A:6-10 and 11. *In the Matter of the Tenure Hearing of David Fulcomer*, 1962 S.L.D. 160, 162, remanded State Board of Education, 1963 S.L.D. 251, decided by the Commissioner 1964 S.L.D. 142, affirmed State Board of Education 1966 S.L.D. 225, reversed and remanded 93 N.J. Super. 404 (App. Div. 1967), decided by the Commissioner 1967 S.L.D. 215, aff'd N.J. Superior Court 220; *In the Matter of the Tenure Hearing of Robert Mantone*, 93 N.J.A.R. 2d (EDU)322, aff'd State Board 789; and *In the Matter of the Tenure Hearing of Robert H. Beam*, 1973 S.L.D. 157, 163.

Finally, consistent with the State Board's directive with regard to the Complaint in Lieu of Prerogative Writ, transferred from the Appellate Division to the Commissioner on December 19, 1995, this matter shall be remanded to the OAL for further proceedings solely with respect to the issues raised in that Complaint. The Commissioner herein notes that, notwithstanding respondent's provision of a transfer order from the Court, no pleadings were ever forwarded to this agency by the Court, nor did respondent provide them directly, either as filed in

¹ The Commissioner had, in his prior decision, found these exceptions to be untimely filed. Respondent subsequently produced a receipt from the Department of Education mail room evidencing that his exceptions were received there on October 21, 1996, notwithstanding the October 22, 1996 date stamp on the face of the document. Given that this receipt was not a part of the record before the Commissioner when he found the exceptions untimely, respondent was invited by letter dated November 22, 1996, to file a motion for reconsideration so that

Court or in the form of a petition of appeal. Accordingly, such pleadings are not a part of the within record and the parties are directed to reconstruct them so that further proceedings may ensue at OAL in accordance with the State Board's decision.²

Accordingly, as in the Commissioner's prior decision, the initial decision of the ALJ is affirmed with regard to the tenure charges and respondent is hereby dismissed from his teaching position in the Camden Public School District as of the date of this decision. This matter shall be transmitted to the State Board of Examiners, pursuant to the requirements of *N.J.A.C.* 6:11-3.6, for action against respondent's certificate as it deems appropriate. The issues raised in the Complaint in Lieu of Prerogative Writ are remanded to the OAL for further proceedings in accordance with the direction of the State Board of Education decision dated April 2, 1997.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 5, 1997

such exceptions might be duly considered. Respondent elected not to file such a motion but chose, instead, to appeal the Commissioner's rejection of his exceptions directly to the State Board.

²The Commissioner additionally notes that failure to consider the matters included in the Prerogative Writ was not raised in respondent's exceptions, nor was it brought to the Commissioner as an issue until the filing of a motion six calendar days before the statutory due date of the final Commissioner's decision. The Commissioner found the motion to be inappropriately filed at that time, and, by letter dated November 19, 1996, denied its consideration in the context of the present proceeding, instead inviting submission of a new petition.