

IN THE MATTER OF THE TENURE :
HEARING OF WILLIAM WENISCH, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY : DECISION
OF UNION CITY, HUDSON COUNTY. :
_____:

SYNOPSIS

Board certified tenure charges against respondent janitor for alleged unbecoming conduct and other just cause. Respondent contended that the Board failed to provide the opportunity to respond to the charges as guaranteed by *N.J.S.A.* 18A:6-11 and *N.J.A.C.* 6:24-5.1.

ALJ found that as the Board failed to give the within respondent the 15-day period in which to respond to the charges and presented no sufficient reason to justify the relaxation of the applicable rule, its failure to comply with *N.J.A.C.* 6:24-5.1(b)3 was a fatal defect. ALJ dismissed the tenure charges and ordered the Board to reinstate respondent to his tenured position with full salary and emoluments as of the date of suspension without pay.

Commissioner adopted findings and determination in initial decision as his own and directed reinstatement with compensation.

January 15, 1998

OAL DKT. NO. EDU 7333-97
AGENCY DKT. NO. 174-5/97

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of the Board, reiterating arguments advanced before the Administrative Law Judge (ALJ), and reply exceptions of respondent were timely filed pursuant to *N.J.A.C.* 1:1-18.4 and were duly considered by the Commissioner in making his determination herein.

Upon his careful and independent review of the record, the Commissioner concurs with the findings and conclusion of the ALJ that, because the Board acted to certify the within tenure charges prior to the expiration of 15 days from the date upon which respondent received the charges in violation of *N.J.S.A.* 18A:6-11 and *N.J.A.C.* 6:24-5.1(b)3, such charges must be dismissed as procedurally deficient, without prejudice to the Board's right to reconsider them following proper compliance with the applicable statute and regulation. The Commissioner, likewise, agrees with the ALJ that, notwithstanding the Board's urging to the contrary in its exceptions, the circumstances existing in this matter do not warrant a relaxing of the rule pursuant to *N.J.A.C.* 6:24-1.15.

Accordingly, the initial decision of the OAL dismissing the instant tenure charges, without prejudice, is affirmed for the reasons expressed therein. The Board is directed to reinstate respondent to his tenured position and pay his full salary and emoluments as of May 27, 1997, when it suspended him without pay.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

January 15, 1998