

NICHOLAS A. CIUFI, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

TOWNSHIP OF IRVINGTON, ESSEX :

COUNTY :

RESPONDENT. :

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SYNOPSIS

Petitioner, tenured vice principal who was dismissed from his position based on tenure charges of unbecoming conduct, sought to compel Board to pay legal costs of defending criminal matter which allegedly arose in the course of his employment and was ultimately dismissed by the court.

*N.J.S.A.* 18A:16-6.1 prescribes a two-part test for determining whether board of education employees are entitled to indemnification of counsel fees and expenses incurred in the defense of criminal charges: 1) the charges must either be dismissed or result in a final disposition favorable to the employee; and 2) any act or omission on which the criminal charges are based must arise “out of and in the course of performance of the duties” of the position held by the employee. (*Bower*) ALJ concluded that the tenure findings, which resulted in petitioner’s dismissal from his position, precluded indemnification of petitioner’s criminal defense costs. ALJ granted Board’s motion for summary decision; petition was dismissed.

Noting that unlike the situation in *Bower*, there was evidence on the record of the specific conduct which formed the basis of the criminal charge brought against petitioner, the Commissioner concurred with the ALJ that petitioner was now precluded, by specific findings to the contrary in an administrative forum, from asserting that the criminal charge brought against him involved an act or omission arising out of and in the course of the performance of his duties as an assistant principal. Petition was dismissed.

May 14, 1998

OAL DKT. NO. EDU 7548-94  
AGENCY DKT. NO. 277-7/94

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Board’s reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, and noting that petitioner’s exception arguments reiterate those advanced at the OAL, the Commissioner concurs with the findings and conclusions of law rendered by the Administrative Law Judge. Unlike the situation in *Bower, supra*, there *is* evidence on the record of *the specific conduct which formed the basis of the criminal charge* brought against petitioner, see *Bower, supra*, at 433, as such evidence was adduced at the prior tenure proceeding involving petitioner, see *In the Matter of the Tenure Hearing of Nicholas Ciufi*, 96 *N.J.A.R.* 2d (EDU) 980. Further, in view of the Supreme Court’s admonition that such evidence, were it available in *Bower*, “\*\*\*would have been material to the proceeding instituted by Bower for indemnification of his legal expenses” *Bower, supra*, at

434, the Commissioner concurs that petitioner is now precluded, by specific findings to the contrary in an administrative forum, from asserting that the criminal charge brought against him involved an act or omission arising out of and in the course of the performance of his duties as an assistant principal. Petitioner does not, therefore, meet the legal standard for indemnification of his counsel fees under *N.J.S.A.* 18A:16-6.1.

Accordingly, the initial decision of the OAL is adopted for the reasons expressed therein, and the within Petition of Appeal is hereby dismissed.\*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

May 14, 1998

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\* This decision, as the Commissioner's final determination in the instant matter, 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.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.