

IN THE MATTER OF THE TENURE :
 HEARING OF PETER LORIA, STATE- : COMMISSIONER OF EDUCATION
 OPERATED SCHOOL DISTRICT OF : DECISION ON REMAND
 THE CITY OF NEWARK, ESSEX :
 COUNTY. :
 _____ :

SYNOPSIS

District certified tenure charges of inefficiency and unbecoming conduct to the Commissioner in February 1992 against respondent English teacher. Partial initial decision in September 1992 dismissed the inefficiency charge because of District's failure to comply with statutory and regulatory requirements mandated when bringing charges of inefficiency. Matter was returned to OAL to proceed on remaining charges of unbecoming conduct. Thereafter, the ALJ found that the failure of a teacher to discipline and control the students in his charge and the failure of a teacher to teach his students in an effective manner are clearly unbecoming conduct. ALJ found that, in this matter, respondent continuously failed to discipline and control the students in his charge, failed to teach his students in an effective manner and, on many occasions, continuously failed to teach his students in any manner whatsoever. Thus, ALJ concluded that respondent was guilty of unbecoming conduct. ALJ ordered respondent removed from his position as a tenured teaching staff member. Commissioner concurred with the conclusion of the ALJ that the record made it abundantly clear that respondent should not be continued in his tenured teaching position and directed his dismissal as of the date of the decision.

State Board reversed and remanded matter, finding that the ALJ improperly shifted the burden of proof from the District to respondent. State Board directed determination of the charges under the correct standard of whether the District established respondent's unbecoming conduct by a preponderance of credible evidence.

On remand, the ALJ, having considered the testimony and evidence mindful of the burden of proof, concluded that respondent was guilty of unbecoming conduct as he continuously failed to impose discipline on his students and refused to teach his students effectively. ALJ found that removal from his position was warranted. ALJ also ruled on claim for back salary and benefits, finding that respondent was underpaid by three days, that the District had to provide proof of payment for unemployment benefits, that pension contributions were due from respondent and that respondent was due post-judgment interest.

Upon careful review of the record, including transcripts of nine days of hearing and exhibits consisting of a number of observations made of respondent, the Commissioner agreed with the determination of the ALJ that respondent was guilty of unbecoming conduct warranting his dismissal. In light of the State Board's remand, the Commissioner concluded that the documentary and testimonial proofs advanced established, by a preponderance of the credible evidence, Charges 2 and 3 of the District's unbecoming conduct charges. Citing *Bradley*, the Commissioner noted not only respondent's unsatisfactory behavior but also the impact of this behavior on the students. Commissioner directed that respondent be dismissed from his position and the matter be transmitted to the State Board of Examiners for further appropriate action. As to the money issue, the Commissioner found that the existing record did not provide the necessary detail to enable him to make the conclusive determinations required. Therefore, he remanded that issue to the OAL for expansion of the record and determination on this limited issue.

IN THE MATTER OF THE TENURE :
HEARING OF PETER LORIA, STATE- : COMMISSIONER OF EDUCATION
OPERATED SCHOOL DISTRICT OF : DECISION ON REMAND
THE CITY OF NEWARK, ESSEX :
COUNTY. :
_____ :

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions were timely filed pursuant to *N.J.A.C.* 1:1-18.4, and were duly considered by the Commissioner in reaching his determination herein. No submission was filed by the District.

Upon a careful and thorough review, which included transcripts of the nine days of hearing conducted at the OAL,¹ the Commissioner agrees with the conclusion of the Administrative Law Judge (ALJ) that the within respondent is guilty of conduct unbecoming a teaching staff member warranting his dismissal from his tenured position in the District. In his consideration of this matter, the Commissioner concludes that the documentary and testimonial proofs advanced herein establish, by a preponderance of the credible evidence, Charges 2 and 3 of the District's unbecoming conduct charges,² and he, therefore, categorically rejects, for the

¹Hearing in this matter took place on November 6, 12 and 17, 1992, October 22 and 27, 1992, March 15, 1993, September 22 and 27, 1994, and October, 24, 1994.

² The Commissioner concurs with the ALJ's dismissal of Charge 1a., as the within record establishes that respondent, rather than spending an inordinate amount of time disciplining his students, spent virtually no time whatsoever engaging in this endeavor. The Commissioner also accepts that b of this Charge has not been established by the District. With respect to Charges 4 and 5, he finds that these are more appropriately categorized as conclusory statements rather than charges. (See *In the Matter of the Tenure Hearing of April Renee Bradley*,

reasons which follow, the ALJ's apparent agreement with respondent's arguments that these have not been proven. (Initial Decision at p. 46) Specifically, these charges state:

2. He has willfully disregarded express and implied directives to conform his conduct to the level expected of teaching staff members;
3. Mr. Loria displayed insubordinate conduct, in that he has refused to obey the orders/directives by his superior(s) and/or department administrators who are entitled to give and have said directives obeyed.

Initially, in his review, the Commissioner observes that the record reflects that, at the beginning of each school year, the District disseminates to its teaching staff members a document entitled "Guidelines for Instructional Staff Performance," prepared by District administrators, which states on its face that it is intended "to clarify the rules under which each staff member of Central High School is expected to function ***." (See Exhibit P-45G and H.) Pursuant to this document, *inter alia*, teachers are expected to report to class on time; should have regular lesson plans available at all times when teaching; should give students homework every day; are expected to submit timely reports; should establish the rules and regulations of the class; are expected to follow the recommendations of supervisors; and should be located at their classroom doors during the passing of classes to minimize improper student activities in the halls. (It is noted that this last requirement is also specifically mandated by the teacher's union contract - See Exhibit P-79B at 9B.)

The within record confirms that a large number of observations were made of respondent, both formal and informal, over a protracted period of time, by his supervisor and other administrative staff members, and reports prepared by these individuals, and shared with respondent, uniformly and repeatedly detail certain consistent behavior of the respondent which

Board of Education of the City of Newark, 1990 S.L.D. 790, affirmed in part, reversed in part by the State Board, 1991 S.L.D. 2521.

reflected significant deviation from that which is required and expected of teaching staff members in the District, *i.e.*, lateness in arriving to class (Exhibits P-8, P-38, P-39, P-44, P-46, P-61, P-64, P-65, P-73), failure to have and/or display lesson plans (Exhibits P-3, P-48, P-73), failure to be present at his classroom door during the passing of classes (Exhibits P-66, P-67), failure to assign homework to students (Exhibit P-60), a total failure to even attempt to control or conduct his class (Exhibits P-4, P-8, P-10, P-12, P-26, P-30, P-33, P-46, P-59, P-62, P-64, P-65, P-67, P-71), and use of dittos as his sole teaching source rather than in conjunction with textbooks and other materials mandated by the District. (Exhibits P-62, P-67). The Commissioner rejects as untenable any argument that the reports of these evaluators, detailing such behavior, were merely suggestions for improvement of his teaching style and, therefore, that respondent's complete refusal to alter his behavior as a result of these was not a failure to respond to "directives." Rather, he concludes that the observation reports, presented to respondent and discussed with him, irrespective of the nomenclature or vernacular utilized on the evaluation forms themselves, which notified this teaching staff member that he was observed engaging in conduct which he knew or should have known is violative of conduct expected of a teaching staff member in the District, must be viewed, at a minimum, as implied directives to cease such behavior. It is observed that despite all of the warnings received by respondent that his conduct was in violation of what was recognized to be comportment required of teaching staff members in the District, the record reflects that he totally ignored such directives and continued his discordant behavior. As such, the Commissioner finds and determines that Charge 2 has been amply demonstrated through respondent's refusal to conform his conduct to that demanded of all teaching staff members by District policies and their teaching contract.

Moreover, it is further noted that the testimony of respondent's immediate supervisor, Lula Mae Rivers, confirmed by exhibits in the record, detailed numerous memos

which she sent to respondent advising that he was not complying with certain District mandates and **directing** him to do so. These include his repeated failure to submit student writing samples (Exhibits P-16, P-17, P-23, P-28, P-32, P-35, P-41, P-43, P-49; failure to submit lesson plans for approval on a timely basis and to display and use such plans as required (Exhibits P-19, P-20, P-27, P-28, P-31, P-34, P-36, P-37, P-42, P-43); failure to remain at his door during the changing of classes (Exhibits P-28, P-66), failure to address discipline in his classroom (Exhibits P-29, P-33, P-38); his lateness to class (Exhibits P-9, P-38); and failure to utilize the District Literature outline in preparing lesson plans (Exhibit 51). Ms. Rivers further testified that, for the most part, respondent neither complied with her directives nor did he offer any reason or excuse for not doing so. (Tr. 10/22/92, pp. 40, 74-75, 127-128, 130, 140, 146, 152; Tr. 10/27/92, pp. 7, 18, 19)

That this deliberate disobedience constituted insubordinate conduct is undeniable. In this connection, the ALJ's agreement with the advanced argument of respondent, contending that because there was no testimony which established that he engaged in any overt exhibition of disrespect or verbal refusal to perform duties required of his position, the District had not proven that he displayed insubordinate conduct in his failure to obey the orders/directives of his superiors or department administrators, is misplaced. Rather the Commissioner determines that the lack of "overt" insubordinate behavior is not dispositive in the substantiation of the charge here. Rather, he finds that insubordinate conduct, in the context of the unbecoming conduct charge in the instant case, is fully established by respondent's willful and intentional disregard of the lawful and reasonable directives of his duly authorized supervisor, which were not casual suggestions but requirements expected of all teaching staff members and with which he was compelled to adhere. (See *Board of Education of the Township of Teaneck, Bergen County v. Leon Wilburn*, 91 N.J.A.R. 2d (EDU) 48, aff'd State Board, 92 N.J.A.R. 2d (EDU) 328.)

The Commissioner's comprehensive review in the instant matter further leads him to concur with the ALJ's assessment of the credibility of the District's witnesses (Initial Decision at p. 53) and, likewise, to find respondent's testimony herein, which consisted of categorically denying and/or disagreeing with deficiencies and behavioral aberrations observed by each of his evaluators and which attempted to attribute any perceived less than exemplary behavior on his part to the shortcomings and proclivities of his students, uncooperative administrators, lack of provision of materials, and dilapidated classroom conditions, wholly "incredible." (*Id.* at p. 54)

Respondent's exceptions in this matter vehemently argue, as he has throughout this protracted case, that all of the evidence advanced goes to inefficiency and does not rise to the level of unbecoming conduct warranting his dismissal. The Commissioner finds this contention without merit. As stated by the New Jersey Superior Court, Appellate Division, in *In the Matter of the Tenure Hearing of Walter Driscoll, School District of Woodstown-Pilesgrove Regional High School, Salem County*, decided October 25, 1983, Docket No. A-748-82T2

***N.J.S.A. 18A:6-10 provides for dismissal of a tenured teacher for inefficiency, incapacity, unbecoming conduct or other just cause. Whether the charges fall under any of the categories is a determination for the Commissioner to make. Regardless of the label placed on the conduct charged and proven "**the touchstone is fitness, to discharge the duties and functions of one's office and position.**" (emphasis added) *In re Tenure Hearing of Grossman*, 127 N.J. Super. 13 (App. Div. 1974), certif. den. 65 N.J. 292 (1974); *Redcay v. State Board of Education*, 130 N.J.L. 369, 371 (1943), aff'd. 131 N.J.L. 326 (E&A 1944). (Slip Opinion at p. 3)

As such, the Commissioner concludes that the necessary focus does not stop with respondent's established behavior, it is also highly significant to look at the impact this behavior had on students. Here, the totality of the record establishes that respondent's conduct amply portrays a teaching staff member who exhibits total disregard for fulfillment of the requisite responsibilities of his position, the authority and directives of the District, administrators, his supervisor, and, most importantly, the welfare of his students, with the resultant consequence of depriving these

students, in one of the neediest districts in the state, of that to which they are legally entitled, a thorough and efficient education, a situation which cannot be tolerated. The Commissioner views this matter as similar to that which existed in *In the Matter of the Tenure Hearing of April Renee Bradley, Board of Education of the City of Newark*, 1990 *S.L.D.* 790, affirmed in part, reversed in part, by the State Board, 1991 *S.L.D.* 2521, wherein the Commissioner and the State Board both found

Bradley's conduct demonstrated contempt, disregard, and a lack of confidence in the professional judgment of her immediate supervisor and others who attempted to assist her. The resultant effect created an intolerable working relationship which interfered with the efficient management and operation of the Clinton Avenue School. The most significant impact unfortunately falls on children. Commissioner decision at 822; State Board decision at 2525,

a finding which is totally apropos in the instant case and which amply supports respondent's dismissal from his tenured position.

Also particularly troubling in this matter is the uniform observation of respondent's evaluators that he evidenced a nonchalant, uncaring attitude toward his students and his teaching. (Tr. 10/22/92, p. 10; Tr. 11/6/92, pp. 7-8, 127; Tr. 11/12/92, p. 13; Tr. 3/15/93, p. 15); the testimony of his supervisor which reported

***I didn't find any effort on the part of Mr. Loria, to fulfill his obligations as a teacher to comply with the Board's mandate to perform certain functions, such as submitting his lesson plans, submitting writing samples which is mandated by the Board ***to perform certain clerical matters that related to tasks that we were mandated to do in preparation--in preparing the students for tests, or improvement in classroom management, so that the *** time in the classroom could be better used for teaching purposes. Tr. 10/22/92, p. 153

***I found that the students felt that because of the kind of situation that was prevalent in this class, that they didn't have to come to class on time, they didn't have to be respectful, they didn't have to do the homework, they didn't have to comply with *** whatever they were told to do, because nothing would happen, they

thought. But at the end of the year, I found that a vast majority of those students failed. Tr. 10/22/92, pp. 157-158;

and respondent's own testimony which demonstrates his cavalier attitude with respect to satisfying the requirements of his position where, although admitting that he was required to submit writing samples of his students every month, when queried as to whether he had submitted such samples he replied "some I did, some I did not." (Tr. 9/27/94, p. 113, L9-16)

With respect to the moneys which may be due the parties in this matter, the Commissioner finds that the arguments and proffered evidence advanced are inconsistent in this regard and, therefore, he finds that the existing record does not provide the necessary detail to enable him to make the conclusive determinations required.³ As such, he concludes that this matter must be remanded to the OAL, on this singular issue, for expansion of the record sufficient to allow such determinations to be made.

Accordingly, the Commissioner accepts the recommendation of the OAL that respondent be dismissed from his tenured employment with the District for conduct unbecoming a teaching staff member and adopts the initial decision as the final decision in this matter for the reasons expressed therein as amplified above. He hereby directs that the issue of moneys which may be due and owing the parties in this case be severed from the tenure matter herein and that

³ As examples, it is noted that, although the record indicates that the parties agree that the District was entitled to an additional set-off of \$2,920, representing unemployment benefits paid to respondent during the period September 22, 1996 through November 30, 1996, the May 1, 1997 letter of the District's counsel, Gregory G. Johnson, indicates, without explanation, that \$2,230 was the amount actually set-off. Additionally, this same letter, which, it is observed, contains computation errors, states that the District paid \$224.10 in post-judgment interest but provides no details as to how this figure was calculated. Finally, it is also noted that the Certification of Kamal Diyandih, Coordinator of Safety and Health Insurance, dated March 5, 1997, states

The District is self-insured for unemployment compensation. When Mr. Loria applied for and received unemployment compensation from the Department of Education, the district was charged for the costs of Mr. Loria's benefits (See attached Exhibit "B"). In simple terms, for every dollar Mr. Loria was paid the District was charged. (See Diyandih Certification at p. 4.)

As such, it would appear, absent any further clarifying information, that such a situation would obviate the need for the transmission of recouped unemployment insurance moneys to the New Jersey Department of Labor, Division of Unemployment Insurance, as was demanded by respondent and ordered by the ALJ.

this sole issue be remanded to the OAL for expansion of the record and necessary determinations consistent with his expressed concerns. The tenure matter will be transmitted to the State Board of Examiners, pursuant to the requirements of *N.J.A.C. 6:11-3.6(a)*, for action as it deems appropriate.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

January 26, 1998