

IN THE MATTER OF THE TENURE :
 HEARING OF NEAL A. ERCOLANO, :
 SCHOOL DISTRICT OF THE :
 TOWNSHIP OF BRANCHBURG, :
 SOMERSET COUNTY. :
 AND :
 NEAL A. ERCOLANO, : COMMISSIONER OF EDUCATION
 PETITIONER, : DECISION
 V. :
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF BRANCHBURG, :
 SOMERSET COUNTY, :
 RESPONDENT. :
 _____:

SYNOPSIS

In consolidated matters, the Board certified tenure charges of unbecoming conduct against teaching staff member for allegedly assaulting a student and Mr. Ercolano contested the withholding of his increment for the 1997-98 school year.

ALJ concluded that Mr. Ercolano forfeited his teaching position due to his conviction. Moreover, the ALJ upheld the increment withholding.

Commissioner reversed the initial decision in that, pursuant to N.J.S.A. 2C:51-2, as amended by *P.L. 1995, c. 250*, the Commissioner does not have jurisdiction to enter orders of forfeitures of public employment, as such orders may now only be issued by the sentencing court. Commissioner remanded this matter to OAL to move forward on both the Board's tenure charges and the increment withholding challenge.

JUNE 25, 1998

OAL DKT. NOS. EDU 8422-97 and EDU 8509-97
AGENCY DKT. NOS. 321-9/97 and 334-9/97 (CONSOLIDATED)

IN THE MATTER OF THE TENURE :
HEARING OF NEAL A. ERCOLANO, :
SCHOOL DISTRICT OF THE :
TOWNSHIP OF BRANCHBURG, :
SOMERSET COUNTY. :
AND :
NEAL A. ERCOLANO, : COMMISSIONER OF EDUCATION
PETITIONER, : DECISION
V. :
BOARD OF EDUCATION OF THE :
TOWNSHIP OF BRANCHBURG, :
SOMERSET COUNTY, :
RESPONDENT. :
_____ :

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon his independent review, the Commissioner is compelled to reverse the initial decision in that, pursuant to *N.J.S.A. 2C:51-2*, as amended by *P.L. 1995, c. 250*, he does not have jurisdiction to enter orders of forfeitures of public employment, such orders now being issued only by the sentencing court. Consequently, this matter must be remanded to the OAL for further proceedings on both the Board's tenure charges and the increment withholding challenge. The Commissioner specifically notes, however, that nothing herein precludes the Board from moving for

summary decision before the Administrative Law Judge with respect to any aspect of the pending tenure charges, nor from pursuing an order of forfeiture in the appropriate forum.

Accordingly, the initial decision of the OAL is reversed and the matter is remanded for further proceedings consistent with this decision.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

JUNE 25, 1998

* 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.