

IN THE MATTER OF THE TENURE :  
HEARING OF ALAN P. TIGHE, : COMMISSIONER OF EDUCATION  
SCHOOL DISTRICT OF THE TOWN- : DECISION  
SHIP OF OLD BRIDGE, :  
MIDDLESEX COUNTY. :  
\_\_\_\_\_ :

SYNOPSIS

Board certified tenure charges of unbecoming conduct against respondent custodian for alleged theft of money from the school activities fund.

ALJ concluded that respondent's behavior constituted behavior unbecoming a school employee warranting removal from his position. Moreover, the ALJ determined that the stealing of money from the school was clearly an offense which involved and touched on respondent's position. Therefore, the ALJ ordered that respondent forfeited his position pursuant to *N.J.S.A. 2C:51-2*.

Commissioner affirmed in part, reversed in part the initial decision. Commissioner concurred with the ALJ that the matter was properly determined upon summary judgment, that respondent's action constituted conduct unbecoming a tenured employee and that dismissal was the appropriate penalty. Commissioner, however, determined that, contrary to the ALJ's finding, he is without jurisdiction to enter an order of forfeiture of public employment pursuant to *N.J.S.A. 2C:51-2*, as amended by *P.L. 1995, c. 250*. Commissioner ordered respondent dismissed from his employment as of the date of this decision.

May 3, 1999

OAL DKT. NO. EDU 6704-98  
AGENCY DKT. NO. 214-6/98

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Respondent'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, the Commissioner affirms in part, and reverses in part, the initial decision of the Administrative Law Judge (ALJ). Initially, notwithstanding respondent's assertion that he has "a right to be heard and seen by the Court and a right to personally confront the witnesses against him," (Respondent's Exceptions at p. 1), the Commissioner finds that this matter was properly determined upon summary judgment. In this regard, the Commissioner recognizes

\*\*\*that while he has a duty to conduct a hearing and render a decision in all tenure matters, such hearings will necessarily be in accordance with the Uniform Administrative Procedure Rules of Practice, *N.J.A.C.* 1:1. Contrary to respondent's view, these rules contemplate motions for summary decision, and decisions on said

motions, before the ALJ. See *N.J.A.C.* 6:24-1.10(b) and *N.J.A.C.* 1:1-12.5. \*\*\*

\*\*\* “It is well-established that where no disputed issues of material fact exist, an administrative agency need not hold an evidential hearing in a contested case.” *Frank v. Ivy Club*, 120 *N.J.* 73, 98, citing *Cunningham v. Dept. of Civil Service*, 69 *N.J.* 13, 24-25 (1975). “Moreover, disputes as to the conclusions to be drawn from the facts, as opposed to the facts themselves, will not defeat a motion for summary judgment.” *Contini v. Board of Education of Newark*, 96 *N.J.A.R.* 2d (EDU) 196, 215, citing *Lima & Sons, Inc. v. Borough of Ramsey*, 269 *N.J. Super.* 469, 478 (App. Div. 1994) (emphasis added). \*\*\**In the Matter of the Tenure Hearing of Andrew Phillips, School District of the Borough of Roselle, Union County*, Commissioner’s Decision No. #129-97, decided March 20, 1997, Slip Opinion at pp. 9-11.

In the instant matter, respondent admits to having stolen the \$20, notwithstanding that he denies that his action constitutes conduct unbecoming a tenured employee. (Respondent’s Exceptions at p. 1) However, like the circumstances in *Phillips*, summary disposition in favor of the Board is appropriate herein, inasmuch as respondent has failed to show “that there is a genuine issue which can only be determined in an evidentiary hearing.” *N.J.A.C.* 1:1-12.5(b).

The Commissioner further concurs with the ALJ that respondent’s action constitutes conduct unbecoming a tenured employee, and that dismissal is the appropriate penalty. In this regard, the Commissioner notes that respondent does not dispute the Board’s contention that

[a]lthough Respondent claims to have cooperated with investigators and admitted his wrongdoing, he did not readily confess to the offense, but waited until the police department performed powder testing on each employee with access to the office from which the student funds were stolen. \*\*\* Only *after* testing positive for the transfer of the powder and *after* the missing funds were recovered *on*

*his person*, did Respondent confess to the theft.\*\*\*  
(Board's Brief, December 9, 1998 at pp. 5, 6) (emphasis in  
text)

The Commissioner, therefore, concurs that respondent's actions are "inherently incompatible with public employment \*\*\*." *DePasquale, supra* at 540.

Finally, contrary to the ALJ's finding, the Commissioner maintains that, pursuant to *N.J.S.A. 2C:51-2*, as amended by *P.L. 1995, c. 250*, he is without jurisdiction to enter an order of forfeiture of public employment. *In re Ercolano, supra*. Thus, the ALJ's order that respondent has forfeited his employment is hereby set aside.

Accordingly, the initial decision of the ALJ is affirmed in part, for the reasons expressed therein, and reversed in part, as set forth above. Respondent's tenured employment with the Board is terminated as of the date of this decision.\*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

May 3, 1999

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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.