

IN THE MATTER OF THE TENURE :  
 HEARING OF ROBERT G. MORTON, :  
 SCHOOL DISTRICT OF THE CITY :  
 OF CAMDEN, CAMDEN COUNTY.

AND : COMMISSIONER OF EDUCATION

ROBERT MORTON, : DECISION

PETITIONER, :

V. :

BOARD OF EDUCATION OF THE :  
 CITY OF CAMDEN, CAMDEN :  
 COUNTY, :

RESPONDENT. :

---

#### SYNOPSIS

Board certified tenure charges of unbecoming conduct against Respondent Morton, an Industrial Arts Teacher, based on drug-related criminal charges. In consolidated matter, respondent challenged the Board's action suspending him without pay. He asserted that his suspension should have been with pay from November 1, 1996 until December 16, 1996, when the Board voted to certify tenure charges against him, and that he was entitled to continuation of his full salary effective April 16, 1997, pursuant to *N.J.S.A.* 18A:6-8.3 and 6-14.

Having found respondent's testimony incredible, the Board determined that his possession of a controlled dangerous substance and possession of drug paraphernalia constituted conduct unbecoming a teacher even though the possession occurred off school premises. In 1988, the Board had reasonably accommodated respondent's drug addiction by supporting his inpatient drug program and by permitting him to return to work after completion of that program. Now, since respondent did not prove any mitigating circumstances, the ALJ concluded that the appropriate penalty for respondent's conduct unbecoming on the two charges brought by the Board was removal from his tenured position. Board argued that by virtue of respondent's conviction of possession of drug paraphernalia, he forfeited his position. However, the ALJ noted that neither the OAL nor the Commissioner has the jurisdiction to enter orders for forfeiture of public employment pursuant to *N.J.S.A.* 2C:51-2, as amended by *P.L.* 1995, *c.* 250. ALJ ordered respondent dismissed from his position and ordered that the Board pay respondent his salary for the period between November 1, 1996 and December 16, 1996.

Having reviewed the record, including transcripts of the hearing, the Commissioner found no reason to challenge the ALJ's credibility determinations and adopted the findings and determination in initial decision as his own. Commissioner also affirmed the ALJ's Interlocutory Order of May 14, 1997 regarding the permissible scope of discovery and the procedures for disclosure of documents in the Board's possession. Commissioner ordered respondent dismissed as of the date of this decision and directed Board to pay respondent's salary for the period in question. Commissioner ordered a copy of this decision transmitted

July 30, 1999

IN THE MATTER OF THE TENURE :  
HEARING OF ROBERT G. MORTON, :  
SCHOOL DISTRICT OF THE CITY :  
OF CAMDEN, CAMDEN COUNTY. :  
AND : COMMISSIONER OF EDUCATION  
ROBERT MORTON, : DECISION  
PETITIONER, :  
V. :  
BOARD OF EDUCATION OF THE :  
CITY OF CAMDEN, CAMDEN :  
COUNTY, :  
RESPONDENT. :

---

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondent Morton'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, which included transcripts from the four days of hearing conducted at the OAL, the Commissioner finds no cause to disturb the findings and conclusions of the Administrative Law Judge (ALJ).<sup>1</sup> To the extent the ALJ's factual findings omit details which respondent argues are relevant, the Commissioner determines that such information is inconsequential to the within matter.

---

<sup>1</sup> In his affirmance, the Commissioner neither explicitly accepts nor rejects the ALJ's discussion on pages 37 and 38 regarding whether respondent's criminal conviction *would have been* sufficient to warrant forfeiture under the pertinent statute, prior to its 1995 amendment.

Moreover, the Commissioner observes that the record before him provides no basis to challenge the ALJ's credibility determinations.

Concurring that the Board has proven the charges of unbecoming conduct, the Commissioner affirms the initial decision of the ALJ recommending a penalty of dismissal, for the reasons clearly and effectively expressed in the initial decision. Additionally, in accordance with *N.J.A.C. 1:1-14.10(j)*, the Commissioner affirms the ALJ's Interlocutory Order of May 14, 1997 regarding the permissible scope of discovery and the procedures for disclosure of documents in the Board's possession.

Accordingly, respondent is deemed dismissed from his tenured position as of the date of this decision. The Board is directed to pay respondent's salary due for the period November 1, 1996 to December 16, 1996, the date upon which the herein charges were certified to the Commissioner, as per *N.J.S.A. 18A:6-14*, unless, as the ALJ notes, the Board successfully obtains an order of forfeiture pursuant to *N.J.S.A. 2C:51-2*, as amended by *P.L. 1995, c. 250*. A copy of this decision will be transmitted to the State Board of Examiners for action as it deems appropriate, pursuant to *N.J.A.C. 6:11-3.6*.<sup>2</sup>

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

July 30, 1999

---

<sup>2</sup> 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.