

IN THE MATTER OF THE TENURE :
HEARING OF EUGENE M. LEGGETT, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE : DECISION ON REMAND
CITY OF TRENTON, MERCER :
COUNTY. :

SYNOPSIS

Board certified tenure charges of unbecoming conduct and other just cause against respondent physical education teacher due to his handling of two incidents in his swimming classes. Board alleged that respondent utilized improper techniques to effectuate the rescue of students and failed to properly supervise students. After barring, in an interlocutory order affirmed by the Commissioner, the Board's presentation of testimony and/or report of its expert as a result of the late submission of the report, the ALJ found, and the Commissioner affirmed, that the Board failed by proofs, by either direct or by reasonable inferences, to establish a *prima facie* case on any of the four charges that it brought, and, therefore, concluded that the charges must be dismissed. On appeal, the State Board reversed the interlocutory order and remanded the matter, determining that the Board should be given the opportunity to present expert evidence in regard to respondent's alleged professional misconduct.

In his decision on remand, the ALJ found that the contribution made to the record in the proceedings on remand did not result in any meaningful addition to the evidence in the matter such that the ALJ and the Commissioner would be compelled to alter their previous determination that the four charges of unbecoming conduct must be dismissed because the Board failed to establish a *prima facie* case in support of the charges.

The Commissioner adopted the findings and determination in Initial Decision as his own. Tenure charges were dismissed.

June 26, 2000

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of the Board and the respondent's reply thereto, filed in accordance with the directives of *N.J.A.C.* 1:1-19.4, were fully considered by the Commissioner in making his determination herein.

The Commissioner has independently and carefully reviewed and considered this matter, which was remanded as a consequence of the State Board's reversal of the Commissioner's Interlocutory Order, affirming the Administrative Law Judge (ALJ), precluding the introduction of the Board's expert's report and testimony on the basis of such report's untimely submission. Upon such review, the Commissioner must agree with the determination of the ALJ that the contribution made to the record in these further proceedings on remand has not made any meaningful addition to the evidence in this matter, such that the ALJ and the Commissioner would be compelled to alter their previous determination that the within four charges of unbecoming conduct must be dismissed because the Board has failed to establish a *prima facie* case in support of these charges. *See In the Matter of the Tenure Hearing of Eugene M. Leggett, School District of the City of Trenton, Mercer County*, decided by the Commissioner of Education, December 17, 1998. In so determining, the Commissioner is obliged to remain mindful of the well-established principle that, in order for him to sustain charges brought

pursuant to the Tenure Employees Hearing Law, *N.J.S.A. 18A:6-10 et seq.*, the District bears the burden of proving such charges by a preponderance of the credible evidence. *In re Tenure Hearing of Grossman*, 127 *N.J. Super.* 13 (App. Div. 1974).

In this matter, as the Commissioner previously recognized,

the focus of the examination here is not whether the Commissioner, or any other individual for that matter, in retrospect, might find that there were more appropriate procedures which might have been utilized under the circumstances which occurred in these incidents but, rather, *the relevant issue in this tenure case is whether the Board has established that respondent's actions breached any established standard of behavior.**** (emphasis added) (*In re Leggett*, Slip Opinion at 22)

Once again, as aptly expressed by the ALJ here,

in the absence of any evidence that [Leggett] can be held to the standards of a trained individual in the performance of a task which is well acknowledged to require significant training and examination leading to certification, there is no basis to fault him for using the wrong method to achieve successful rescues. ***[T]here is no basis for finding that Leggett violated the professional standards to which the Board and the Commissioner have a right to hold him.*** (Initial Decision at 7)

Accordingly, the Initial Decision of the OAL is affirmed for the reasons clearly stated therein and the within tenure charges are hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: June 26, 2000

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* This decision, as the Commissioner's final determination, 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. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.