

IN THE MATTER OF THE TENURE :  
HEARING OF WILLIAM THOMAS, : COMMISSIONER OF EDUCATION  
PLAINFIELD SCHOOL DISTRICT, :  
UNION COUNTY. : DECISION  
\_\_\_\_\_ :

SYNOPSIS

Petitioner certified tenure charges of unbecoming conduct against respondent – a tenured teacher and vice principal in the district – based upon his arrest and indictment for possession of cocaine in May of 2004. Respondent subsequently entered and completed a 24 month pre-trial intervention (PTI) program. At the commencement of the plenary hearing in this matter – in February 2008 – respondent moved for dismissal of tenure charges, claiming that since the tenure charges were directed at his arrest, indictment and participation in PTI, as opposed to the behavior which precipitated same, the charges were defective. He additionally moved for reimbursement of back pay from the date he completed PTI on March 16, 2007 until the filing of tenure charges on May 17, 2007, and from the one hundred twenty-first day after the filing of tenure charges until the date of the Commissioner’s determination, pursuant to *N.J.S.A.* 18A:6-14.

The ALJ found that: the tenure charges clearly articulated that respondent had been arrested and indicted for possession of a controlled dangerous substance (CDS) and drug paraphernalia, giving respondent ample notice that the charges were based on drug possession; the fact that possession of the CDS occurred off school premises has no bearing on the determination that the behavior underlying respondent’s arrest constituted conduct unbecoming; and the respondent is nevertheless entitled to back pay as per his motion. The ALJ concluded that respondent’s behavior was blatantly conduct unbecoming an educator, ordered that the appeal filed by respondent be dismissed and directed that he be reimbursed for back pay pursuant to *N.J.S.A.* 18A:6-14.

Upon careful and independent review of the record, the Initial Decision of the OAL was adopted as the final decision in this matter, and the Commissioner directed that respondent be dismissed from his tenured position. A copy of this decision has been transmitted to the State Board of Examiners for action as that body deems appropriate.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>
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May 23, 2008

OAL DKT. NO. EDU 1763-08  
(EDU 5908-07 on remand)  
AGENCY DKT. NO. 133-5/07

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HEARING OF WILLIAM THOMAS, : COMMISSIONER OF EDUCATION  
PLAINFIELD SCHOOL DISTRICT, :  
UNION COUNTY. : DECISION  
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The record of this matter,<sup>1</sup> the Initial Decision of the Office of Administrative Law (OAL) and the exceptions filed by respondent have been reviewed.

Pursuant to a November 26, 2007 remand order of the Commissioner of Education (Commissioner), a plenary hearing took place in the OAL on February 26, 2008 to adjudicate the facts underlying tenure charges that petitioner had filed against respondent on May 16, 2007. After the conclusion of the hearing, the Administrative Law Judge (ALJ) found, as a matter of fact, that the petitioner’s witness – Union County police officer Dennis O’Connell – was more credible than respondent,<sup>2</sup> and that petitioner had proven the facts necessary to sustain the tenure charges.

More specifically, the ALJ found that on May 4, 2004, O’Connell observed respondent sitting alone at a picnic table in Greenbrook Park and approached him. Respondent left his seat and advanced toward O’Connell, stating that everything was fine, even before O’Connell asked any questions. Respondent’s demeanor was agitated, his eyes were bloodshot and his speech was rambling and incoherent.

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<sup>1</sup> As no transcript of the February 26, 2008 hearing has been provided, the Commissioner will rely upon the Administrative Law Judge’s (ALJ) account of the witnesses’ testimony.

<sup>2</sup> Respondent alleges in his exceptions that O’Connell “acknowledged that he had very little recollection of the event in question and that he would have had even less recollection had he not reviewed his notes before the hearing . . . .” The Commissioner may not rely on this representation, in the absence of a transcript or other support from the record and, further, finds nothing out of the ordinary about a witness who needs to consult contemporaneous notes in order to give testimony about an event four years after the fact.

A bag of suspected controlled dangerous substances (CDS) and a tube (or pipe) was on the picnic table where respondent had been seated and several more bags of suspected CDS were on the ground at respondent's feet. O'Connell arrested respondent for CDS possession and respondent mentioned, in the course of the arrest, that he had a problem with cocaine. State laboratory testing and analysis of the tube and the contents of the bags revealed that they contained cocaine.<sup>3</sup>

In light of the foregoing factual findings, and legal precedent pertinent thereto, the ALJ concluded that petitioner had met its burden to show that respondent had perpetrated unbecoming conduct sufficient to warrant termination. The Commissioner concurs.

In his exceptions, respondent urges the Commissioner to dismiss the petition because in describing respondent's unbecoming behavior, the original tenure charges also recited that respondent was arrested, indicted and accepted into the court's pre-trial intervention program because of the offending conduct. The Commissioner joins the ALJ in rejecting this argument.

As the ALJ pointed out, respondent had ample notice of the exact nature of the behavior which petitioner believed disqualified him to serve as an educator of school children. Petitioner met its burden at the February 26, 2008 hearing to prove that respondent committed the conduct. The Commissioner cannot find that the public good is served by invalidating charges – the factual bases of which were adequately articulated and subsequently proven – solely because the charges were drafted in a way that appeared to put more emphasis on legal procedure than on the underlying factual circumstances and their ramifications.

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<sup>3</sup> The ALJ found that respondent's testimony at the hearing – *i.e.*, that two other men had left the cocaine and tube on the picnic bench about twenty minutes before O'Connell observed respondent – lacked credibility. Nor did the ALJ find credible respondent's contention that he never told O'Connell that he had a problem with cocaine.

Respondent also suggests that petitioner, having failed to present any fact witnesses at the first OAL hearing in this matter, should not have had a second chance to prove its charges at the remand hearing. This argument is untimely. Respondent's opportunity to appeal the Commissioner's November 26, 2007 order for a remand hearing to the State Board of Education pursuant to *N.J.A.C. 6A:4-1.3* has long since expired.

Accordingly, the Commissioner adopts the Initial Decision in its entirety. The tenure charges against respondent are upheld, and respondent is terminated from his position in petitioner's district. Back pay is awarded, both from the date of the dismissal of the criminal indictment until May 17, 2007 – when the tenure charges were filed – and from the one hundred twenty-first day after the filing of tenure charges until the date of this decision. Back pay shall be reduced by any sums that respondent has received from employment during the applicable periods, and respondent shall provide any and all documentation reasonably required to ascertain the amount of back pay which is due him.

This matter shall be transmitted to the State Board of Examiners for action as that body deems appropriate against respondent's certificate.

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2008

Date of Mailing: May 23, 2008

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<sup>4</sup> This decision 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.*