

IN THE MATTER OF THE TENURE :
HEARING OF ROBERT A. DOMBLOSKI, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWN OF : DECISION
BELVIDERE, WARREN COUNTY. :
_____:

SYNOPSIS

Board certified tenure charges of unbecoming conduct against respondent teaching staff member for allegedly misrepresenting that he possessed a supervisory certificate, causing the Board to employ him as Athletic Director, a position for which he was not qualified.

ALJ found that the evidence was insufficient to satisfy the District's affirmative burden of showing that respondent truly realized he was not appropriately certified. ALJ concluded that the District failed to sustain the tenure charges against respondent. Although the primary responsibility for obtaining appropriate certification belongs to the teaching staff member, the school administration must share some of the blame for violating its duty to assure that all professional staff is properly certified. (*N.J.A.C. 6:3-1.4(b)*) ALJ dismissed tenure charges and ordered the District to restore full back pay and other benefits attributable to respondent's part-time teaching position, subject to mitigation of damages.

Upon careful review of the record, including transcripts from the hearings, the Commissioner reversed the ALJ's determination. Commissioner emphasized that although the Board must take responsibility for failing to assure that respondent was properly certified before appointing him as Athletic Director, the ultimate burden for respondent's failure to clarify his certification status, even assuming that there was reasonable cause for confusion, fell on respondent. Commissioner found that based on the documentary and testimonial evidence, respondent knew or should have known that he did not possess the requisite certificate to assume the Athletic Director's position. As a result of his failure to hold an appropriate certificate, he received salary as Athletic Director to which he was not entitled. Thus, the Commissioner found respondent guilty of conduct unbecoming a teaching staff member. But in recognition of respondent's extended service to the Board and his prompt action in obtaining the required courses when the deficiency was again brought to his attention in 1995, and noting that the Board had a part in the deficiency in that it did not require respondent to produce evidence of his supervisor's certificate, the Commissioner determined dismissal was not warranted. Commissioner did order that respondent forfeit the 120 days' salary already withheld, together with an additional two months' salary and concomitant emoluments. Matter was referred to the State Board of Examiners for action against respondent's certificate, as it deems appropriate.

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. The Board's exceptions and respondent's reply thereto are duly noted as submitted in accordance with *N.J.A.C. 1:1-18.4*.

In its exceptions, the Board argues that, contrary to the Administrative Law Judge's (ALJ) findings and conclusions, respondent misrepresented that he possessed the supervisory certificate necessary to hold the position of Athletic Director, and such misrepresentation constitutes unbecoming conduct, in accordance with case law. See *In the Matter of the Tenure Hearing of Michael A. Pitch, Superintendent of Schools, Board of Education of South Bound Brook, Somerset County, 1974 S.L.D. 1176*, aff'd State Board of Education 1975 *S.L.D. 763*, aff'd N.J. Superior Court, Appellate Division, 1976 *S.L.D. 1159*; *In the Matter of the Tenure Hearing of Peter J. Deer, Board of Education of the Borough of Palisades Park, Bergen County, 1975 S.L.D. 752*; and *In the Matter of the Tenure Hearing of Gordon Moore, School District of the Township of Piscataway, Middlesex County, 1978 S.L.D. 862*.

The Board argues that the ALJ's conclusion that respondent did not knowingly misrepresent his qualifications is not supported by the record, as evidenced by respondent's

vague, contradictory and incredulous response when measured against the testimony of four District administrators. (Board's Exceptions at p. 3) The following illustrations from the record demonstrate, according to the Board, that respondent's credibility must be questioned.

First, the Board points out that in respondent's Answer to the tenure charges, he admits that he informed the Board that his certificate had been destroyed in a fire. (*Id.*) However, at the hearing, respondent contradicted himself when he claimed that he did not say the certificate was lost in the fire, but rather that "everything I had prior to July 15 of 1982 was destroyed in a fire." (*Id.* at p. 4, citing to Tr. I at p. 122) Additionally, the Board recounts that respondent specifically denied that he told John Pappas, the then High School Principal, that he had a supervisory certificate. Yet, Mr. Pappas clearly testified that respondent told him that he had a certificate. (*Id.*) Although the ALJ dismisses the testimony of Pappas because "his memory was based on the mistaken belief that the District required a supervisory certificate," (*id.* citing to Initial Decision at p. 7), this credibility determination was, according to the Board, improper and inconsistent with the testimony of Pappas.

The Board further notes that respondent acknowledges he was aware in 1979-80 that there were problems with the course work he took toward his supervisory certificate. Yet, respondent's characterization of the conversation he had with then Superintendent Andrew Mark wherein respondent recalls that the problem "would be taken care of," does not comport with Mark's testimony. Here, the Board asserts

***The ALJ states that "...Marks (sic) seemed unable to recall many details of this short encounter, ..." (Initial Decision p. 8) To the contrary, the transcript *** makes it abundantly clear that Mark stated unequivocally that, although aware of it, he was not involved in trying to resolve the problem with Dombloski's credits. He noted that in his 21 years as Superintendent, he never got involved with such issues as it was his view that it was the teacher's responsibility to deal with the County Office on such questions. *** Mark did, however, show Dombloski a copy of the September, 1980 memo (P6) advising him that he was 3 credits short and did not qualify for a Supervisor certificate. *** This

portion of Mark's testimony contradicts Dombloski's testimony that he was unaware of P6. No rebuttal to this testimony was offered or even attempted and yet the ALJ fails to address this issue of fact. It should be noted that although at first claiming he did not receive P6, Dombloski conceded that he did receive an envelope from the County Office which he did not open and that it could have been P6 ***. (Board's Exceptions at pp. 5, 6)

The Board further observes that, when asked, respondent indicated that he did not know if he had received an actual piece of paper constituting his certificate. In this context, respondent again asserted that he did receive correspondence from the State, but he was not sure that he opened it since he was upset with the Board's decision not to create department chairpersons. (*Id.* at p. 7)

As a final illustration that the record supports the conclusion that respondent was not credible, the Board observes that although respondent, in answer to the tenure charges, denied that he was ever asked to produce a copy of the certificate, in his testimony, he admitted that he first told Principal Jiorle that he would produce the certificate, without making any reference to the fire. (*Id.*)

The Board next excepts to the ALJ's minimizing respondent's affirmative obligation and primary responsibility for having a supervisory certificate. Here, the Board maintains that, as a matter of law, it was respondent's obligation to obtain the actual certificate, citing *Sydnor v. Englewood Bd. of Education*, 1976 S.L.D. 113, 117, and that any responsibility the Board had to verify the certification does not diminish that responsibility, as per *Nealy v. Roselle Bd. of Education*, 1987 S.L.D. 1598, 1631). (*Id.* at p. 8)

The Board maintains that respondent's motive to misrepresent himself was the 50 percent salary increase, health benefits and an enhanced pension. The Board affirms that it has established that respondent is guilty of unbecoming conduct and must be dismissed from his position.

In reply, respondent argues that the Commissioner cannot overturn the credibility determinations of the ALJ who correctly found that he did not intentionally mislead the Board. Further, the cases cited by the Board, *supra*, with respect to an employee's dismissal for unbecoming conduct are inapposite, inasmuch as those cases presented clear and convincing evidence of an intent to mislead, unlike the circumstances herein. (Respondent's Reply at p. 2) Respondent further counters that he had no motive to mislead the Board since he was a long-term employee with a fine reputation. (*Id.*) Moreover, contrary to the Board's statement, respondent claims that he "always received health benefits from the NJEA due to his consultant position." (*Id.*) He maintains that he would have received such benefits regardless of whether he retained the Athletic Director position.

Finally, respondent affirms that, although he had "primary responsibility" to obtain the appropriate certification, it was the Board's duty to ensure that its staff members were properly certified. (*Id.* at p. 3)

Upon careful and independent review of the record in this matter, which included transcripts from the hearings conducted live on March 4, 1997 (Transcript I) and by telephone on March 4, 1997 (Transcript II) and on July 16, 1997 (Transcript III), the Commissioner determines to reverse the determination of the ALJ, for the reasons set forth below.

In Charge One certified to the Commissioner in this matter, the Board asserts:

1. Dombloski has been continuously employed as a teaching staff member in Belvidere since September 1, 1969 and, as such, is tenured in the District. On or about April 28, 1993, Dombloski was subject to a reduction-in-force (R.I.F.). The impact of this R.I.F. was to reduce Dombloski's employment for the 1993-94 school year from full time to part time. Consequently, his annual salary was reduced to \$27,350.00, rather than \$54,700.00 he would have earned in a full time capacity. Further, as a result of the R.I.F. to part-time employment, he no longer qualified for District paid health insurance benefits.
2. Thereafter, Dombloski served as the District's Athletic Director, a supervisory position, during the period September, 1994 through

December 31, 1995. At the time he applied for the position of Athletic Director, Dombloski was employed as a tenured part-time business education teacher at an annual salary of \$27,350.00. In such status, the District did not pay for health insurance benefits. For the 1994-95 school year, but for his employment as Athletic Director, Dombloski's part time status was to have continued, except his annual salary was scheduled to be \$27,500.00 (One half of full time salary of \$55,000.00). As in 1993-94, Dombloski would not have been eligible for Board paid health benefits during the 1994-95 school year.

3. At the time of his application to be the Athletic Director, Dombloski assured the Administration that he already possessed and had been issued the supervisory certificate required for the position. As a result thereof, Dombloski was subsequently hired and employed as the District's Athletic Director. His annual salary for 1994-95 was \$56,000.00 which continued for the 1995-96 school year. As a result of his employment as Athletic Director, the District also paid for health insurance benefits. The cost of these premiums was approximately \$9,000.00 per year. Several times during Dombloski's employment as Athletic Director, he was asked by the Administration to provide a copy of his supervisory certificate and, although assuring the Administration that he would, never provided it.
4. By Memorandum dated November 29, 1995, the Warren County Superintendent's Office summarized the status of Dombloski's supervisory certificate. As stated therein, during a routine check by the Warren County Superintendent's Office, Dombloski's name was "kicked out" on its 1994-95 certified staff report, as his certificate information did not match that Office's files regarding Dombloski's possession of a supervisory certificate. Both the District Administration and the County Office asked Dombloski to provide a copy of his supervisory certificate. Thereafter, in September 1995, Dombloski for the first time stated to each that it had been lost in a fire. Dombloski proceeded to make application for a replacement certificate. Upon receipt of this application, the State Department of Education checked its records and confirmed that Dombloski was never issued a supervisory certificate. It so notified the District and, as a result, Dombloski was removed from the position of Athletic Director, effective December 31, 1995. No appeal of this Board action was instituted by Dombloski.
5. As part of its review of this matter, in January 1996, the District received a copy of the September 17, 1980 letter referred to by the County Office in its November 29, 1995 memo. This letter from the State Board of Examiners specifically advised Dombloski that he did not qualify for a supervisory certificate.

As a result of the foregoing, Dombloski caused the District to employ him as Athletic Director, a position for which he was not certified, in violation of Title 18A. (emphasis added) (Board's Certification of Charges at pp. 1-3, June 21, 1996)

The record shows that the facts alleged in the first two paragraphs of Charge One are not in dispute. Further, the record supports the Board's assertion in paragraph three that respondent did assure the District that he was properly certified when he applied for the position of Athletic Director. (Tr. I at p. 45) As the ALJ noted, even though respondent testified that he could not recall the specific conversation, he stated that he would have told the District that he had the certificate, because he believed he did.¹ (Initial Decision at p. 6) However, there is no question that respondent never produced a copy of the certificate. As to paragraph four of Charge One, the Commissioner finds there to be no disputed facts, inasmuch as respondent admitted in his Answer that "he informed the Board that his certificate had been destroyed in a fire ***." (Respondent's Answer at p. 2)² Finally, the Commissioner finds that the record supports the conclusion that there are no disputed facts as to the fifth paragraph of Charge One. Accordingly, the Commissioner determines to sustain Charge One, as clarified herein, in that the Board has proven that the District employed respondent as Athletic Director, a position for which he was not properly credentialed, in violation of education statute and regulation, in part because he failed to disavow the District of its mistaken notion that he possessed a supervisor's certificate. In so finding, the Commissioner underscores that although the Board must take responsibility for failing to assure that respondent was properly certified before appointing him to the position of Athletic Director, the ultimate burden for respondent's failure to clarify his certification status, even assuming there was reasonable cause for confusion, as respondent so

¹ Whether respondent's alleged belief was reasonable, under the circumstances, is discussed, *infra*.

² The Commissioner concurs with the Board that respondent's testimony was not entirely consistent with this admission, in that he specifically stated on cross-examination that "I don't think I ever said it got lost in a fire. I said everything I had prior to July 15 of 1982 was destroyed in a fire." (Tr. I at p. 122) When asked by Board's counsel whether it could fairly be implied from such a statement that the certificate itself was also lost, respondent ambiguously replied, "It may have inferred that, but I did not imply that. All I said was I lost everything." (*Id.*)

claims, falls on respondent. See *Nealy, supra*, at 1619. The procuring of a certificate is the primary responsibility of the teacher. *Sydnor, supra*.

Charges Two and Three, as certified to the Commissioner, affirm that respondent is guilty of unbecoming conduct and other just cause warranting his dismissal by virtue of paragraphs one through five, *supra*, and further declare that

***Dombloski lied about and misrepresented his certification status to the District. When confronted, Dombloski lied again in stating that his supervisory certificate was lost in a fire. *** and

***Dombloski misrepresented his certification status when he knew or should have known that he did not possess or qualify for the necessary supervisory certificate. (Board's Certification of Charges at p. 4, June 21, 1996)

Although the Commissioner cannot find, based on the record before him, that respondent "lied about" his certification status, so as to sustain Charge Two, he does find sufficient support in the record to sustain Charge Three, and determines, therefore, that, based on the documentary and testimonial evidence, respondent knew or should have known that he did not possess the requisite certificate to assume the Athletic Director's position. In so finding, the Commissioner notes that respondent acknowledges that he was aware of the problem with his course, as early as 1979 or 1980. (Tr. I at p. 89) Contrary to the ALJ's finding, and based on a careful reading of the transcripts, the Commissioner finds that the testimony of former Superintendent Mark was clear as he recalled on direct examination the conversation which he had with respondent on the issue of his deficient course work. Indeed, Mr. Mark was able to recall, some sixteen years after the conversation took place, that the communication was from a woman at the county office whose name was "Sadie Summerfeld or Summerfest***." ³ (Tr. III at p. 2) Mr. Mark testified that he showed the September 1980 correspondence (P-6) from the county office to respondent, who was upset by the news. Mr. Mark stated unequivocally that he

³ The actual name which appeared on P-6 was Sadie Sumfest, Examiner.

did not call the county office on behalf of respondent at that time or any time, as it was not his policy to do so. (*Id.* at p. 3) Where Mr. Mark's memory was less clear was regarding *any other* conversations he had with respondent regarding his coursework.⁴ Based on Mr. Mark's testimony and respondent's admitted knowledge of the deficiency in his coursework, the Commissioner finds that respondent had an obligation to follow through with the county office regarding the discrepancy in his certification. This is true particularly since respondent testified that he could not recall ever receiving his certification in the mail. (Tr. I at pp. 119-121) That respondent claims he may have received the document, as he received an envelope from the State, but did not open it, is simply an inadequate response for a professional, in light of his primary responsibility to secure appropriate certification, and particularly since he was a seasoned educator who was not unfamiliar with the certification process.⁵ At the very least, when respondent determined that he would like to apply for the Athletic Director position, he was obligated to make sure that he was duly certified. The Commissioner concurs with the Board's view that when respondent applied for the position, he affirmed to the District that he had the appropriate supervisor's certificate. Thus, the Commissioner finds that respondent misrepresented his certification status when he knew *or should have known* that he did not possess the necessary supervisory certificate.

Charge Four as certified to the Commissioner avers that respondent is guilty of unbecoming conduct and other just cause warranting dismissal by virtue of paragraphs one through five, *supra*, and further affirms that, as a result of his failure to hold an appropriate certificate, he received salary as Athletic Director to which he was not entitled, in violation of

⁴ Dombloski testified that he met with Mr. Mark at the point when he was considering whether he should go to school to take the courses necessary to obtain his supervisor's certificate. He testified that he needed only 12 additional credits, and he had a conference with Mr. Mark wherein they "got in touch with the County Superintendent***" and respondent subsequently submitted a course outline from Stroudsburg State College to the County Office for the courses he had expected would satisfy the certification requirement. (Tr. I at p. 88)

N.J.S.A. 18A:29-1. (Board's Certification of Charges at p. 4, June 21, 1996) Finding sufficient evidence to sustain Charges One and Three, the Commissioner determines to sustain Charge Four, as there is no dispute that respondent was paid as an Athletic Director from September 1994 through December 31, 1995. (Partial Stipulation of Facts at paragraph 2)

Having found that respondent was guilty of conduct unbecoming a teaching staff member, the Commissioner turns to the issue of penalty. Here, respondent has served the District since 1969, apparently, apart from this matter, in good standing. In *Deer, supra*, as cited by the Board, the respondent had been employed by the Board for only two years when he misrepresented to the Board that he had a Master's Degree for purposes of obtaining additional salary income and advancement of position, for a time period ranging from 1962 until 1974. (*Deer, supra*, at 752) University records showed that respondent had taken and failed the comprehensive examination to receive his M.A. in 1959. Although he claimed that he took the exam again, and was notified of his successful completion thereof, he stated that he never attended graduation and did not obtain his diploma. (*Id.* at 756) The Commissioner found, *inter alia*, that there was no evidence in the record on which respondent could reasonably base such claim. Moreover, respondent was found to have represented to the Board on numerous occasions that he possessed a Master's Degree. "****When employees make such representations, they may reasonably be expected to be able to substantiate their claims.****" (*Id.* at 757) The Commissioner therein noted that he

****has ruled against teaching staff members on previous occasions when he determined that they had misrepresented their academic attainments for the purpose of gaining additional salary or position. Such findings have resulted in a determination that the teaching staff member has exhibited conduct unbecoming a teacher. Such is the matter herein. **** (*Id.* at 762, citing, *inter alia*, *Pitch, supra*, wherein the Commissioner determined that a superintendent's

⁵ It is herein noted that respondent never satisfactorily explained why, when he affirmed that he was uncertain whether he had ever received the certificate, he also told District administrators that it was lost in the fire. (Tr. I at pp. 122, 123)

misrepresentation of his undergraduate credits as graduate credits constituted unbecoming conduct, warranting dismissal.)

In another case cited by the Board, the Commissioner did not dismiss the respondent where he forthrightly admitted that he did not possess the requisite principal's certificate so as to qualify him to hold a position as deputy superintendent, which he occupied for two years prior to the Board's certification of tenure charges. (*Moore, supra*, at 862) Here, the Board reluctantly certified tenure charges, acknowledging that respondent's services were valued in the District. (*Id.* at 863) Unlike the situation herein, the Board in *Moore* did not seek his dismissal; it took no action other than to assign him to a post for which he was duly certified. (*Id.* at 865) The Commissioner therein recognized the Board's prompt action in assigning him to an appropriate position when it learned that he was not properly certified, and further noted the respondent's "genuine show of contrition," as well as the high value the Board placed on respondent's services in the District. (*Id.* at 866) Rather than forfeiting his tenure, the Commissioner ordered that respondent forfeit a sum equal to one month's compensation at his present rate of salary. (*Id.*)

In the instant matter, in recognition of respondent's extended service to the Board, and his prompt action to obtain the required courses when the deficiency was again brought to his attention in 1995, and further noting that the Board was clearly deleterious in that it did not require respondent to produce evidence that he possessed his supervisor's certificate prior to appointing him to the position, despite its notice through former Superintendent Mark, that his application for the credential was deficient, the Commissioner determines that the severe penalty of dismissal is unwarranted. However, to impress upon respondent that such careless and unprofessional conduct is unacceptable, and that the Commissioner steadfastly maintains that teachers hold positions demanding public trust, *In the Matter of the Tenure Hearing of Ernest Tordo, School District of the Township of Jackson, Ocean County, 1974 S.L.D. 97*, and must,

therefore, set an example to their students and to the public, (see *In the Matter of the Tenure Hearing of Jacque L. Sammons, School District of Black Horse Pike Regional, Camden County, 1972 S.L.D. 302*), the Commissioner herein orders that respondent forfeit the 120 days' salary already withheld, together with an additional two months' salary and concomitant emoluments.

Accordingly, the initial decision of the ALJ is reversed, as set forth above. This matter is further referred to the State Board of Examiners pursuant to *N.J.A.C. 6:11-3.6* for action against respondent's certificate as it deems appropriate.⁶

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 6, 1998

⁶ 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.