

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 and other just cause against respondent high school business education teacher. ALJ denied request to consolidate matter with separate tenure charges previously filed against respondent.

ALJ concluded that respondent was guilty of conduct unbecoming a teacher. Respondent had pleaded guilty to one count of Criminal Contempt, 4th degree, for having violated a restraining order. Moreover, ALJ noted respondent previously had been found guilty of unbecoming conduct when he deliberately misled the District with respect to his claimed possession of a supervisor's certificate. (*In the Matter of the Tenure Hearing of Robert A. Dombloski*, decided by the Commissioner August 6, 1998) Thus, the ALJ found respondent clearly acted directly contrary to the expectations placed upon teaching staff members who are expected to serve as role models for their students. (*In the Matter of the Tenure Hearing of Ernest Tordo*) ALJ found that the only appropriate sanction for his misconduct was termination of his employment as a tenured teaching staff member. ALJ ordered respondent removed from his employment.

Commissioner concurred with the ALJ that respondent's conduct in connection with the tenure charges brought was sufficient to warrant his dismissal, even where his behavior was viewed independently of the prior finding of unbecoming conduct, and even where his psychological condition might have contributed to his behavior. Commissioner did not share the ALJ's view that the disturbances, which occurred in the District as a result of respondent's misbehavior, were "not substantially disruptive." Commissioner noted that respondent's conduct negatively impacted the student, C.S. Commissioner directed respondent be dismissed from his tenured position as of the date of this decision and referred the matter to the State Board of Examiners for action against his certificate as it deems appropriate.

June 23, 1999

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) 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*.

Respondent asserts that the initial decision consists of factual findings which are generally consistent with his position, including the Administrative Law Judge's (ALJ) finding on page six that respondent's conduct was "not substantially disruptive of the District's activities." (Initial Decision at p. 6) Further, respondent points out that the ALJ recognized the role his "diminished mental status" played in his conduct. (Respondent's Exceptions at p. 2) However, respondent challenges the ALJ's consideration of his prior finding of unbecoming conduct on another tenure matter, contending that there is no nexus between these matters: "[T]he previous matter had absolutely nothing to do with the subsequent matter." (*Id.*)

Additionally, respondent avers that although the ALJ concluded that the Board need not tolerate the continued employment of a teacher who behaved as he did, the ALJ nonetheless conducted no analysis in this regard. Respondent warrants that while he does not deny that he committed the offenses alleged in the tenure charges against him,

they are not school related and there is no dispute in light of the Administrative Law Judge's findings that his psychological

condition contributed to his actions. It is also tremendously significant herein that at no time has Mr. Dombloski been found to forfeit his position. Accordingly, the crimes to which he plead guilty are not of such a serious nature nor do they touch upon his employment in any way[,] shape or form so that a forfeiture was either sought or determined to have occurred. (*Id.* at p. 3)

Respondent reasons that his behavior did not rise “to the level of conduct unbecoming a tenure[d] employee ***.” (*Id.* at p. 4) Although he admits he violated the restraining order, the calls were nonthreatening in nature and were not related to his work. (*Id.*) Thus, respondent argues that when the relevant case law, as well as the substantial mitigating evidence in this matter, is considered, along with his history in the District since 1969, termination is too harsh a penalty.

In reply, the Board argues that the ALJ appropriately determined that the factors in this matter which might mitigate against respondent’s dismissal do not outweigh the seriousness of his conduct. Although respondent claims that termination is not an appropriate penalty since his (admitted) actions did not, according to him, cause disruptions in the District’s activities and because, at the time of his actions, he suffered from Obsessive-Compulsive Disorder (Board’s Reply at p. 4), the Board points out that respondent, in his Answer to the within tenure charges, never claimed that he was suffering from a psychological disorder. (*Id.* at p. 5) Moreover, the Board indicates that

it is not a foregone conclusion that Respondent did, in fact, suffer from Obsessive-Compulsive Disorder at the time he committed these acts, or that if he did suffer from the disorder, that he is completely cured at the present time. (*Id.*)

Notwithstanding the reports which respondent submitted into evidence, the Board contends that respondent produced no witnesses with information on this issue and there was no way, therefore, to determine the veracity of the psychological reports. (*Id.*) The Board notes that the Superior Court Judge in the criminal matter did not determine that respondent’s alleged mental

condition should exonerate his guilt or mitigate his punishment, and, if respondent suffered from any diminished capacity, the Judge would not have accepted his guilty plea. (*Id.* at p. 6)

The Board next asserts that notwithstanding respondent's repeated claims in his exception arguments and other submissions before the ALJ

[s]ubsequent to the 1996 incident, Respondent has, in fact, again violated the same restraining order. On January 8, 1997, barely three months after pleading guilty to fourth degree criminal contempt for violating the restraining order against him, and just twenty-six days after receiving a three-year probationary sentence, Respondent was again arrested for violating the restraining order and the terms of his probation. On June 30, 1997, Respondent pleaded guilty to two counts of criminal contempt of court for his continued harassment of Ms. [S.], one count of civil contempt for failing to appear in court, and one count of violation of his probation. *** Therefore, as the ALJ recognized, it appears that the likelihood the behavior in question will recur has already been reached. (*Id.* at p. 8)

Further, the Board finds that the ALJ correctly considered respondent's prior finding of unbecoming conduct, in spite of respondent's contention that the incident had nothing to do with the latter incidents. (*Id.* at p. 10) Moreover, the Board argues that respondent's conduct could not be characterized as either a "momentary lapse in his personal life" or "one fleeting instance of bad judgment," as were the circumstances in cases cited by respondent to convince the Commissioner that a teaching staff member's psychological condition at the time he/she committed an act of unbecoming conduct should mitigate against termination of employment. (*See In the Matter of the Tenure Hearing of Pappa, School District of the Township of Old Bridge*, 1988 S.L.D. 542, 548; *In the Matter of the Tenure Hearing of Lieb, School District of the Town of West Orange*, 1985 S.L.D. 933, 943.) (Board's Reply at pp. 10, 11)

Upon careful and independent review of the record in this matter, which did not include a transcript of the hearing conducted at the OAL, the Commissioner concurs with the ALJ that respondent's behavior with respect to the incidents enumerated in the Board's tenure

charges constitutes conduct unbecoming a teaching staff member. (Initial Decision at p. 5) In so doing, the Commissioner clarifies that the issue herein is *not* whether respondent's conduct rises to the level of warranting forfeiture of public employment, pursuant to *N.J.S.A. 2C:51-2*, as amended by P.L. 1995, c. 250, but, rather, whether respondent's conduct warrants his dismissal, or reduction in salary, pursuant to the tenure laws, *N.J.S.A. 18A:6-10 et seq.*¹ As the ALJ aptly notes:

By violating the duly entered restraining order and engaging in the sort of conduct described in the charges, Dombloski clearly acted in a manner directly contrary and inimical to the expectations placed upon teaching staff members who are expected to serve as role models to their students. (*Id.*)

“In determining the discipline which should be imposed in cases involving unbecoming conduct, *** the Commissioner considers the nature and circumstances of the incident in question, the individual's prior record and current attitude, and the likelihood that the behavior in question will recur.” (*Board of Education of the Township of Parsippany-Troy Hills v. Molinaro*, 96 *N.J.A.R.* 2d (EDU) 268, 276, citing *In the Matter of the Tenure Hearing of Frederick L. Ostergren, School District of Franklin Township, Somerset County*, 1966 *S.L.D.* 185) Initially, as the Board notes, although respondent pleaded guilty to one count of criminal contempt, he committed more than one act of bad judgment:

In the present matter, Respondent *initially* harassed Ms. [S.], which led to the granting of a restraining order against him. After Respondent's harassing conduct was “discovered,” however, Respondent continued to harass Ms. [S.] and continued to violate the restraining order, which led to his conviction for criminal contempt in the fourth degree. (Board's Reply at p. 11) (emphasis in original)

Further, the Commissioner does not share the ALJ's view that the disturbances which occurred in the District as a result of respondent's misbehavior were “not substantially

¹ Thus, the Commissioner finds respondent's argument that it is “tremendously significant” that he was not found to have forfeited his position to be misplaced. (Respondent's Exceptions at p. 3)

disruptive.” Rather, the Commissioner concurs with the Board’s position that respondent’s conduct negatively impacted C.S., (Initial Decision at p. 4) or, at the very least, provided an unwarranted interruption in her educational program, notwithstanding that C.S. was ultimately able to pass her accounting course. Indeed, respondent fails to meaningfully rebut the Board’s contention that

[t]he High School also instituted other procedures designed to insure a safe and healthy environment for both of Ms. [S.’s] daughters while they were at school or at school related activities.*** Furthermore, Frank Jiorle, the school principal, testified that on one day, the police sent patrol cars to the school to see if Respondent showed up there and/or to arrest him. Therefore, it seems quite clear that Respondent’s conduct had a negative educational impact on Ms. [S.’s] daughter and affected the entire school. (Board’s Post-Hearing Reply Brief at p. 2)² (emphasis in original)

Moreover, even assuming, *arguendo*, that respondent’s conduct did *not* negatively affect school operations, the Commissioner notes that dismissal may be imposed upon a tenured employee for unbecoming conduct “even if such conduct did not occur in the course of a teacher’s employment.” (*Molinaro, supra*, at 276, citing *In the Matter of the Tenure Hearing of Robert H. Beam, School District of the Borough of Sayreville, 1973 S.L.D. 157*) The Commissioner has determined:

The teaching profession is chosen by individuals who must comport themselves as models for young minds to emulate. This heavy responsibility does not begin at 8:00 a.m. and conclude at 4:00 p.m., Monday through Friday, only when school is in session. Being a teacher requires, *inter alia*, a consistently intense dedication to civility and respect for people as human beings. The Commissioner has, on past occasions, determined tenure charges arising from incidents which happened in the evening both on and off school property. *** (citations omitted) *In re Beam, supra*, at 163.³

² Respondent merely argues that such contention is “substantially vague” (Respondent’s Answer at p. 2) and asserts that “[t]he patrol cars appeared on only one day.” (Respondent’s Post-Hearing Brief at p. 3)

³ See also *In the Matter of the Tenure Hearing of McIntyre*, 96 N.J.A.R. 2d (EDU) 718, *aff’d* State Board 726, *aff’d* New Jersey Superior Court, Appellate Division 726, where the respondent teacher was pulled over by the police at 1:00 a.m. and, after the officer detected an odor of burnt marijuana and observed empty beer containers in the car,

Additionally, the Commissioner concurs with the Board that respondent fails to demonstrate any remorse for his conduct, arguing, instead, in an attempt to mitigate against a finding of guilt, that “the phone calls he made were non-threatening in nature.” (Respondent’s Exceptions at p. 4) Clearly, respondent does not, even now, appreciate the significance of his misbehavior. Irrespective of whether respondent’s calls may be characterized as threatening, these calls “were serious in their consequences to the [recipient and her family].” *See In the Matter of the Tenure Hearing of Stephen Levitt, School District of the City of Newark, Essex County*, 1977 S.L.D. 976, *aff’d* State Board 1978 S.L.D. 1027, *aff’d* New Jersey Superior Court, Appellate Division 1979 S.L.D. 849, 850.

Thus, the Commissioner concurs with the ALJ that respondent’s conduct in connection with the tenure charges brought herein is sufficient to warrant his dismissal, even where his behavior is viewed independently of the prior finding of unbecoming conduct, and even where his psychological condition may, as respondent alleges, have contributed to his behavior. *See In re Dombloski, supra; In the Matter of the Tenure Hearing of Henderek*, 94 N.J.A.R. 2d (EDU) 268, *aff’d* State Board 276. Like the ALJ, the Commissioner finds that respondent’s actions in this matter evidence a lack of self-restraint and controlled behavior which are compelled by his position as a professional employee in a public school system holding great influence over the lives of children. *See also In the Matter of the Tenure Hearing of*

was given a field sobriety test. Respondent’s person and his vehicle were searched and trace amounts of marijuana were found in the car, along with rolling papers and a bag of marijuana on respondent’s person. Therein, the Commissioner was not persuaded by respondent’s assertion that “no student, teacher or school administrator was involved in this matter,” but, instead, underscored that teachers hold positions of public trust, and dismissed respondent from his tenured position. (*Id.* at pp. 725, 726)

*Jacque L. Sammons, School District of Black Horse Pike Regional, Camden County, 1972 S.L.D. 302, 321; Molinaro, supra, at 276.*⁴

Accordingly, the initial decision of the OAL, directing that respondent be dismissed from his tenured position as a teaching staff member, as of the date of this decision, is adopted for the reasons expressed therein and amplified above. In view of the nature of the charges proven, this matter is hereby referred to the State Board of Examiners for action against respondent's certificate as it deems appropriate. *N.J.A.C. 6:11-3.6.*

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

June 23, 1999

⁴ With respect to respondent's prior record in the District, the Commissioner notes that respondent has presented neither documentary nor testimonial evidence in support of his reinstatement, save the simple statement that he "has been in the district since 1969." (Respondent's Exceptions at p. 4)

⁵ 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.