

**BOARD OF EDUCATION OF THE SCHOOL DISTRICT
OF HUNTERDON COUNTY,**

Petitioner,

v.

PAUL MC CORMICK,

Respondent.

Decided January 4, 1980

Initial Decision

SYNOPSIS

Tenure charges were filed by a Board of Education against a tenured high school department chairman for failure to perform assigned cafeteria monitoring duties and for insubordination for refusal to follow administrative directives. Prior to these two tenure charges, the Board demoted the chairman, allegedly because he refused to perform assigned cafeteria monitoring duties. The chairman challenged his demotion and the Commissioner of Education directed the Board to reinstate him to a position commensurate with his certification and former duties and to make him whole for monies lost during his illegal demotion. Two weeks later the two tenure charges which are the basis of this action were filed.

The evidence showed that respondent willfully and continually refused to perform his assigned duties and refused to follow administrative directives.

Respondent-teacher is permitted to retain tenure and all seniority as a teaching staff member, but forfeits his tenure as a department chairman or supervisor. Board is directed to assign respondent to a teaching position within the scope of his teaching certificates.

James. P. Granello, Esq. for Petitioner (Murray, Granello & Kenney, Attorneys)

Edmund R. Bernhard, Esq. for Respondent (Bernhard, Durst & Dilts, Attorneys)

THOMAS, ALJ:

The Board of Education of the Hunterdon Central Regional High School District certified to the Commissioner of Education, two tenure charges against Paul J. McCormick (respondent), a supervisor of the instruction of English in its high school. The Board seeks his dismissal, or, reduction in

salary pursuant to statutory prescription. (*N.J.S.A.* 18A:6-11) Respondent was suspended without pay, pursuant to *N.J.S.A.* 18A:6-14.

This matter began in the Department of Education before a hearing examiner, now the undersigned administrative law judge. It was transferred to the Office of Administrative Law, pursuant to *N.J.S.A.* 52:14F-1 *et seq.* Hearings were conducted in the Hunterdon County Agricultural Building, Flemington, on ten days commencing March 26 and ending June 26, 1979. One hundred and twenty-eight documents were marked in evidence, or, for identification and counsel filed briefs after the hearing.

HISTORY

Respondent had been employed by the Board for ten years when in 1966 he was assigned duties as chairman of the English Department. He held this position until the Board, by unanimous passage of a formal resolution on November 10, 1975, removed him from that position and reassigned him to teaching duties. The Board's determination to demote respondent was based on its assertion that he refused to perform cafeteria monitoring duties as directed by his superiors on and after September 10, 1975.

Respondent filed a Petition of Appeal with the Commissioner challenging his demotion, and the Commissioner determined that respondent held tenure as a supervisor of instruction. The Board was directed to reinstate respondent to a position commensurate with his certification and his former duties and to make him whole for monies lost during his illegal demotion (1978 *S.L.D.* 160).

Two weeks later, on March 14, 1978, the tenure charges against respondent were filed with the Board Secretary by the Superintendent of Schools and a copy was transmitted to respondent. These charges were certified to the Commissioner of Education on April 13, 1978.

Essentially, Charge No. 1 is a restatement of the Board's resolution leading to respondent's demotion for failure to perform assigned cafeteria duties. Charge No. 2 is insubordination, based on allegations of respondent's refusal to follow administrative directives from at least July 1972.

Charge No. 1

Essentially, this charge states that:

On or about September 10, 1975, and thereafter, Paul McCormick did willfully refuse to perform a required duty, to wit: cafeteria supervision, contrary to administrative directions issued by his superiors . . .

By reason of such acts of deliberate insubordination, Paul McCormick has demonstrated conduct warranting dismissal or reduction in salary, specifically that Paul McCormick is unfit to

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continue . . . as a Supervisor of Instruction . . . and should be returned to a teaching position.

Respondent concedes that he did not perform cafeteria duty between the dates September 10 and November 10, 1975. He denies that his refusal is evidence of a willful act of insubordination. He states that cafeteria supervision was not a required duty in that the Board did not direct that he perform such a duty, and that there was an improper delegation of authority by those purporting to direct to perform such duty.

The Board's authority is set forth in *N.J.S.A.* 18:11-1, which reads in pertinent part:

The board shall . . .

c. Make . . . rules for its own government and the transaction of its business and for the government and management of the public schools . . . of the district and for the employment, regulation of conduct and discharge of its employees . . . and,

d. Perform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the district.

Pursuant to this statutory authority, the Board adopted a policy on March 13, 1967 which sets forth the responsibilities of the Superintendent. That policy gives the Superintendent the ordinary responsibility of regulating the operation of the public schools. The Superintendent testified that neither his duties nor the policy have changed since the policy was adopted.

The statutes further vest in the Superintendent the authority for the "general supervision over the schools . . . and he shall have such other powers and perform such other duties as may be prescribed by the board . . ." (*N.J.S.A.* 18A:17-20). Respondent's contention that cafeteria duty was not a required duty assigned by the Board must be set aside. The Superintendent clearly has the statutory authority, as set forth, *supra*, to assign staff to the duty of cafeteria supervision.

Further, the Superintendent testified that a meeting with department chairmen was conducted on August 4, 1970, at which time one topic of discussion was the general staff supervision of different school areas. The minutes of that meeting show that department chairmen were to become more involved in a leadership role in the general supervision of areas of the building. Department chairmen responsibilities were further delineated in a manual which set forth certain of their responsibilities as follows:

The department chairmen will play a vastly expanded role in the general supervision of the areas of the building in which their offices are located. Some chairmen will of necessity be appointed to building supervision in areas remote from their offices. These supervisory duties transcend department lines. The chairmen are paid members of

the administrative hierarchy and conduct themselves accordingly.

Supervisory duties include:

- A. Homeroom activities – decorum, announcements, attendance
- B. Faculty attendance at assemblies
- C. Halls in the area of the department office decorum, appearance
- D. Lavatories in the area of the department office --decorum, appearance
- E. Study halls run by his staff
- F. Library when run by his staff

In the performance of his duties, the Superintendent assigned the responsibility for the regular operations of the school to an Assistant Superintendent in April 1973. Thereafter, the Board adopted a policy directing the Superintendent to devise whatever procedures are necessary in carrying out the supervision of the school. Because there was a necessity to provide cafeteria supervision, the Assistant Superintendent who was assigned the responsibility for the operation of the school, assigned respondent and other department chairmen the task of cafeteria supervision. These assignments were made with the prior knowledge and consent of the Superintendent. The assignment of department chairmen to cafeteria duty was caused by the refusal of teachers to further perform that duty when their negotiations with the Board for a new working agreement were stalled in the spring of 1975. The authority for teacher assignments to cafeteria supervision has since been set forth by the courts. *Long Branch Education Association, Inc. v. Board of Education of the City of Long Branch, Monmouth County*, 1974 *S.L.D.* 1189; affirmed, State Board of Education, 1975 *S.L.D.* 1098; affirmed 73 *N.J.* 461.

The record shows that department chairmen were assigned general campus supervisory assignments necessary for the efficient day-to-day operation of the school. The record also shows, that respondent notified the Assistant Superintendent in charge of the school on April 30, 1975 that he must decline this cafeteria assignment in the future. Respondent consistently refused to serve in a role as a cafeteria supervisor after September 10, 1975. The Superintendent directed respondent to perform cafeteria duty on September 18, 1975 and respondent, in refusing, replied that he was willing to face the consequences. The Personnel Committee of the Board met with respondent and asked him to return to his cafeteria assignment. He replied that he would take the matter under advisement.

Respondent was suspended as a department chairman and returned to duty as a teacher by action of the Board at a special meeting on September 24, 1975.

The Board met with respondent regarding this cafeteria problem on

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October 4, 1975, at which time respondent admitted not performing his assigned cafeteria supervision and he submitted to the Board a written statement of his position. The Board investigated respondent's complaints regarding the cafeteria assignment and on October 13, 1975, it adopted a resolution restoring him to his position as a department chairman, provided that he perform his cafeteria duty as assigned by the school administration. When respondent failed to report for the cafeteria duty after advice by the Superintendent, the Board adopted another resolution on November 10, 1975, reassigning respondent to classroom teaching.

As stated earlier, this action was set aside by the Commissioner in his decision on February 28, 1978.

It is abundantly clear to this court from the above recitation, the testimony and the numerous documents in evidence, that respondent willfully refused to perform his assigned cafeteria duties. Further, the evidence cited shows that he displayed needlessly obstructionist tactics during the entire episode. Therefore, I **CONCLUDE** that the Board has met its burden of proving Charge No. I.

Charge No. II

Charge No. II reads as follows:

Paul McCormick, while holding the title of English Department Chairman, has had a long and consistent pattern of conduct of refusing to follow legitimate orders of his superiors and has exhibited a disdain for administrative authority dating back at least to July, 1972. At that time, he made clear that the Administration would regret that they had not selected him to the position of Supervisor of Instruction, a position which he had applied for but which was awarded to someone else.

Because of a failure to follow directions from the Board which required the dating of all observations for non-tenured teacher evaluations, a full increment was withheld for 1973-1974 school year. Because of his obstructionist behavior which created conflicts with the office of Supervisor of Instruction, a partial increment was withheld for the 1974-75 school year.

The cafeteria incident referred to in Count One is the most recent in a series of actions which demonstrate that Paul McCormick should not hold a supervisory position. Paul McCormick has been afforded several opportunities to correct his behavior, and has shown no improvement. By reason of such pattern of conduct constituting acts of insubordination, Paul McCormick has demonstrated that his conduct warrants dismissal or reduction in salary, specifically, Paul McCormick is unfit to continue in a supervisory position as a Supervisor of Instruction and/or English Department Chairman and should be returned to a teaching position.

This charge has been amply proved by the Board. The numerous documents in evidence and the testimony of Board witnesses show a pattern of discord and disharmony since 1972. Further, evidence of the Board's dissatisfaction with respondent is shown by its action withholding his increment and a partial increment, as stated in Charge No. II.

The record is lengthy and burdened with memoranda between respondent and his superiors detailing his disagreements with certain of their actions. I am convinced from the testimony adduced and a review of the record, that respondent has demonstrated an independence verging on defiance of the authority of his superiors. This conclusion can be reached by a review of just one incident – respondent's refusal to date teacher evaluation forms as he was directed to do on several occasions and his contentious meeting and correspondence with his superiors.

One striking written example is found in the first and last paragraphs of a two-page, single-spaced typed memorandum by respondent to his superior which is quoted below to demonstrate the contentious atmosphere he created by his refusal to follow legitimate administrative directives:

I've already told you why I think you're making a mistake in insisting upon placing dates of classroom observations on teacher evaluations. However, it occurs to me that I ought to repeat them for the record. . . .

If you choose to "mandate" the inclusion of observation dates on evaluations, you can do so. However, I request that your directive be in writing and a copy inserted in my personnel folder together with a copy of this memo. In addition, I will inform the members of the English Department of my feelings on the matter as I have outlined them here.

Based on the foregoing, a review of the record and specifically the above listed transcript cites and the documents in evidence, I **CONCLUDE** that the Board has demonstrated a pattern of unbecoming conduct and obstructionist behavior on the part of the respondent.

The Board seeks reimbursement of monies paid respondent which it avers were paid during periods of delay attributable to him. The Board seeks, also, reimbursement of monies from the Department of Education for its delays during this litigation.

A review of the record shows numerous letters scheduling hearing dates and certain requests for adjournments by respondent. It shows, also, and quite understandably, that the Board was not always prepared to go to hearing on date acceptable to respondent and the then hearing examiner. There are secretarial notes and notations evidencing unsuccessful attempts made by telephone to establish mutually agreeable hearing dates, and,

finally, there was some delay caused in the Department of Education, which is explained in a Commissioner's Order in this matter dated December 28, 1978 (*In the Matter of the Tenure Hearing of Paul J. McCormick*, 1978 S.L.D. 160, appeal denied, State Board of Education, Docket No. 3-79).

Suffice it to say that the adjournments granted were for good and sufficient reasons including court appearances, counsel out of the country on vacation, unavailability of witnesses and conflicting schedules of counsel. In any event the scheduling was procedural and in accordance with N.J.A.C. 6:24-1.11 (b) and 1.19. The State Board denial of the Board's earlier appeal to suspend payment of respondent's salary was not appealed further; consequently,

I **FIND** that there has been no delay except as explained in the Commissioner's Order of February 28, 1978. The Board's request for reimbursement from respondent and the Department of Education for salaries paid during those proceedings is **DENIED**.

Finally, the Board seeks reimbursement from respondent for all wages paid to him after August 21, 1978, the date on which he refused its offer to accept alternate supervisory employment within the district.

The record discloses that respondent was entitled to his full salary by law on the 121st day following his suspension without pay (N.J.S.A. 18A:6-14). He had been receiving his salary while suspended, when on August 21, 1978 the Board offered him, by certified letter, an alternate supervisory position. This offer was not accepted; neither is respondent obligated to accept alternate employment. Such a practice would enable boards to circumvent the intent of the tenure statutes by removing an employee from his tenured position and placing him in another pending the outcome of the board's complaint.

The Commissioner's function under the Tenure Employees Hearing Act was explained in detail by the court in *In the Matter of the Tenure Hearing of David Fulcomer*, 93 N.J. Super. 404, 410 (App. Div. 1967). Its language vests in the Commissioner the sole authority to "render a decision" in all tenure matters. This authority includes the obligation to "impose the penalty." Further, its language removes from the Board any authority to interfere with the decision-making process. (*Id.* 412-414)

For this reason, I **FIND** that the Board's employment offer to respondent was made to ameliorate its decision to suspend him without pay, and that its offer went beyond its authority under the tenure statutes and the cited decision law, *ante*.

SUMMARY OF FINDINGS

1. Charge No. I is true.

2. Charge No. II is true.
3. The Board's request for reimbursement from respondent for his alleged delays is denied.
4. The Board's request for reimbursement from the Department of Education is denied.
5. The Board's request for reimbursement from respondent for wages paid since August 21, 1978 is denied.

Remaining to be considered is the penalty to be assessed respondent in view of the findings of fact on Charges I and II. Clearly, the refusal to perform properly assigned, and reasonable cafeteria duties by the school's administrators can be a matter of serious consequences to the school district. Likewise, the failure of respondent to respond in a positive manner, *e.g.*, the many requests to date evaluations is an example of obstructionist behavior which can prevent the smooth and efficient operation of the school.

Appropriate concerns about the efficient operation of a school have been expressed in *Phebe Baker v. Board of Education of the Lenape Regional High School District and K. Kiki Konstantinous, Superintendent, Burlington County*, 1975 S.L.D. 471 as follows:

The Commissioner is constrained to state that divergent opinion within the members of a teaching staff is not unwholesome when directed toward educational improvement. It must, however, be channeled and expressed in acceptable ways. As was said by the court in *Pietrunti v. Board of Education of Brick Township*, 128 N.J. Super. 149 (App. Div. 1974):

' . . . [A] teacher is expected to exhibit loyalty to the district in which he or she is employed and to cooperate with the administration in seeking the education goal It is the individuality each teacher brings to the educational scheme that contributes to educational success; that individuality however must be sublimated to the educational goal. A teacher is expected to show a reasonable respect for the authority of his or her employer and to maintain a civility commensurate with his or her professional status' (128 N.J. Super. at 165)

The Commissioner upheld that Board's determination to terminate Baker.

In the instant matter, the penalty must be tailored to meet the aforementioned circumstances. It is tempered because of the Board's prior action withholding respondent's increments and in view of the record which discloses he was a fit and able department chairman. Accordingly, I **ORDER** that:

1. Respondent must forfeit his tenure as a department chairman, or supervisor. He will retain tenure and all seniority as a teaching staff member

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N.J.S.A. 18A:1-1.

2. Respondent will forfeit the 120 days salary withheld by statute pending this proceeding (*N.J.S.A.* 18A:6-14.)

3. Respondent will be placed at his appropriate step on the current teacher's salary guide retroactive to January 1, 1980, or the nearest pay period.

4. Respondent will be assigned within the scope of his teacher's certificate(s) by the Board for the balance of this school year ending June 30, 1980.

5. As of July 1, 1980, respondent *may* be reassigned as a department chairman if the Board offers, and respondent accepts, such a position. If accepted, no tenure attaches to the department chairman position since that tenure has been terminated by this Initial Decision. However, tenure may accrue pursuant to statute. (*N.J.S.A.* 18A:28-6)

After Reviewing this Initial Decision, The Commissioner of
Education, on March 3, 1980 issued the following Final
Decision

The Commissioner has reviewed the entire record of the matter controverted herein including the initial decision rendered by the Office of Administrative Law.

The Commissioner affirms the findings and determination as rendered in the initial decision in this matter and adopts them as his own.