

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D27120
H/hu

_____AD3d_____

Argued - April 5, 2010

PETER B. SKELOS, J.P.
RUTH C. BALKIN
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2009-02663

DECISION & JUDGMENT

In the Matter of John Overton, petitioner, v Board
of Education of the Yonkers City School District,
et al., respondents.

(Index No. 24013/08)

James M. Rose, White Plains, N.Y., for petitioner.

Donoghue, Thomas, Auslander & Drohan, Yonkers, N.Y. (Ana I. Gonzalez of
counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the Board of Education of the Yonkers City School District, dated August 21, 2008, which adopted the recommendation of a hearing officer, made after a hearing pursuant to Civil Service Law § 75, finding that the petitioner was guilty of nine charges of misconduct, incompetence, and insubordination, and terminated his employment.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

Contrary to the petitioner's contention, the determination that he was guilty of misconduct, incompetence, and insubordination was supported by substantial evidence in the record, including written reports and testimony as to the repeated deficiencies in his work performance, his failure to improve despite subsequent oral and written warnings, and his excessive absences (*see Matter of Cardenas v Board of Educ. of Yonkers City School Dist.*, 298 AD2d 390; *Matter of*

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MATTER OF OVERTON v BOARD OF EDUCATION OF THE
YONKERS CITY SCHOOL DISTRICT

Garayua v Board of Educ. of Yonkers City School Dist., 248 AD2d 714; *Matter of Davis v Board of Educ. of Yonkers City School Dist.*, 241 AD2d 521; *Matter of Smith v Board of Educ. of Yonkers City School Dist.*, 231 AD2d 528).

Moreover, the punishment was not so disproportionate to the misconduct as to be shocking to one's sense of fairness, thus constituting an abuse of discretion as a matter of law (*see Matter of Kreisler v New York City Tr. Auth.*, 2 NY3d 775; *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 237; *Matter of Cardenas v Board of Educ. of Yonkers City School Dist.*, 298 AD2d 390; *Matter of Garayua v Board of Educ. of Yonkers City School Dist.*, 248 AD2d 714; *Matter of Davis v Board of Educ. of Yonkers City School Dist.*, 241 AD2d 521; *Matter of Smith v Board of Educ. of Yonkers City School Dist.*, 231 AD2d 528). Given the petitioner's continued misconduct and insubordination demonstrating a pattern of poor work performance and disruptive behavior burdening both his employer and coworkers, there is no reason to disturb the determination to terminate his employment (*see Matter of Gradel v Lilholt*, 257 AD2d 972).

SKELOS, J.P., BALKIN, ROMAN and SGROI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court