

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

In the Matter of the Arbitration Between:

TRENTON COMMUNITY CHARTER SCHOOL

-and-

DoE Docket No.2011-3

JOYCE B SPADY

Before: Susan Wood Osborn, Arbitrator

Appearances:

For the Employer:

Wong Fleming, Attorneys
Gregory Johnston, of Counsel

For the Respondent:

Joyce B. Spady, pro se

Witnesses:

For the Employer:

Christi Pemberton, TCCS Principal
Edwin Lloyd, Board President
Edna Williams, TCCS Employee
Lee Brockington, TCCS Business Administrator
Curtis Henderson, TCCS Head Custodian
Curtis Sullivan, TCCS Custodian

For the Respondent:

Lynn Williams, Board Member
Jerri Morrison, Former TCCS Executive Director
Joyce Spady, Respondent

OPINION AND AWARD

Pursuant to N.J.A.C. 6A:11-6.3, I was appointed as the arbitrator to hear and decide the tenure charges filed by the Trenton Community Charter School ("TCCS") against employee Joyce B. Spady. Pursuant to a Notice of Hearing issued on April 11, 2011, arbitration hearings were conducted on April 28 and 29 and May 3, 2011 at which time the parties each presented witnesses and documentary evidence.¹ The parties filed letter briefs by May 16, 2011, and the record closed on that date. N.J.A.C. 6A:11-6.3 provides that the decision in this matter shall be issued within twenty days of the close of the hearing, and that the decision shall be final and binding.

TENURE CHARGES

On September 29, 2010, the TCCS Board of Trustees voted to certify the following tenure charges against Joyce Spady:

CHARGE ONE: CONDUCT UNBECOMING AN EMPLOYER

Specification: During the 2009-2010 year, Respondent held the position of Human Resource Manager and her duties included overseeing employee attendance and record keeping of sick and vacation time for the Charter School. On or about May 28, 2010, Respondent sent a memo to Cora Birnberg, former Business Manager for the Charter School, recommending payment of unused sick and vacation days to Jerri Morrison, former School Principal. Respondent processed two payrolls for Ms. Morrison for the gross amounts of (1) \$6,361.95 payment for vacation days and (2) \$5,000.00 for sick days. Subsequently, Ms. Morrison was issued two checks and did cash them. Respondent approved these

¹ Petitioner's exhibits shall be referred to as "P- "; the Respondent's exhibits shall be referred to as "R- "; joint exhibits shall be referred to as "J- "

payments without notification and the approval of her principal and supervisor Christi Pemberton. Further, Respondent failed to obtain the approval of the Board of Trustees prior to approving these payments resulting in unapproved expenditures in violation of Title 18A. Respondent's conduct constitutes conduct unbecoming an employee and warrants her termination in that the Respondent improperly and in violation of N.J.S.A. 18A: 19-1 made expenditures of funds that were not authorized by the Board.

CHARGE TWO: CONDUCT UNBECOMING AN EMPLOYEE

Specification: In reference to Charge One, on April 14, 2010 and thereafter, Respondent recommended payment of unused sick and vacation days to Jerri Morrison, former School Principal. Respondent processed two payroll checks for Ms. Morrison for the gross amounts of (1) \$6,361.95 payment for vacation days and (2) \$5,000.00 for sick days, which were issued and cashed. Respondent knew that Ms. Morrison was terminated on or about November 10, 2010 because she did not possess a New Jersey Principal or Administrative certificate. Board Policy expressly states that "(T)here is no lump sum payment for sick leave upon termination and/or resignation." Contrary to Board Policy, Respondent caused a \$5,000.00 payment for 100 sick days to Ms. Morrison for which she was disentitled. Further, Respondent failed to obtain the approval of the Board of Trustees prior to approving these payments resulting in unapproved expenditures in violation of Title 18A. Respondent's conduct constitutes conduct unbecoming an employee and warrants her termination.

CHARGE THREE: CONDUCT UNBECOMING AN EMPLOYEE

Specification: During the 2009-2010 year, Respondent held the position of Human Resource Manager and her duties included overseeing employee attendance and record keeping of sick and vacation time for the Charter School. On or about May 28, 2010, Respondent sent a memo to Cora Birnberg, former Business Manager for the Charter School, recommending payment of unused sick and vacation days to Jerri Morrison, former School Principal. Respondent processed two payrolls for MS. Morrison for the gross amounts of (1) \$6.361.95 payment for vacation days and (2) \$5,000.00 for sick days. Subsequently, Ms. Morrison was issued two checks and did cash them. Respondent approved these payments without notification and the approval of her principal and supervisor Christi Pemberton. Further, Respondent failed to obtain the approval of the Board of Trustees prior to approving these payments resulting in unapproved expenditures in violation

of Title 18A. Respondent's conduct constitutes conduct unbecoming an employee and warrants her termination in that the Respondent improperly and in violation of N.J.S.A. 18A:19-1 made expenditures of funds that were not authorized by the Board.

CHARGE FOUR: CONDUCT UNBECOMING AN EMPLOYEE

Specification: During the time period of July/August, 2010, Principal Pemberton conducted an investigation concerning the payment of unused sick and vacation days to Jerri Morrison, former School Principal. When the Respondent was questioned about the payments made to MS. Morrison, she stated that the Board President Edwin Lloyd authorized the payments. In particular, Respondent stated that she sent an e-mail to the Board President, and then later a letter, evidencing his approval of the payments to MS. Morrison. Based upon a review of e-mails in May, June and July 2010, the Respondent did not send any notification about payments to Ms. Morrison, to Board President Edwin Lloyd or to her supervisor Principal Pemberton. Respondent gave false statements to her employer intended to mislead and cover-up unauthorized payments to Ms. Morrison. Respondent's conduct constitutes conduct unbecoming an employee and warrants her termination in that the Respondent improperly and in violation of N.J.S.A. 18A:19-2 made expenditures of funds that were not authorized by the Board.

CHARGE FIVE: CONDUCT UNBECOMING AN EMPLOYEE

Specification: During the 2009-2010 year, Respondent held the position of Human Resource Manager and her duties included overseeing employee attendance, recordkeeping of sick and vacation time, and processing the payroll for the Charter School. On or about July 15, 2009 and October 15, 1009, Respondent processed payments for unused sick leave for herself and other non-teachers without Board authorization. Respondent failed to obtain the approval of the Board of Trustees prior to approving these payments resulting in unapproved expenditures in violation of Title 18A. Respondent's conduct constitutes conduct unbecoming an employee and warrants her termination in that the Respondent improperly and in violation of N.J.S.A. 18A:19-2 made expenditures of funds that were not authorized by the Board.

CHARGE SIX: CONDUCT UNBECOMING AN EMPLOYEE

Specification: On or about June 30, 2010, Respondent held the position of Human Resource Manager and her duties included overseeing employee attendance, record keeping of sick and vacation time, and processing of payroll for the Charter School. On or about June 30, 2010, Respondent processed payments for unused sick leave for herself and other non-teachers without Board authorization. Respondent failed to obtain the approval of Principal Pemberton and the Board of Trustees prior to approving these payments resulting in unapproved expenditures in violation of Title 18A. Respondent's conduct constitutes conduct unbecoming an employee and warrants her termination in that the Respondent improperly and in violation of N.J.S.A. 18A:19-2 made expenditures of funds that were not authorized by the Board.

CHARGE SEVEN: CONDUCT UNBECOMING AN EMPLOYEE

Specification: During the 2009-2010 and 2010-2011 school years, Respondent held the position of Human Resource Manager and working for the Young Scholar's Institute ("YSI"), a non-profit agency, and vendor to the Charter School policy. Jerri Morrison was/is Respondent's direct supervisor in the capacity of Executive Director of the YSI. Respondent regularly worked on YSI matters during school time and working hours during 2009-2010 school year and up until August 2010. In particular, on June 16, 2010 Respondent worked on preparing contracts for the Summer Enrichment Program to be run by YSI under contract with the Charter School. Also, on June 4, 2010, Respondent prepared an YSI Transition letter during school time and sent it to Jerri Morrison, her supervisor at YSI. Respondent's misconduct constitutes conduct unbecoming an employee and warrants her termination.

CHARGE EIGHT: CONDUCT UNBECOMING AN EMPLOYEE

Specification: During the 2009-2010 year, Respondent held the position of Human Resource Manager and her duties included assisting with the maintenance of employee attendance for the Charter School. On or about June 30, 2010, Respondent sent a letter to Anthony Roberts, former Administrator for the Charter School, advising him that the Board of Trustees would compensate him for 28 vacation days. Respondent processed the payroll to include an unauthorized payment of \$2,254.24 to Roberts. Further, Respondent failed to obtain the approval of her supervisor Principal Pemberton and/or the Board of Trustees

prior to sending said correspondence in violation of Title 18A. Respondent's conduct constitutes conduct unbecoming an employee and warrants her termination in that the Respondent improperly and in violation of N.J.S.A. 18A: 19-2 made expenditures of funds that were not authorized by the Board.

CHARGE NINE: CONDUCT UNBECOMING AN EMPLOYEE

Specification: During the 2009-2010 year, Respondent held the position of Human Resource Manager and her duties included assisting with the maintenance of employee attendance for the Charter School. The Charter School's policy regarding vacation days is that employees earn 15-20 vacation days per year (depending on their longevity), but are not allowed to "carry over" any vacation days. Employees forfeit any vacation days not used during any particular year. As Human Resources Manager, Respondent was aware of the School's policy and was specifically advised in writing. Nevertheless during the 2008-09 and 2009-10 school years (and before), Respondent improperly carried over vacation days and allowed other employees to carry over vacation days from the previous year. In 2009, Respondent carried over 19.5 days and allowed Administrator Anthony Roberts to carry over 3.5 days. Respondent's conduct was in direct contravention of Charter School policy, constitutes conduct unbecoming an employee, and warrants her termination in that the Respondent (sic).

CHARGE TEN: CONDUCT UNBECOMING AN EMPLOYEE

Specification: During the 2009-2010 year, Respondent held the position of Human Resource Manager and her duties included (1) serving as secretary to the Board of Trustees; (2) maintaining Board agendas, minutes, and resolutions, (3) giving the public at large proper notice of Board meetings; and (4) ensuring compliance with State mandated disclosures, reporting rules and regulation, among others. On several occasions Respondent performed her duties in an unsatisfactory manner, to include adding items to Board meeting agenda without the approval of Principal Christi Pemberton, and failing to give the public proper notice of board meetings by failing to publish the notice of the meeting in two Trenton newspapers. Respondent's misconduct constitutes neglect of duty and warrants her termination.

CHARGE ELEVEN: CONDUCT UNBECOMING AN EMPLOYEE

Specification: During the 2008-2009 and 2009-2010 school years, Respondent held the position of Human Resource Manager and her duties included processing pension enrollment forms with the New Jersey Division of Pensions for Charter School employees. Respondent failed to timely submit pension forms for employees to the Division of Pensions resulting delays for pension credit and deduction and a penalty assessed to the Charter School of \$10,000.00. Respondent's neglect of duty constitutes conduct unbecoming an employee and warrants her termination.

CHARGE TWELVE: CONDUCT UNBECOMING AN EMPLOYEE

Specification: During the 2009-2010 school year, Respondent held the position of Human Resource Manager and her duties included processing enrollment forms for the State Health Benefit Program ("SHBP") with the New Jersey Division of Pensions for Charter School employees. Respondent failed to submit timely SHBP enrollment forms for new employees including Shari Gaines-Gilbert (DOH 7/19/10), Domarino Greco (7/8/10), Curtis Henderson (4/28/10) and Curtis Sullivan (7/26/10) to the Division of Pensions resulting in non-compliance and potential sanctions. Respondent's failure has resulted in enrollment delays in medical coverage and potential liability for medical expenses incurred by the new employees. Respondent's conduct constitutes gross neglect of duty and warrants her termination.

* * * * *

On October 15, 2010, Spady filed the following Answer to the Charges:

CHARGE ONE: CONDUCT UNBECOMING AN EMPLOYER

This charge states that I sent a memo to Cora Birnberg recommending payment of unused sick and vacation days to Jerri Morrison, former school principal and executive director. This charge also states that I processed two payroll checks for Ms. Morrison for payment of aforementioned.

Response: I answered the questions regarding this practice at a meeting with the Principal and Board President in a meeting held in the Principal's office prior to my receiving a contract for the 2010-2011 school year. Additionally, I do not process payroll for Trenton Community Charter School.

It has never been neither the written policy, nor the practice, of TCCS employee's benefits to be subject to review or approval by the school principal or the Board of Trustees. I received a memorandum dated June 30, 2010 from Ms. Pemberton, principal, informing me of her primary authority in making such decisions. I received this communication from Ms. Pemberton more than a month after the payment to Mrs. Morrison.

I also wish to add that Mrs. Morrison received twenty vacation days at the beginning of July, 2009 for days earned during the 2008-2009 school year. Also beginning in July, 2009, Mrs. Morrison started earning days that she would be eligible to take beginning July, 2010; however, her position was eliminated prior to this date; therefore she was paid for the twenty days as mentioned, minus any days she had used, plus days she earned from July until the time of her job being eliminated.

As for the allegation of payment for sick days. Mrs. Morrison, who for twelve years directed process/procedures as my immediate supervisor directed me to use the teacher's negotiated contract for all staff in general. This included, lump sum payment for sick days, tuition reimbursement and incentive payment for staff using three or fewer personal illness days during the school year. This has been the practice since the beginning of the teacher's union at Trenton Community Charter School.

The incentive payment and/or payment for unused vacation days were never subject to review or approval by Board of Trustees.

CHARGE TWO: CONDUCT UNBECOMING AN EMPLOYEE

This charge again refers to a memo to Cora Birnberg recommending payment of unused sick and vacation days to Jerri Morrison, former school principal.

Response: This charge is a mirror of Charge One which was answered in the response to Charge One.

CHARGE THREE: CONDUCT UNBECOMING AN EMPLOYEE

This charge states again that I sent a memo to Cora Birnberg recommending payment of unused sick and vacation days to Jerri Morrison, former school principal. That I processed two payroll checks for Ms. Morrison for payment of aforementioned.

Response: This charge also mirrors Charges One and Two which was answered in Charge One.

CHARGE FOUR: CONDUCT UNBECOMING AN EMPLOYEE

This charge states again that I said I received authorization from Mr. Edwin Lloyd approving payments to Ms. Morrison and that a copy of the letter sent to Mrs. Morrison was provided to Ms. Christi Pemberton prior to payment. The charge states that after review of emails in May, June and July, there was no notification sent to Mr. Lloyd; therefore providing a false statement intended to cover up unauthorized payment.

Response: I verbally answered this question when I met with the Principal and Board President in a meeting held in the Principal's office prior to my receiving a contract for the 2010-2011 school year. I also stated same during the executive session at the August 11th Board of Trustees' meeting. I indicated that I shared the correspondence to Ms. Morrison with the Board President and principal prior to giving the letter to Ms. Morrison and that I made this statement to "cover-up" unauthorized payments to Mrs. Morrison. There is no way to cover-up unauthorized payments because all payroll and bill payments are reviewed by the business administrator consultant and provided to Board members at monthly Board meetings; thereby, it is simply no merit to the issue of "cover-up" raised in this charge.

CHARGE FIVE: CONDUCT UNBECOMING AN EMPLOYEE

This charge states again that I processed payments for unused sick leave for myself and other non-teachers in July and October, 2009.

Response: Ms. Morrison, who for twelve years served as my supervisor, directed me to use the teacher's negotiated contract for all staff in general. This included, lump sum payment for sick days, tuition reimbursement and incentive payment for staff using three or fewer personal illness days during the school year. This has been the practice since the beginning of the teacher's union at Trenton Community Charter School. The incentive payment and/or payment for unused vacation days were never subject to review or approval by Board of Trustees.

CHARGE SIX: CONDUCT UNBECOMING AN EMPLOYEE

This charge states that I processed payments for unused sick leave for myself and other non-teachers in June 2010.

Response: My understanding of this is that I assumed that the procedure I was following was correct, neither Ms. Pemberton nor the Board of Trustees indicated that a different procedure should be followed until I received the correspondence dated June 30, 2010.

CHARGE SEVEN: CONDUCT UNBECOMING AN EMPLOYEE

This charge states again that I regularly worked for Young Scholars Institute (YSI), a Trenton Community Charter School vendor, during 2009-10 school year and up until August 2010.

Response: It was neither a conflict nor does it present the appearance of any improper conflict of interest. Young Scholar's Institute's Board of Trustees granted Mrs. Jerri Morrison to write the application for a charter. Some YSI Board members were also founders of Trenton Community Charter School and served on the Board in the earlier years. Initially, three staff members were shared by the charter school, as the school grew, two additional staff members were "shared employees". The Board of Trustees was aware of this relationship with Young Scholar's Institute since the charter school's inception. It was also noted as "shared employees" on Trenton Community Charter School budgets.

As for the correspondence I received from YSI, you will note that there is no evidence that I responded to the e-mail during the work-day. I did respond to an e-mail received from Mrs. Morrison on June 4th; however, I responded to this e-mail after 4:30 p.m. (Exhibit "D").

When I asked Board members their choice to receive e-mails either at work or at home, many responded that they wished to receive their e-mails at work. We often communicated several times in one day while they were at their various places of employment.

CHARGE EIGHT: CONDUCT UNBECOMING AN EMPLOYEE

This charge states that I sent a memo to Cora Birnberg recommending payment of unused sick and vacation days to Anthony Roberts, former employee of Trenton Community Charter School.

That I processed two payroll checks for Mr. Roberts for payment of aforementioned.

Response: It has never been either the written policy, nor the practice, of TCCS employees' benefits to be subject to review or approval by the school principal or the Board of Trustees. I received a memorandum dated June 30, 2010 from Ms. Pemberton, principal, informing me of her primary authority in making such decisions. I received this communication from Ms. Pemberton after the payment to Mr. Roberts was processed.

I also wish to add that Mr. Roberts received twenty vacation days at the beginning of July, 2009 for days earned during the 2008-2009 school year. Also beginning in July, 2009, Mr. Roberts started earning days that he would be eligible to take beginning July, 2010; however, his position was eliminated prior to this date; therefore he was paid for the twenty days as mentioned, minus any days he had used, plus days he earned from July until the time of his job being eliminated.

As for the allegation of payment for sick days. I reiterate that for twelve years I was directed to use the teacher's negotiated contract for all staff in general. This included, lump sum payment for sick days, tuition reimbursement and incentive payment for staff using three or fewer personal illness days during the school year. This has been the practice since the beginning of the teachers union at Trenton Community Charter School.

The incentive payment and/or payment for unused vacation days were never subject to review or approval by Board of Trustees.

CHARGE NINE: CONDUCT UNBECOMING AN EMPLOYEE

This charge states that I allowed several employees to "carry over" vacation days.

Response: I answered this question when presented to me by the Principal and Board members at a Board meeting during executive session. My answer is the following;

1. Employees earn their vacation days from the time they were hired; however, they are not eligible to begin taking vacation days until they complete a year of employment.

Example: Ms. Pemberton was hired in July, 2009; however she was not eligible to begin taking her earned twenty vacation

days until July, 2010. In the meantime, she will begin to earn additional vacation days beginning July, 2010.

2. On my record of employee time, I record all days (whether used or not); however, on the correspondence given to staff, it only indicates days they are allotted for vacation days in any one year; therefore, the allegation that I allowed several employees to accumulate vacation days is false.

CHARGE TEN: CONDUCT UNBECOMING AN EMPLOYEE

This charge states that I performed my duties unsatisfactory in manners including adding additional agenda items without approval by immediate supervisor and failing to give public proper notice (via newspapers) for upcoming meeting.

Response: I create the minutes from the tape and notes taken. Over years I automatically placed certain items on the board agenda (i.e. bill list, budget transfer, etc.). I received a memorandum from MS. Pemberton asking me to not place items on the agenda and I immediately ceased. However, I always provided MS. Pemberton with a copy of the agenda prior to the distribution of said agenda to board members for her approval. The allegation that I did not properly notify the newspapers of upcoming board meetings is incorrect. As soon as I was made aware that a meeting would be taking place, I contacted the newspapers; however, this does not warrant the title of "unbecoming conduct". In the twelve years as Board secretary, this action has never happened as stated in the Board meeting by Mrs. Lenora Green, former Board President.

I would also like to state that I received a "Rice Notice" on September 2, 2010 via regular mail for a Board meeting to be held that evening. I checked the local newspapers to make sure it was advertised forty-eight hours prior to this meeting and it had not been. I sent an e-mail to Trenton Community Charter School informing them the notice was not in the Trentonian newspaper. I received an e-mail stating that I would not be discussed at that meeting. (See Exhibit "E"). Should the person who failed to advertise for this meeting be charged with unbecoming conduct for failure to properly notify the newspaper of an upcoming Board meeting?

CHARGE ELEVEN: CONDUCT UNBECOMING AN EMPLOYEE

This charge states that I failed to timely submit pension enrollment forms for employees to the state resulting in delays

for pension credit and assessing a penalty to the Charter School.

Response: This was a mistake on my part; however, this error was made when my immediate supervisor was Mrs. Morrison who reprimanded me for this error verbally and in writing. It behooves me as to why Ms. Pemberton would make this a tenure charge against me, especially since I was granted renewal of my contract months after this incident. The Board was also aware of this incident and voted to renew my contract.

CHARGE TWELVE: CONDUCT UNBECOMING AN EMPLOYEE

This charge states that I failed to timely submit health benefit enrollment forms to the State resulting in delays of enrollment days medical coverage.

Response: I submitted a health enrollment form for employee Mr. Curtis Henderson in April, 2010 along with his enrollment into the dental/vision program. Mr. Henderson received his cards for the dental/vision; however, he did not receive his health insurance card. I was not made aware that he did not receive this card until on or about August 23rd. A copy of his enrollment form should be in his personnel file with a circle (file) copy. I did submit his health enrollment form to the State; however, I also submitted another former employee's enrollment form at about the same time (date of hire). I was informed by Ms. Law that she never received her health cards when I provided her with COBRA information. I called the State and was informed to fax over her application. When Mr. Henderson made me aware that he never received his health cards, I attempted to call the State; however, I was placed on hold for forty-five minutes. I was going to make a follow-up call to the state the next day; however, I was dismissed.

As for the enrollment of the other three, I did submit their paperwork and it was returned from the state asking for additional information from the employees. I retrieved the additional documentation from the employees; however, I was dismissed prior to my being able to resubmit this data to the state.

In conclusion, I have been a loyal employee of Trenton Community Charter School since its inception. It is my feeling that I am being targeted for trying to complete my job to the best of my ability. I questioned the principal and Board attorney when several employees were docked for excessive lateness. I

informed them that this practice was illegal and presented the Board attorney with the statutes supporting this finding. The employees were subsequently reimbursed for days/times they were docked; however, some (not all) were either not renewed for the 2010/2011 school year or their increments were withheld. (See Exhibit "F"). It appears that a targeted group is being misrepresented and other similar information is being withheld from Board members by administration.

FINDINGS OF FACT

In 1990, Jerri Morrison founded Young Scholar's Institute (YSI), a non-profit organization designed to assist students improve academic skills. Morrison served as YSI's chief executive officer, and Joyce Spady served as her assistant. In 1995, the YSI Board of Trustees authorized Morrison to explore the possible creation of a charter school and a small grant was obtained. Morrison visited charter schools in other parts of the country, and studied their operation. Morrison, with Spady's assistance, prepared and submitted an application to the State Department of Education for a charter school in Trenton. Sometime in 1997, the charter was granted and the school became known as Trenton Community Charter School ("TCCS"). Morrison recruited members of the community to serve on the TCCS Board of Trustees. The Board then appointed Morrison as the TCCS Executive Director.

In a series of meetings with the Department of Education, Morrison was told that the School's Charter "served as the school's 'bible.'" The Department of Education expressed some

concerns about the relationship between YSI and TCCS. It proposed language to be added to the TCCS Charter to define the relationship between the two entities. That language was adopted and become part of the 1996 Charter application. That language provides,

Role of Young Scholars' Institute

The Young Scholars Institute has assisted in the founding of the Trenton Community Charter School by paying some of the startup costs particularly in preparing the application, and also by the fact that a number of the founders are affiliated with Young Scholars' Institute. The Institute will lease space to the Charter School, and the two entities may share some employees. (R-1, p.2)

Although the TCCS bylaws have since been amended, this language remains as part of the TCCS charter.

Morrison served as TCCS's Executive Director from the school's opening in 1997 through 2009. During this entire period, she also served as the Executive Director of YSI. Since TCCS's founding in 1997 until 2010, YSI and TCCS had several other "shared employees", including Business Manager Cora Birnberg; Human Resources Manager Joyce Spady; Executive Assistant Anthony Roberts, and Human Resources Assistant Edna Williams. These employees worked in offices located in the YSI building, which was then located on Rutgers Place, near TCCS. In addition, TCCS purchased a computer server and other office equipment to be used jointly by TCCS and YSI. Morrison and

Spady both testified that the shared employees often worked many long hours, evenings and weekends. Morrison testified that the boards of trustees of both YSI and TCCS were well aware of the arrangements concerning the shared employees.

By the spring of 2009, the TCCS Board was becoming concerned about the school's performance. The Board asked Morrison whether she was willing to serve as the school principal.

Edwin Lloyd has been a member of the TCCS Board of Trustees since September 2007. He became Board President in June or July, 2009, and continues to serve in that role.² Lloyd testified that Morrison applied and interviewed for the principal's position. In July, 2009, the Board conditionally appointed her as acting principal, with the understanding that she would obtain her principal's certificate. Lloyd explained that the Board had paid for Morrison to get her principal's certification, and it expected that she would obtain the certification by September, 2009. In September, 2009, the Board offered her an employment contract for the 2009-2010 school year, but that contract was never signed. (R-11)

²Lloyd also is employed full time as an Assistant Regional Director for FDIC.

In October or November, 2009, Morrison sent Lloyd a memo explaining that she was having difficulties in obtaining the principal's certification. Lloyd testified that because she lacked the necessary certification, the Board felt she could no longer serve in the school principal position.

Also, at about the same time, the YSI Board advised Morrison that it was not comfortable with her serving as YSI Director and the TCCS principal and it asked her to give up one position or the other. Because she was forced to choose one, and because she was having difficulties in obtaining a principal's certificate, in December, 2009, she submitted her resignation from the principal's position to the TCCS Board. (R-10) Morrison testified that Board President Lloyd then offered her a position as the School's Instructional Advancement Officer, a position which would report to the school principal. Morrison declined that offer. Morrison then continued in the Executive Director position until it was abolished in January, 2010.

Christi Pemberton was hired by TCCS as the Vice-Principal of Curriculum and Instruction in July, 2009. After Morrison's resignation from the principal's position, the Board appointed Christi Pemberton as acting principal in November, 2009, and then in December, permanently appointed her as school principal.

On January 14, 2010, the Board of Trustees voted to abolish the Executive Director position and simultaneously empowered Pemberton to supervise the operations of the Charter School and its staff.

By memo of January 15, 2010 Pemberton directed Spady, Cora Birnberg, Anthony Roberts, and Grants Writer Tolu Lanrewaju to report directly to her concerning their duties and responsibilities. (P-1)

Soon after, Spady provided Pemberton with a copy of her job description (P-3). Spady's job description included the following:

Title: Manager, Human Resources and Enrollment Services

Reports to: Executive Director

Responsibilities: The primary responsibility of the manager of human resources and enrollment services is to maintain all employee personnel files and recruit students and staff. To complete these goals, the manager of human resources and enrollment shall:

Staff:

1. Make certain staff has completed and submitted all necessary documentation for work readiness [including]:
 - ...b. Insurance forms - medical and dental
 - ...d. Pension forms
2. Submit all paperwork to required authorities as needed.
3. Draft employee contracts.

- 4. Assist with maintenance of employee attendance
- . . .7. Complete employee personnel manual yearly.

Board:

- 1. Serve as board recording secretary
- 2. Record and maintain agenda and minutes.
- 3. Maintain board resolutions.
- 4. Send notice to newspaper for all up-coming board meetings... (J-3, p. 1-2)

Pemberton reviewed the job description and was considering some revisions to the position to separate the Human Resources functions from the student enrollment functions.

Payments of Unused Leave Time:

In January, 2010, Spady revised the Staff Personnel Handbook (P-2), and distributed it to the staff. Morrison testified that she had previously approved the Handbook. It provides under "Employee Benefits,"

Vacation Days

Twelve-Month Employees: All twelve-month employees are granted paid vacation days at the rate of .83 days for every full month of service (10 days per full year of service). This rate will increase as indicated for years of service below:

<u>Length of Service</u>	<u>Days</u>
Five-Ten Years	15 days
Over Eleven Years	20 days

Full-time employees must take vacation days during the months of July and August unless pre-approved. Vacation days are not cumulative.

All full-time employees who resign or are terminated will receive payment for any earned unused vacation days for that calendar year provided six months of service has been completed and, in terms of a

resignation, the sixty days notice requirement was given.

Personal Illness

All full-time employees are granted accrued sick leave at the rate of one day per full month of service. . . Sick leave benefits are allowed to accumulate until the employee has accrued a total of one hundred (100) calendar days of sick leave benefits. . . .

Trenton Charter School will pay each employee and/or his/her estate for unused accumulated sick leave at a rate of \$75.00 per day with a maximum payment of up to one hundred (100) days upon retirement and/or death. There is no lump sum payment for sick leave upon termination and/or resignation. [Emphasis added]. (J-2, pp 5, 6)

Spady testified that she authored the handbook and was responsible for updating it with the most recent revisions. The provisions cited above were not revised recently. The handbook provides at page 1 that the manual is reviewed annually by the TCCS Board of Trustees.

The TCCS teachers are represented for negotiations purposes by the TCCS Education Association. The 2005-2008 collective bargaining agreement between TCCS Board of Trustees and the TCCS Education Association provides at Article 10,

10:1.1: All employees shall be allowed sick leave with full pay for ten (10) days in any school year.

10:1.2: All unused sick leave shall be accumulated from year to year with a maximum limit of 90 days. Such days are not compensable upon separation or resignation. Effective July 1, 2003, the Board shall pay \$50 per day, to each employee or his/her estate for unused accumulated sick leave. The maximum

payment shall be for up to ninety (90) days upon retirement. (P-39)

By Memorandum of Agreement of May 28, 2009 the Association and the Board modified the contract as follows:

Modify 10:1.2 as follows: Increase to 100 days and value to \$75 per day. Add in new language: A teacher who has at least five (5) years of service with TCCS shall have the option of trading in $\frac{1}{2}$ of their accumulated days at $\frac{1}{2}$ of the prevailing substitute per diem pay in separation from the district. (P-39, addendum)

Both Spady and Morrison testified that they believed the Employee Personnel Manual was "superseded" by the benefits in the collective negotiations agreement between the Board of Trustees and the TCCS Education Association. Morrison testified that when the teachers first decided to be represented by a union, the Board of Trustees directed her in executive session to extend the contract's benefits to the non-represented employees. Those benefits included sick leave incentives, tuition reimbursements, and payment of unused vacation time. Spady testified that it had been the past practice of TCCS to pay employees upon separation from the school for their accumulated vacation and sick leave.

Morrison testified that the usual practice was to pay employees for their unused vacation time if they left TCCS's employ. For example, she testified that Quandra Fudd received

her vacation pay when she was terminated after her position was abolished in the Spring, 2009. Andrea Schutz was non-renewed and received vacation payout, as did other employees who left the TCCS. According to Morrison, such payments for unused vacation time were usually not presented to the Board for approval.

By letter of April 14, 2010, Spady advised Morrison that the Board had directed her to collect all TCCS property (keys, laptop, etc) from her, and Spady asked Morrison to turn the materials in within 10 days. In the same letter, Spady continued,

I also wish to inform you that Trenton Community Charter School will compensate you for the following:

100 unused sick days @ 50.00 per day

25 unused vacation days (J-5)

On May 24, Spady had a "Payroll Change Notice" prepared as backup to the payments listed above. She signed the document.

(P-6) On May 25, Spady sent Cora Birnberg a memo stating,

Jerry Morrison is entitled to the following vacation days:

FY 08-09: 20 days (to be taken beginning in July, 09
 - 9 days (taken between July-October, 2009
 Remaining: 11 days (because of new position and reorganization, it was impossible to take vacation days during the summer months).

Accrued days (12th year - 25 days (July - November, 2009 at a rate of 2.08 days per month = 10 days

This communication shall serve as back-up for payment of twenty-one (21) days to Jerri Morrison for unused vacation days.³ (J-7)

On May 28, 2010, Morrison was issued a check for the gross amount of \$5000 for her unused sick time (J-8). On June 15, Morrison was issued a check in the gross amount of \$6361 for her unused vacation days. (J-9) By letter of June 16, Spady advised Morrison that the check she issued for unused sick leave was incorrectly calculated. Spady advised her that she had been paid for 100 unused sick days when she should have been paid for 50 unused days (J-10). When advised that she had been overpaid, Morrison reimbursed TCCS with a check for ½ of the payment, or about \$1700. However, the Board points out that Morrison returned ½ of the net payment, leaving the Board in a negative position for the amount it paid in taxes and deductions on the gross amount.

Until 2010, Anthony Roberts held the position Assistant to the Executive Director at TCCS, and reported to Morrison. He was also an employee of YSI. One of his responsibilities for TCCS was systems maintenance. In May, 2010, the State cited TCCS for failure to correct 96 fire code violations. Pemberton believed this was indicative of Roberts not properly performing

³ I note that there is a discrepancy between what Spady represented to Morrison that she was entitled to (25 days) and what Spady told Birnberg to pay (21 days).

his duties. Roberts was suspended from his position in May, 2010, and soon thereafter, his position was eliminated.

By letter of June 30, 2010 (J-11), Spady advised Roberts that the Board had voted to eliminate his position. She further advised Roberts,

During your tenure at Trenton Community Charter School, you accumulated 60 unused sick days and 8 unused vacation days. I wish to inform you that TCCS will compensate you for the following:

30 unused sick days @ \$50 per day (employees with five or more years of service shall receive compensation for one half of the accumulated sick days at the substitute rate.)

28 unused vacation days (J-11)

Roberts was paid \$2,254 for his vacation days and \$1500 for his sick leave (P-12, p. 13).

Pemberton first learned about Spady's letter to Roberts advising him that he would be paid for his leave time when Roberts, together with his attorney, produced it at a Board meeting. Roberts argued to the Board that Spady had committed the Board to pay out his leave balances. He threatened to sue the Board if it failed to pay as Spady had represented. The Board ended up paying Roberts.

In July, 2010, Pemberton began an investigation of the promised payments to Roberts and Morrison. She discussed the issue with Spady and demanded to see timesheets. Spady showed her P-14, which shows Anthony Roberts' leave records for the

length of his employment from 2003 through 2010. It shows that Roberts began the 2009-10 school year with a credit of 20 vacation days which he had earned in the 2008-09 school year. It shows that he used 10 of those twenty days during the 2009-10 year, leaving him with a balance of 10 unused days by June 30. In addition, it shows that he earned 18 vacation days during the 2009-10 school year, which he would have been eligible to take July 1, 2010. Therefore, Roberts was left with an accumulated, unused balance of 28 vacation days. (P-14) Parenthetically, it also shows that Spady was converting unused personal business days to sick days at the end of each year (14, p. 1-2).

Pemberton also examined the annual attendance calendars for Birnberg, Spady and Roberts for 2009-10. (J-16, J-17, J-18, P-19) All showed an entry for vacation "carryover" days. More specifically, J-16 shows that Spady carried over 19 ½ vacation days for 2010. However, Spady explained that while the line entry is labeled "carryover", it really was not days carried over.

Spady denied that she permitted employees to carry over vacation time from year to year. She explained that vacation time is earned during a new employee's first year of employment and then credited upon completion of the first year. Going into

the second year of employment, the employee has the bank of earned time, which must be used that year.

However, I do not entirely credit Spady's explanation of the timekeeping methodology. J-2 provides that for 12-month employees, vacation time may not be accumulated. It appears that time earned during one school year must be used by the July/August period following that school year unless pre-approved to use at another time. Further, it appears to me that time not used by the beginning of the next school year would be lost. Therefore, if you carried unused time into the following school year, you would be "carrying over" time in contravention of the provisions in J-2. Pursuant to J-2, the highest allotment of annual vacation leave is twenty days. Accordingly, I conclude it would not be possible, absent carry over from one school year to the next, to have more than one year's allotment of vacation days. I note that J-18 shows that Spady had credited herself with 45 ½ vacation days for 2010.

Until 2010, Edna Williams was the Human Resources Assistant for TCCS and for YSI. She reported directly to Joyce Spady, and like Spady, she worked in the YSI office near TCCS. Her responsibilities included filing, making and receiving telephone calls, processing payroll, and handling enrollment. Williams handled the payroll for TCCS employees in 2009-10, but Spady kept timesheets for the shared employees.

Pemberton testified that Williams approached her and reported that certain payments were being made to former employees and that Pemberton needed to look into it. Williams denied initiating the conversation with Pemberton about payments for unused leave time. Williams testified that Pemberton met with Cora Birnberg first and then asked Williams about the terminal leave payments and asked for the time records. Williams testified that by that point, she had not previously seen Spady's letters to Morrison and Roberts promising terminal leave payments. (J-5, J-11)

Williams testified that TCCS employees could not carry over vacation time, but she believed the shared employees' vacation time has been carried over. She understood that employees would get paid for unused vacation time when they left, but Williams testified that this was the first time that sick leave was paid out since 2001. She acknowledged that the payouts for vacation time had never been presented to the Board for approval.

In October 2009, fifteen employees, including Spady, were paid an incentive payment because they had used less than three sick days in the prior school year. (P-25) On June 30, fifteen employees again received the incentive pay for using less than three sick days during the past school year. Williams prepared P-25 at Birnberg's direction. Spady testified that Edna Williams prepared P-25, and that she did not see the document

at that time. In fact, she testified that she did not see it until after July 1, 2010. Some of these payments were later recouped by the Board as unauthorized payments.

Spady testified that she followed TCCS's past practice and previous directives of Morrison with regard to the payment of unused vacation time upon an employee's resignation or termination. For example, Ron Brady, Evelyn Thomas, Schutz, and Fudd were all paid for unused vacation time upon their terminations from employment. (P-25 p. 2) Further, Spady testified that the practice had never been to obtain Board approval for such terminal leave payments. Spady testified that while Williams prepared the payroll, Spady was responsible for it. In each case, Williams followed the TCCS normal practice in paying the employees for their time.

Pemberton testified that after she became principal, she met with Spady on more than a weekly basis. There were also frequent emails and calls between them. She expected that an issue such as the payout of sick leave and vacation time to former employees would have been the type of issue Spady would certainly have discussed with her.

Pemberton's Investigation of Payments

Pemberton testified that, until she had the conversation with Williams, she was not aware that payments were being made to employees and she had not seen the letters to Morrison or

Roberts. After the conversation with Williams, Pemberton began an investigation. She questioned Spady. Spady showed her J-5, J-6, J-7, J-8 and J-9. Pemberton asked Spady for an explanation of the calculations resulting in J-9 and Spady provided her with back-up documents.

Pemberton asked Spady why the payments were not discussed with her first. On July 28 Pemberton sent Spady a memo asking for documentation to address the following issues:

Who requested that you compensate Jerri Morrison?

Why was this matter not discussed with the Board members and/or Mr. Johnson before any action was taken to process payments or issue checks?

By memo of August 4 Spady responded that she had "submitted the time in writing to Mr. Lloyd and Ms. Pemberton." Spady orally told Pemberton that she had advised her by email. However, no copy of an email could be produced. Spady then claimed that she had sent Board President Edwin Lloyd a letter. No copy of a letter was produced. Pemberton believed that Spady had made false statements about the email and/or letter to cover up the fact that the payments were unauthorized. Pemberton believed that the payments were contrary to Board policy and brought the issue to Lloyd's attention. Pemberton testified that she was unable to find attendance records on Morrison, so she had no way of knowing what Morrison's leave balances were when she resigned.

Lloyd emphatically denied authorizing any payments to Morrison after she left the TCCS's employ. There was no discussion at any Board meeting about payments of banked leave time to Morrison. He testified that after Morrison was removed from her position as principal, the Board's relationship with her became acrimonious. Lloyd testified that, because the relationship with Morrison had so deteriorated, he would "never have authorized payment of any leave time to her." Lloyd referred to Spady's claim in P-24 as a "mendacious" story. He testified that he "never received any email or anything in writing" from Spady about paying Morrison. He reiterated that neither he nor the Board of Trustees authorized such payments.

I credit Lloyd's testimony in its entirety. I found his testimony to be clear, straightforward and trustworthy. Further, his testimony with regard to the acrimonious relationship with Morrison by January 2010 is evidenced by his lengthy memo to her on February 22, in which he expresses disappointment in her leadership and blames her for the high turnover and low morale among staff, as well as some of the poor performance issues of the Charter School. (R-14)

Conflict of Interest

Pemberton had concerns about Spady serving as Human Resources Director when she had relatives on staff and on the

Board. Pemberton felt Spady had a conflict of interest that would impede her from fully performing her duties.

Spady admits that she had a relative on the Board and relatives on the staff, but testified that she has always disclosed her relationships with others to the Board. Lloyd acknowledged that he was aware that Spady had a relative on the Board. In fact, Board Member Lynn Williams is Spady's cousin. Williams has been excused from executive sessions where Spady has been discussed. Additionally, when Pemberton asked her for a list of her relatives on staff and on the Board, she promptly complied.

Lloyd testified that he had questions about whether there was a conflict of interest with certain employees simultaneously working for TCCS and YSI, since YSI acts as a vendor for services to TCCS. Until 2009, YSI provided a summer enrichment program (SEP) to the TCCS students, for which it charged TCCS a fee. The Department of Education advised Pemberton that if she wished to continue the SEP, she would have to have a vendor contract for YSI to do so. The Board told Pemberton not to contract with YSI for the program.

Shared Employees/Dual Time

Pemberton was aware that certain employees were shared between TCCS and YSI. She never asked Spady about how much time she was devoting to YSI before June, 2010. Lloyd was aware that

the dual employees were working for both TCCS and YSI, although he was unaware that they were getting paid by both entities for the same working hours.

Near the end of the 2009-10 school year, Williams alerted Pemberton to the fact that Spady was spending much of her work day working on YSI matters instead of TCCS. Pemberton testified that she would not expect to have to tell an employee not to work for another employer on TCCS work time. Pemberton initiated an investigation and had Spady's laptop computer seized and analyzed.

Pemberton learned that YSI work, including documents preparation, emails, and scanning was being done between 8:30 and 4:30 (P-26, P-27). Spady's individual employment contract with the TCCS Board provides in relevant part that her work hours are 8:30 to 4:30 (P-38). Sometime after June, 2010, Pemberton advised Spady that she was not permitted to do YSI work on TCCS time. There is no evidence that after July 1, Spady did any work for YSI during her TCCS workday.

Spady testified that while she may have received YSI-related emails during her workday, she rarely responded to them immediately. She testified at length that for the most part, her workday was separated and that she performed YSI-related duties before school, during her breaks, at lunch and after the end of the workday. However, Williams and Morrison both

testified that all of the shared employees integrated their workday between the two entities and would go back and forth between YSI projects and TCCS work regularly. As to this issue, I credit Morrison and Williams. I do not credit Spady that her workday was divided into distinctive time periods for TCCS work, at last not prior to July, 2010 when she was directed by Pemberton to maintain strict compliance with her TCCS workday schedule.

Pension Enrollment Delay

Sometime in late 2009, Spady had failed to enroll new employees, Athletic Director Alan Tuback and Lunch Aide Audrey James, into the pension plan. She believed that the employees were ineligible because they were hired at less than full time. In January, 2010, the State Division of Pensions and Benefits fined TCCS \$10,927 for its failure to timely enroll these two employees in the system. (P-33) On January 21, Morrison issued Spady a letter of reprimand concerning her failure to enroll the new employees and warned her that all employees must be enrolled within one week of their hire date. Spady accepted full responsibility for the error. (P-28, P29)

Health Benefit Enrollments

Pemberton testified that in September, 2010, (after Spady's removal from her position), she reviewed the files in Spady's office. Crates of paperwork were found in her office, including

some health benefits enrollment applications for four recently hired employees; namely, Curtis Henderson, hired in April, 2010; Curtis Sullivan, Domarino Grecco and Shari Gaines-Gilbert, all hired in July. It appeared to Pemberton that the enrollment forms had not been submitted to New Jersey State Pensions and Benefits for processing. Employees are entitled to medical, dental, and vision care coverage 60 days after their date of hire. If the employees are not timely enrolled, they are not provided coverage.

After the enrollment forms were discovered in September, Pemberton questioned the affected employees and learned that they had not yet received their health benefits identification cards.

Spady explained that upon completion of the health benefits enrollment forms by the new employee, she transmits the application to New Jersey State Pensions and Benefits. The State then mails the health benefit identification cards directly to the employee, unless there is a problem with the application information, in which case the application gets returned to her to obtain more information. Spady had no way of knowing if an employee received his identification card unless he notifies her.

Spady testified that she did submit the State Health Benefit applications to State Pensions and Benefits for

enrolling the new employees "the same day they were completed." She testified that the applications may have been returned for more information and/or documentation to verify dependent status. She recalled specifically that Gaines-Gilbert and Sullivan also had their applications returned for additional documentation. Curtis Henderson came to her and asked about his health benefit cards.

Curtis Henderson testified that he met with Spady as part of the hiring process to complete paperwork, including an application for health benefits (P-40). He signed his health benefits enrollment application on April 15, and Spady signed it May 21, 2010. He acknowledges receiving his vision care card and his dental benefit card. Henderson vaguely recalled speaking to Spady, perhaps in August, about his health benefit card. Henderson did not receive his health benefits card until sometime in January, 2011, although he did receive his vision and dental card promptly.

Curtis Sullivan was hired as a custodian for TCCS in July, 2010. Prior to his hire he was laid off from the West Windsor-Plainsboro School District. That district continued his paid health benefits through July, 2010. Sullivan completed an enrollment form with Spady upon his hire in late June, 2010. After West Windsor stopped paying his health care benefits at the end of July, he was eligible for COBRA benefits and received

an invoice (P-41) for health benefit coverage for August and September, totaling \$3,524. In October, he finally received his health benefit card from TCCS.

Spady pointed out that after July 1, 2010, not only did she not have her computer, but also Williams had been reassigned to another position, leaving Spady with no assistant. She continued to perform the human resources duties, as well as performing the additional duty of reference checks on 30 new employees.

Board Agendas

Part of Morrison's responsibilities as TCCS Director had been to prepare the agenda for Board meetings. She had weekly discussions with the Board president. She provided Spady with items to be placed on the agenda and Spady was responsible for creating the agenda. Because Spady and Morrison had worked together for so long, Spady well knew that some items were regularly placed on the agenda, and she would add them as needed. Morrison always proofread the agenda before it went to the Board members. This was never a problem. Sometime in June, 2010, Pemberton was in attendance at a Board meeting when an issue on the agenda was being discussed about which Pemberton had no knowledge. On June 23, 2010, Pemberton issued a memo to Spady advising her that no item may be added to the agenda without her authorization. (P-20)

Newspaper Ads:

Spady had the responsibility of insuring that the Board meetings were properly advertised in the newspapers before the meetings. On one occasion, Birnberg called Pemberton to report that Spady had not submitted paperwork to timely advertise an upcoming Board meeting. The result was that the meeting had to be cancelled.

Spady testified that a special meeting was called by the Board. She was told the Friday before the meeting that the meeting had been called. She faxed the meeting notice to the Trenton Times and Trentonian newspapers, but apparently the newspapers did not receive the notice in time for publication. I credit Spady's explanation of this event.

Evaluation:

In May, 2010, Spady was evaluated by Pemberton. (R-18) She was rated "above expectations" on eight of the twelve categories being reviewed. She was rated "fair" on the categories of productivity and aptitude. On the categories of "independence and dependability" she was given a rating of "below expectations." The evaluation contains a comment that Spady's efficiency will greatly increase once she develops an organizational plan.

Tenure Charges:

In July, 2010, the ties between TCCS and YSI were severed. TCCS no longer leases space from YSI. Lloyd testified that the process of severing ties between the two entities was difficult and acrimonious.

On August 6, 2010 the Board did a reorganization of titles. It abolished Spady's position as Director of Human Resources and put her in the title Student Services Coordinator. (P-31) Pemberton recommended that the Board withhold Spady's increment. The Board adopted Pemberton's recommendation and the increment was withheld.

On August 24, 2010, Pemberton and new Business Administrator Lee Brockington met with Spady to notify her that the Board had voted to terminate her employment with TCCS. Spady then advised Brockington and Pemberton that she had tenure. Pemberton then researched whether Spady did, in fact, have tenure. Pemberton learned that Spady had acquired tenure as an administrative assistant (also referred to with the title secretary) when she had completed three years in that position. While Spady also contends that she had tenure as the Human Resources Director, the record contained no proof of this, and no explanation was provided as to how or when she might have been given tenure in that position.

After Spady was removed from the payroll, new Human Resources Director Kimberly James sent Spady a letter on November 9 advising her that her health benefits coverage was being terminated, notwithstanding that she was on suspension status at that point. (R-5) Pemberton was unaware of that letter. James was later terminated because of the mistakes she was making.

ANALYSIS

The Board argues that Joyce Spady engaged in 11 counts of conduct unbecoming a public employee and therefore should be terminated from her position with the Trenton Charter School. It maintains that taken alone, many of the charges would independently justify dismissal. However, it argues that the totality of Spady's conduct can only lead to the conclusion that she should be dismissed.

Spady maintains that she was a good and loyal employee of the Trenton Charter School for 13 years. She denies that she engaged in wrongdoing on all but one count, and denied that any of her conduct constitutes conduct unbecoming a public employee. Spady asks that the tenure charges be dismissed and that she be reinstated to her position with the School.

N.J.S.A. 18A:17-2 provides that a tenured secretary of a board of education shall not be dismissed, suspended or reduced

in compensation "except for neglect, misbehavior, or other offense." N.J.S.A. 18A:6-10 provides that tenured school employees shall not be dismissed or reduced in compensation "except for inefficiency, incapacity, unbecoming conduct or other just cause."

"Unbecoming conduct" has been defined in In re Tenure Hearing of Motley v. State Operated School District of Newark, EDU 742-97, aff'd as modified, Comm'r (August 4, 1999), aff'd State Bd. of Education (December 1, 1999) as follows:

'Unbecoming conduct' had been defined to include any conduct "which has a tendency to destroy public respect for [government] employees and [confidence] in the operation of [public] services.' Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998). Behavior rising to the level of unbecoming conduct 'need not be based merely upon a violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.' Hartmann v. Police Dept. of Ridgewood, 258 N.J. Super 2, 40 (1992).

The Board has the burden of proving the tenure charges by a preponderance of the evidence. Issues of credibility are for me to resolve. If I find that any one of the charges, if proven, rises to the level of behavior which is so egregious that dismissal is warranted on that count alone, then dismissal will result. Additionally, if I find that the totality of charges, if proven, constitutes unbecoming public employee conduct, then removal may result. N.J.A.C. 6A:11-6.3 provides that the

decision in this matter shall be final and binding. I will examine the charges beginning with the less serious issues.

Pension Enrollment

Spady is accused of unbecoming conduct by failing to timely enroll two newly-hired employees in the New Jersey State Pension System in late 2009. Spady explained that she believed that Alan Tuback and Audrey James, who were hired as part-time workers, were below the minimum required hours for enrollment in the pension plan.⁴ However, the State Division of Pensions fined the district \$10,927 for its failure to timely enroll the employees. Spady accepted full responsibility for the error, and was given a written reprimand. While I find that Spady made a mistake, and that error cost the district a significant expense, that mistake does not constitute conduct unbecoming a public employee.

Health Benefits Enrollment

The Board charges that Spady failed to timely enroll four new hires into the New Jersey State Health Benefits Program between April and July, 2010. Employees are entitled to health benefit coverage starting 60 days after their date of hire. If the employee is not properly enrolled, the employee does not have health insurance coverage. Spady explained that once the

⁴New Business Administrator Lee Brockington also believed that these employees working less than 32 hours weekly were ineligible for pension membership.

application is filed, the State simply mails the identification cards to the employee, and Spady would not know if the card was received unless the employee complained.

Curtis Henderson was hired in April 2010 and completed his enrollment application on April 15. The other three were hired in July. While Spady testified that she submitted all of the forms to State Health Benefits "immediately" after the employees were hired, I cannot credit this testimony, at least not with regard to Henderson. Henderson's enrollment application form, (P-40) shows that Spady did not sign the form until May 21. I infer that the form was not submitted to the State until after Spady signed it. Pemberton credibly testified that she found health benefit enrollment applications in Spady's office after her removal from her position in August.

Spady believed that the applications were returned from State Health Benefits for additional information, which she obtained, and in Henderson's case, she then resubmitted the form to the State. In the case of the other three hires, she had not had a chance to resubmit the forms before she was removed from her position. She noted that she lacked a computer and an assistant in July, and was given additional responsibilities.

One of Spady's responsibilities as Human Resources Manager was to make sure that employees were timely and properly enrolled in the health benefits plan. I believe it unlikely

that all four hires had their enrollment applications returned, but even if that occurred, it was Spady's job to submit the forms timely in the first instance and to timely make corrections. Moreover, as Human Resources Director, she could have devised a method to check back with employees to insure that they had received their identification cards instead of waiting for the employee to complain. Her failure to timely enroll eligible employees put the school at risk of directly reimbursing employees' medical expenses if no coverage was provided for a medical emergency or condition. I therefore find that Spady was guilty of not fully performing her duties by failing to timely enroll employees within 60 days of their hire. However, I do not find that this misfeasance is sufficient cause for her removal from her position.

Advertising

The Board charges that Spady failed to properly advertise a Board meeting, resulting in the meeting's cancellation. Spady credibly testified that she herself was not given adequate notice of the meeting, but nevertheless did her best to get the notices in the newspapers. I find no evidence of any wrongdoing on Spady's part with regard to this incident.

Conflict of Interest

Spady is charged with having a conflict of interest because of her familial relationships with a member of the Board

of Trustees and members of the staff. I find, based upon the testimony of Spady, Lynn Williams and Lloyd, that Spady's relationships were fully disclosed. The Board has not proven that Spady is guilty of any wrongdoing with regard to this allegation.

Board Agenda Items

Spady is charged with adding items to the Board agenda without authorization from Pemberton. Part of Spady's responsibilities included the role of recording secretary for the Board of Trustees. The testimony of Morrison and Spady establishes that it had long been part of Spady's duties to assemble items for the agenda, based upon what she knew through experience to include every month, plus what the Director told her to place on the agenda.

In January, 2010, Spady had a new boss. Until Spady was told to modify her practice, she had no basis to change what she had been doing all along. One of the basic elements in assessing alleged employee misconduct is whether the employer had a work rule in place that the employee allegedly violated, and whether the employee knew of this rule. Norman Brand, Discipline and Discharge in Arbitration, The American Bar Association, Chicago (1998). If the employer expects compliance with a change in procedures, the employee must be notified of the change. Until Pemberton advised Spady that she did not want

her to add items to the agenda without Pemberton's permission, Spady had every right to continue to do what she had been doing. I find no evidence of misconduct on Spady's part.

Spady's Dual Employment

The Board charges that Spady regularly performed work for YSI during her TCCS work hours as established by her employment contract with the Board. Contrary to Spady's claims that she only did YSI work before and after TCCS work hours or during lunch, I have found as a fact that Spady, as well as the other shared employees, regularly integrated their work between the two entities. This had been the case since TCCS was first founded in 1997. Morrison credibly testified that both the YSI Board and the TCCS Board were well aware of this arrangement from the beginning.⁵ Most importantly, the School's Charter authorized the sharing of employees. The dictionary definition of "sharing" is "to take equal responsibility for something along with other people: or "to allocate equal parts of something to different people or groups." This was the long standing practice -- that both entities shared the employees' time until 2010. Of course, Spady was the last of the shared employees. If TCCS desired to change the arrangement, it needed

⁵ Although Board members were replaced over the years, the newer Board members may not have been fully aware that "shared employees" meant a shared workday. This is of no moment, because the current Board is bound by the policies approved by its predecessors unless it acts to change the policy.

to notify Spady that sharing her work time was no longer an acceptable practice. Pemberton did not in the summer of 2010, and there is no evidence that Spady failed to comply.

Given the totality of circumstances concerning the shared employees, I find that Spady did not engage in any misconduct by performing YSI work during the 8:30 t 4:30 workday.

Vacation Leave Carryover

The evidence shows that Spady had responsibility to keep time records for the shared employees. Spady is accused of permitting employees to "carry over" vacation time from one year into the next contrary to Board policy. The evidence supporting this allegation, together with Spady's explanation, presents an enigma. The Employee Personnel Handbook (J-2) prohibits an employee from carrying over vacation days from year to year. Because the contract between the Board and the Education Association only covers 10-month employees, there is no vacation benefit. Therefore, there can be no claim that the contract provided a precedent for accruing vacation time. Accordingly, if Spady permitted employees to carry over vacation time, then she violated the Employee Personnel Handbook.

The record is unclear whether a "year" means a calendar year (January through December) or an academic year (July through June). Employment contracts are based upon school year, but the attendance calendars in evidence are set up by the

calendar year. The attendance records for 2009 and 2010 for Spady and Roberts each show an entry for "vacation carryover." Spady's explanation for what appears to be carryover is that an employee accrues vacation time during the school year, which is then available to use beginning in July - the start of the next school year. This explanation is logical so far. The Handbook further states that vacation time must be used during July and August unless pre-approved [to use at another time] by the employee's supervisor [which I will refer to as a waiver]. A strict reading of the Personnel Manual would dictate that, absent the waiver, any unused vacation time would then expire at the end of August, and the employee would start earning new vacation days to be used the following summer. I note that the record does not show whether employees were actually "pre-approved" for the waiver or not. It appears that this was the intent or the language in the Personnel Manual.

However, Spady goes on to explain that the employees earned unused vacation days are than available to the employee to use the following year (presumably before the next June). Thus, the employees would always have a bank of unused days from one school year plus whatever was earned the following school year. I note that Spady's method is at last a plausible explanation of the calculation.

Moreover, Spady's defense of her calculation methods is that she had "always done it that way." Spady used this method for all of the shared employees, including for Morrison's vacation time. It would be difficult to imagine that Spady was using this calculation method without Morrison's knowledge and approval, since they worked together in the same office for 13 years.

In balancing whether Spady should have followed the strict meaning of the language of the manual or followed the long-standing practice approved by her director, I find that Spady was not guilty of malfeasance, deliberate misconduct or conduct unbecoming a public employee by her vacation calculation method.

Payment of Incentive Days

The Board charges that Spady inappropriately and without authority, authorized incentive payments to non-union staff in July and October 2009 and again in June 2010. The Education Association's contract provides for certain cash payments to employees who use less than three sick days in a year. Spady contends (1) that she did not know about these payments until well after they occurred, and (2) that it had long been the practice to pay the incentive payments to the staff. I find that this charge lacks sufficient evidence to prove that Spady knew about or authorized these payments. Therefore, I find no misconduct on Spady's part concerning this allegation.

Payments of Unused Leave Time Upon Severance

This is by far the most serious issue. The Board charges Spady with promising Morrison and Roberts payment for their unused sick and vacation time, and then directing payment to Morrison for 100 sick days and 25 vacation days, all without authorization from the Board of Trustees or even approval of her supervisor. The Board charges that Spady's actions were in contravention of the Employee Personnel Manual and were also illegal. Spady has two defenses to this charge: (1) that it has been a long-standing practice, authorized by the Board, to apply the benefits of the teacher's contract to the non-union TCCS employees, including the payouts of sick and vacation leave upon an employee's severance from the district; and (2) that she advised Board President Lloyd and/or Pemberton that she was making the payments.

First, I do not credit Morrison's testimony that the Board of Trustees authorized such payments. Any "blanket" authorization by the Board for payment to employees in perpetuity is unlikely to be undocumented. No Board minutes were produced to substantiate this claim. Further, it would be contrary to statute, which requires a Board vote for approval of such expenditures. N.J.S.A. 18A:19-1 and 2. It is likely the Board and Morrison would have known about this requirement.

Second, it defies logic that if such a practice of paying sick leave had been in place for several years, that Spady would have continued to publish a personnel handbook which provides that employees do not get paid sick leave upon resignation or termination. Why would the handbook be out of sync with the practice if such a practice existed? Further, it was not until May, 2009 that the provision for payment for half of unused sick leave upon employment severance was added to the teachers' contract; prior to that, there was no such provision in the teachers' contract. Therefore, there certainly could not have been a long-standing practice of paying out sick leave upon severance based upon an extension of the teachers' benefits.

Having discounted Spady's testimony that the payment of sick leave was a long-standing past practice, I find no evidence to support the premise that such a practice existed. Further, I find no evidence that the Board ever authorized sick leave payments upon employee resignations or terminations.

As to the payout of unused vacation days, I credit Morrison's and Spady's testimony that there had been along practice of paying employees for their unused vacation days upon resignation or termination. This is consistent with the manual, which provides,

All full-time employees who resign or are terminated will receive payment for any earned unused vacation days for that calendar year. . . .

However, the manual is very clear that only the unused vacation days for that calendar year will be paid out. The import of this is that the manual did not authorize payment of unused vacation days left over from a prior year, only payment for that calendar year. Whether a calendar year is treated as January through December or as a school year, the greatest number of vacation days one could possibly earn in one calendar year is 20 days. Thus, to the extent that Spady offered Morrison 25 days vacation pay and offered Roberts payment for 28 vacation days - in each case more than a one-year allotment - Spady exceeded what the manual states was permitted.

I find that Spady acted in violation of the Personnel Manual by promising payment of both unused vacation days in excess of one calendar year, as well as sick days to Morrison and Roberts. Further, I find that she acted without authority from the Board of Trustees, from Lloyd, or from Pemberton.

N.J.S.A. 18A:19-2 provides, in part:

No claim or demand against a school district shall be paid by the secretary or treasurer of school moneys, as appropriate, unless it is authorized by law and the rules of the board of education of the district, is fully itemized and verified, has been duly audited as required by law, has been presented to, and approved by the board at a meeting thereof. . .

Pursuant to the above statute, the payments must have been authorized by the Board. If the Board did not authorize the payments, then the payments were illegally made.

Spady's claim is that she was following past practice, which was to make the payments for unused leave time upon severance, and to do so without separate Board authorization. As found above, that could not have been the practice for paying out unused sick leave upon severance because the teachers did not even have such a benefit until May 2009. Even assuming for the sake of argument that that had been a practice, following past practice is not a defense if the action is in violation of the law. That is the case here.

I find that Spady committed the School to making payments of unused sick leave to Morrison and Roberts without authorization from the Board, in contravention of the Employee Personnel Manual and the law. I find that Spady issued checks to Morrison for unused sick leave without authorization and in violation of N.J.S.A. 18:19-2. I find that Spady issued a check to Morrison for unused vacation leave in excess of the "one calendar year" amount permitted by the Employee Handbook and without Board authorization. I find that, concerning this charge, Spady is guilty of conduct unbecoming a public employee.

Spady's Untruthfulness in the Investigation

Spady is charged with being untruthful in her responses to questions from Pemberton and the Board about her issuance of the payments to Morrison and promise to pay Roberts. Spady told Pemberton first that she had sent an email advising Pemberton about the payments and later that she had sent an email to Lloyd, or perhaps it was a letter. I have found as a fact above, that no such letter or email was sent, and in fact, the Board was not advised of the payments until it was a *fait accompli*. I find that Spady's untruthfulness in responding to investigative questions from representatives of the Board amount to conduct unbecoming public employee.

CONCLUSION

The tenure charges against Joyce Spady is Charges 1⁶, 4, 8 and 12 are sustained. The remaining tenure charges are dismissed. Joyce Spady has committed acts of conduct unbecoming a public employee as found above. Pursuant to N.J.S.A. 18A:6-10, there is good cause to terminate Joyce Spady, effective immediately.

⁶Charges 2 and 3 are the same as 1.

/S/ Susan W. Osborn

Susan Wood Osborn
Arbitrator

DATED: May 23, 2011
Trenton, New Jersey

