

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
THERESA A. LUCARELLI ORDER OF REVOCATION ON REMAND
_____ : DOCKET NO: 469-04/98-169

At its meeting of April 2, 1998, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Theresa Lucarelli from her tenured position with the Board of Education of the Borough of Brielle for charges of unbecoming conduct. Lucarelli currently holds Teacher of Physical Education and Teacher of Health and Physical Education certificates.

This case originated on August 29, 1995 when the Brielle Board of Education certified tenure charges against respondent, Theresa Lucarelli. Lucarelli was employed as a Teacher of Physical Education. The district charged her with unbecoming conduct for threatening the district Superintendent in a series of written communications. Lucarelli had sought to make the Superintendent change his mind and recommend tenure for one of her colleagues.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Lillard A. Law heard testimony on several days in November 1996. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on March 10, 1997.

In that decision ALJ Law found that Lucarelli had sent her Superintendent a series of handwritten notes. The intent of these notes was to force the Superintendent to recommend one of Lucarelli's colleagues for rehire. That individual, Angelo Vasquez, had not been recommended for tenure. Lucarelli threatened to reveal information about

the Superintendent's alleged drug use. She also cautioned the Superintendent that things "would get dirty." (Initial Decision, slip op. at 6).

After considering all the testimony, ALJ Law found that Lucarelli's conduct was improper. The Judge found that Lucarelli had written those notes to her Superintendent. He also found that subsequent activities in the school, such as a petition drive, ribbon-wearing campaign and sit-in, occurred because the controversy had flowed over into the classroom. (Initial Decision, slip op. at 7-8). Judge Law also noted that Lucarelli was indicted for criminal coercion and subsequently entered a Pre-trial intervention (PTI) program. (Initial Decision, slip op. at 9-10).

Judge Law also reviewed the testimony on Lucarelli's behalf. Lucarelli's witnesses testified as to her good character and the outstanding job that she did as a teacher. None of them addressed the issue of the letters Lucarelli had written to her Superintendent. The ALJ therefore concluded "that the Board has demonstrated, by a preponderance of the credible and un rebutted evidence, that the charge of unbecoming conduct of a teaching staff member brought against respondent Theresa Lucarelli is true, in fact." (Initial Decision, slip op. at 12).

In considering the appropriate penalty, the Judge Law examined Lucarelli's unblemished record. That mitigating factor, however, did not outweigh Lucarelli's improper conduct. (Initial Decision, slip op. at 30). Moreover, notwithstanding that Lucarelli had successfully completed her PTI program, "the fact remains that she is alleged to have committed and (*sic*) indictable offense against her Superintendent of Schools; *i.e.*, criminal coercion, N.J.S.A. 2C:13-5." (Initial Decision, slip op. at 30). The ALJ's review of the pertinent case law convinced him that the Commissioner was "not

only permitted but, rather, obligated to view the elements underlying the charge, notwithstanding respondent's successful completion of PTI." (Initial Decision, slip op. at 31). Thus, based on his review of the entire record, the ALJ concluded that Lucarelli's breach was too substantial to allow for her continued employment in the district. (Initial Decision, slip op. at 31-32). Consequently, the ALJ ordered Lucarelli dismissed from her tenured employment.

In a decision dated April 28, 1997, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Lucarelli.¹ The Commissioner agreed with the ALJ that the local board had proven its case against Lucarelli with regard to the tenure charges of unbecoming conduct. (Commissioner's Decision, slip op. at 48). The Commissioner disputed Lucarelli's claim that her notes were not threats and in fact emphasized that Lucarelli never denied their existence. Indeed, the Commissioner held that the notes were significant because "by their very language [they] demanded particular action of the superintendent and predicted negative consequences if he did not so comply; thus, these memoranda constituted threats to the superintendent." (Commissioner's Decision, slip op. at 48). The Commissioner found that the writings' effect on the superintendent was immaterial; it was Lucarelli's declaration of intent to cause harm that mattered. Thus, the Commissioner found that "the writings evidence, in and of themselves, improper conduct." (Commissioner's Decision, slip op. at 48-49). Accordingly, the Commissioner affirmed Lucarelli's removal from her tenured employment with the Brielle Board of Education and transmitted the matter to the State

¹ The Commissioner modified a portion of the Initial Decision that involved Lucarelli's claim for back pay. That issue is not relevant here and is not addressed in this decision.

Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Lucarelli's certificates.

Thereafter, on June 9, 1998, the State Board of Examiners issued an Order to Show Cause to Lucarelli as to why her certificates should not be or suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Order to Show Cause was mailed to Respondent by regular and certified mail on June 9, 1998. The Order provided that if respondent desired to file an Answer to the Order that Answer must be filed within twenty (20) days. Lucarelli filed an Answer on June 30, 1998. In her Answer Lucarelli admitted that the district had brought tenure charges against her. She also stated that the other paragraphs in the Order to Show Cause referred to a tenure case which "speaks for itself and thereby requires no answer except that the findings therein do not provide cause for the revocation or suspension of Ms. Lucarelli's licenses to teach physical education and health." (Answer, ¶¶ 2-12). In the remainder of her Answer, Lucarelli reiterated her lifelong dedication to the teaching profession and claimed that her loss of tenure after 23 years in the district was sufficient punishment.

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on September 24, 1998, a hearing notice was mailed by regular and certified mail to Lucarelli. The notice explained that, since it appeared no material facts were in dispute regarding the tenure charges, respondent was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder. It also explained that, upon review of the charges against

her and the legal arguments tendered in her defense, the State Board of Examiners would determine if her offense warranted action against her certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

Lucarelli responded to the Hearing Notice on October 6, 1998. In that letter and an attached certification, Lucarelli claimed that her actions were a “byproduct of intense contact” with the superintendent arising out of Lucarelli’s union duties. (Hearing Response, p. 2; Certification of Theresa A. Lucarelli, ¶¶ 1-18). She also stated that her long and unblemished record mitigated her actions.

At its meeting of November 5, 1998, the State Board of Examiners reviewed Lucarelli’s case, including all of her submissions to that tribunal. After an independent review of the record, the Board of Examiners concluded that Lucarelli should not be allowed to teach in any New Jersey public school and revoked her certificates. Lucarelli appealed to the State Board of Education, which summarily remanded the matter to the Board of Examiners for an assurance that its decision was reached independently.

The threshold issue before the State Board of Examiners in this matter, therefore, is to make an independent determination from the facts established in the tenure matter as to whether Lucarelli’s conduct and her subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of November 5, 1998, the State Board of Examiners had reviewed the charges and papers filed by respondent in response to the Order to Show Cause. After reviewing her response, the Board of Examiners independently determined that no material facts related to Lucarelli’s offense were in dispute since she only argued that the appropriate penalty *i.e.*, her loss of tenure, had already been rendered and that her actions, while not threats, were motivated by her

union position. Thus, Lucarelli did not deny the charges in the Order to Show Cause. Accordingly, her actions regarding her superintendent constituted conduct unbecoming a certificate holder.

The State Board of Examiners must now independently determine whether Lucarelli's offense as set forth in the Order to Show Cause, represents just cause to act against her certificates pursuant to N.J.A.C. 6:11-3.6(a)1. After our independent review of the record, we find that it does.

The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. N.J.A.C. 6:11-3.4. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Board of Education, 130 N.J.L. 369, 371 (S. Ct. 1943), aff'd. 131 N.J.L. 326 (E & A 1944). "Teachers... are professional employees to whom the people have entrusted the care and custody of ... school children. This heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment." Tenure of Sammons, 1972 S.L.D. 302, 321.

While Redcay and Sammons specifically address the issue of tenure, this Board is farsighted enough to realize that their principles apply equally in cases that involve the loss of certification. It is incumbent upon this Board to safeguard New Jersey's public schools from individuals who would undermine their stability. Removing inappropriate individuals from only one district through the loss of tenure does not accomplish our goal. Moreover, it would send the wrong message, both to the children who deserve our protection and the many dedicated professionals who deserve our respect.

In fact, the Supreme Court of this State agrees that eliminating undesirable members from a profession is a necessary public service:

The purpose of a disciplinary sanction, whether it be a reprimand, suspension, or a disbarment, is not punishment, but maintenance of the integrity and purity of the bar, elimination of unfit persons from the practice of law, and vindication of public confidence in the bar and the administration of justice.

In Re Logan, 70 N.J. 222,227 (1976). The Court's words in Logan, while referring to attorneys, are pertinent to teachers as well. Revocation proceedings, when taken to the ultimate conclusion, allow the profession to maintain high standards as well as protecting the public from those teachers who ought not to be in a classroom.

Furthermore, in suspending or revoking a teaching certificate, the State Board of Examiners applies a standard that, although not the same as that used for tenure decisions, is just as exacting. It is a standard that differs only in scope, not depth. In other words, this Board's decisions regarding the loss of a certificate cannot be held to a more stringent standard than those of the Commissioner regarding the loss of tenure. Rather, the Board of Examiners' view is more "global" than local since it must make its decisions in the context of removing a teacher from all classrooms in the state and not just one district. See In the Matter of the Revocation of the License of Polk, 90 N.J. 550 (1982)(evidentiary standard to be used in an administrative proceeding regarding the revocation or suspension of a professional license is a fair preponderance of the evidence and not a higher standard.)

Therefore, after an extensive review of the record, it is the Board of Examiners' independent determination that Lucarelli's actions, taken as a whole, render her unfit to teach in any public school system in New Jersey. There can be no dispute that

threatening her superintendent negates any claim Lucarelli can have to self-restraint. Her inability to deal with a conflict in a civilized, constructive manner speaks volumes about her lack of control. This volatility does not belong in a classroom, any classroom. Thus, the only proper response to Lucarelli's breach is revocation.

Accordingly, it is therefore ORDERED that Theresa Lucarelli's Teacher of Physical Education and Teacher of Health and Physical Education certificates be revoked on this 23rd day of September 1999. It is further ORDERED that Theresa Lucarelli return her certificates to the Secretary of the State Board of Examiners, Office of Licensing, CN 500, Trenton, NJ 08625-0500 within fifteen (15) days of receipt of this decision.

Secretary
State Board of Examiners

Date of Mailing: September , 1999

Appeals may be made to the State Board of Education pursuant to the provisions of N.J.S.A. 18A:6-28.

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