

State of New Jersey
Department of Education

In the Matter of the Tenure)
Charges Against)
Daniyelle Lyles-Barnes)
Pleasantville Board of) Agency Docket No. 89.3/16
Education (PBOE))
Atlantic County) June 29, 2016

Issue: Did the School District have just cause to terminate the Respondent, a non-teaching tenured employee, for fighting with a fellow employee during school hours?

Location of Hearing: Pleasantville, New Jersey

Date of Hearing: May 24, 2016

Record Closed: June 7, 2016

Appearances: Michael B. Berman, Esquire
 For the Respondent

 Benjamin Brenner, Esquire
 For the PBOE

Lewis R. Amis
Arbitrator

BACKGROUND

The Pleasantville School District approved tenure charges pursuant to N.J.S.A 18A:6-10 and 6-11 against the Respondent, Daniyelle Lyles-Barnes, a tenured support staff member in the curriculum and instruction office, on December 15, 2015. The formal charge against Barnes placed before the Commissioner of Education and dated December 23, 2015 was that she engaged in conduct unbecoming a staff member. Specifically, she was accused of using "crass and vulgar language toward another staff member" which confrontation devolved into a physical altercation with that staff member. The incident leading to the Respondents tenure charges and termination occurred on September 14, 2015, and is described as follows in the formal charge:

During the lunch break the Respondent was in her normally assigned area, the office of the vice principal, Dr. Bailey. The other actor, Havanna Berry, had been asked by another employee, who otherwise is not involved in this matter, to deliver a bottle of salad dressing to Bailey. Berry in making her delivery entered Bailey's office. Berry recently had been promoted to the position of Director of the C.A.R.E. program in the district and had some control over who was assigned to work in the program.¹ While Berry was in the office, Barnes asked why she was not on the C.A.R.E provider list. Berry responded that everyone knows she (Barnes) does not like children. Berry then returned to the C.A.R.E. office.

¹The C.A.R.E. Program conducts educational enrichment programs after school and at a summer camp under the auspices of the No Child Left Behind Act of 2001.

Shortly thereafter, Barnes went to the C.A.R.E. office and confronted Berry about the remark she had made that Barnes did not like children. According to Barnes, Berry said, "I'm a bitch that say what I mean and mean what I say." Berry then accused Barnes of speaking negatively about her. Barnes denied the accusation, saying, "Bitch, I don't give a fuck about you." Berry said, "Who are you talking to?" Barnes replied, "I'm talking to you."

Berry then got up from her desk, walked around a nearby credenza and headed toward Barnes, who was standing before the office door. Berry slapped Barnes in the face, and the two started to wrestle, punching, pushing, and pulling hair. The two shortly were separated by security employees.

The Petitioner School District concludes its charge:

Respondent's vulgar and crash(sic) language and her participation in a physical altercation interfered with the quality of the educational and professional environment of the school, the students' education, and created an unsafe working environment for other District employees, and thus is conduct unbecoming a staff member.

WHEREFORE, Respondent should be terminated for unbecoming conduct.

December 23, 2015. /s/Leonard Fitts PhD
Superintendent

Barnes filed assault charges against Berry with the local police, and the school district filed similar charges against Barnes. Both later dropped those charges. The School District, however, filed tenure charges against both employees, seeking to terminate their employment.

According to Barnes, her conversation with Berry about getting a position in the C.A.R.E. program and her remark about not liking children began as an innocent joke some weeks earlier and that Berry had said that when she returned from vacation she

would discuss Barnes' being placed on the program. It was with the thought of clarifying this matter, Barnes stated, that she approached Berry on September 14 following their exchange in the curriculum and instruction office. Barnes characterizes Berry's behavior as becoming more and more confrontational. Essentially, she does not contest the description of events as set forth by the district.

It is noted that the events described here took place away from the direct observation of students and teaching staff. The C.A.R.E. office, however, is located near at least two or three active classrooms. No evidence was presented showing any immediate disruption or disturbance of classroom routines because of the altercation between Barnes and Berry. I may be presumed, however, that knowledge of the matter spread quickly through the district.

The School District contends that following N.J.S.A. 18A:6-10 and 18A:6-11, there is probable cause to credit the evidence in support of the tenure charges against the Respondent, showing that she engaged in conduct unbecoming an employee and neglected her duties. Further, the School District argues that the charges and supporting evidence herein are sufficient to warrant dismissal.

The Respondent contends that there is no creditable evidence that she engaged in conduct unbecoming an employee or that she was negligent in her duties. Rather, the Respondent states, she became embroiled in the altercation described here only to defend herself from attack by the other employee. For that reason, Respondent would have all charges dropped and all lost wages and benefits reimbursed.

DISCUSSION AND FINDINGS

This is one of those termination cases that did not have to happen. The issue here involves only one of the participants in the altercation here at issue, but it is clear from her behavior that she became too deeply embroiled in the argument preceding the fight to allow her to escape significant responsibility for the incident on September 14, 2015.

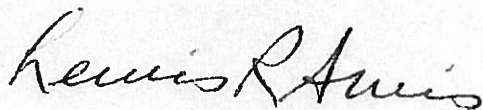
It was reasonable for the Respondent to inquire about a position in the C.A.R.E program while Berry was in the curriculum and instruction office. When Berry apparently brushed off her question, it was still reasonable for her to go to the C.A.R.E. office looking for an explanation. Her opening remark there was confrontational, but not on its face sufficient to warrant Berry's response: "I'm a bitch that say what I mean and mean what I say." That clearly crosses the line of acceptable behavior. Instead of backing off, however, the Respondent responded in kind, using "fighting words", and the matter escalated to physical violence. The evidence is clear enough that Berry threw the first punch or slap, but the Respondent also became fully engaged. She had plenty of opportunity to back off, not retaliate, verbally or physically. She did not choose the peaceful course; therefore, she cannot be exonerated or relieved of responsibility for engaging in the fight with Berry.

It goes without saying that violence in any workplace need not be tolerated. This principle is especially relevant in an educational setting where a core value should be the use of reason as opposed to irrational force to resolve differences. The Respondent's argument that there were no repercussions from the altercation that affected the pedagogical and administrative stability of the district, is without merit. Even though there

were no student witnesses, the fight was a public event in a public setting, and it was highly publicized. The district had no choice but to respond firmly, as it did. The Respondent's dismissal, therefore, will be upheld.

AWARD

The Petitioner, Pleasantville Board of Education, had probable cause under N.J.S.A. 18A:6-10 and N.J.S.A. 18A:6-11 to institute tenure charges against the Respondent, Daniyelle Lyle-Barnes. The charges against the Respondent warrant dismissal; therefore, her appeal is denied.

A handwritten signature in cursive script, reading "Lewis R. Amis". The signature is written in dark ink on a light-colored background.

Lewis R. Amis, Arbitrator

June 29, 2016