

IN THE MATTER OF : NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF : STATE BOARD OF EXAMINERS
FRANK FUZY III : ORDER OF SUSPENSION
_____ : DOCKET NO: 2021-108

At its meeting of December 10, 2020, the State Board of Examiners (Board) reviewed a tenure arbitration decision regarding Frank Fuzy III, a former tenured teacher in the Westfield School District (Westfield). Westfield certified tenure charges against Fuzy for unbecoming conduct and other just cause after he allegedly made threatening comments about his physical stature and his gun ownership, among other allegations detailed below.

On December 16, 2019, the Arbitrator assigned to the case pursuant to *N.J.S.A.* 18A:6-16 found that Westfield demonstrated the truth of the charges and dismissed Fuzy from his tenured employment. *In the Matter of the Tenure Hearing of Frank Fuzy III*, Dkt. No. 4-1/19 (Arbitrator’s Decision, December 16, 2019). The matter was referred to the New Jersey State Board of Examiners (Board) for review.

On or about December 27, 2018 Westfield brought tenure charges against Fuzy for allegedly commenting to other staff members that he owns multiple guns, including an AR-15; informing staff members that he keeps a gun in the glove compartment of his car; that he would run out to his car if he needed to use a gun; commenting in 2016 to a staff member to not be surprised if he came back to take care of some people; frequently posting about guns on social media; showing pictures of guns to staff members; causing fear of harm in other staff members as a result of Fuzy’s statements; making specific threatening comments to another staff member in connection with an observation; expressing anger about being asked to participate in observation and refused to cooperate with the observation; when discussing the observation, commenting to a staff member that he is “six feet tall, weighs 230 pounds and has 26 guns” and repeating this statement seven times; in response to seeing a deer on school property, telling another staff member that he wished the deer would escape and injure students so the principal would look bad; picking a student up by her feet and also disparaging the student in front of her entire class; yelling at his students and asking “what are you stupid” and causing student(s) to cry; after being advised not to contact

staff or students during suspension, requesting some staff cooperate with a private investigator in support of him; leaving voicemails for staff members telling them not to believe what they hear about him.

In the Arbitrator's decision (which is incorporated herein by reference), she found that Fuzy made "generalized threatening comments to another staff member in connection to a request for an update on an agreement between the school principal and Fuzy that he would observe another math class." Arbitrator Decision at p. 29. Further, it was found that Fuzy repeatedly commented to another staff member about his height, weight, and gun ownership; and those comments caused other staff members to be intimidated and fearful of harm. Id. The Arbitrator further found that "any threat, whether actual or implied that could lead to harm of anyone in the school community and 'breaches the obligation of a teacher to be a role model to students and to comply with the implicit standard of good behavior' required of a teacher." Id. at p. 30.

The Arbitrator also substantiated Charge Number Two to the extent the Fuzy's comments regarding the deer on school property demonstrated his animosity towards his building principal. Id. at p. 30. Additionally, the Arbitrator found that Fuzy called a student "stupid," causing the student to cry, and that this conduct demonstrates Fuzy's inability to self-restrain. Id. at p. 32.

On December 16, 2019, the Arbitrator found that Fuzy's threatening statements about guns and his expressions of anger that were incongruous with the situation constitute unbecoming conduct.

Fuzy currently holds a Teacher of Elementary Grades K-8 Certificate of Eligibility with Advanced Standing, a Teacher of Elementary Grades K-8 standard, Supervisor certificate, and Principal Certificate of Eligibility. After reviewing the above information, at its January 22, 2021 meeting, the Board voted to issue an Order to Show Cause to Fuzy as to why his certificates should not be revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

The Board sent Fuzy the Order to Show Cause by regular and certified mail. The Order provided that Fuzy's Answer was due within 30 days. Fuzy filed his Answer on February 25, 2021. In that Answer, Fuzy admitted that Westfield brought tenure charges against him but denied the allegations that he made threatening comments about his physical stature and gun ownership. *See Answer at ¶2a.* He further alleged that the Tenure Charges were not properly served and Westfield violated its own Policy 3510 regarding

same. *Id.* at ¶ 2b. Fuzy additionally indicated that the key witness at the tenure arbitration hearing was biased against him; Westfield was permitted to present unsupported and uncorroborated hearsay documents and that Westfield's counsel was allowed to testify about alleged hearsay. *Id.* at ¶¶ 3 and 4. Much of the Answer challenges the tenure arbitration proceedings and decision. Nevertheless, Fuzy continued to deny the allegations that resulted in his loss of tenure.

Thereafter, pursuant to *N.J.A.C.* 6A:9B-4.6(e), on January 19, 2021, the Board sent Fuzy a hearing notice by regular and certified mail. The notice explained that there appeared to be no material facts in dispute. Thus, Fuzy was offered an opportunity to submit written arguments on the issue of whether the conduct addressed in the Order to Show Cause provided just cause to take action against his certificates as well as arguments with regard to the appropriate sanction in the event that the Board determined to take action against his certificates. It also explained that upon review of the charges against him and the legal arguments tendered in his defense, the Board would determine if Fuzy's offense warranted action against his certificates. Thereupon, the Board would also determine the appropriate sanction, if any. Fuzy was also offered the opportunity to appear before the Board to provide testimony on the sanction issue. Fuzy filed a written response on February 24, 2022. Fuzy also asked to appear before the Board.

In his Hearing Response, Fuzy argued that his certificates should not be revoked due to deficiencies in the tenure hearing process. *See* Hearing Submission at p. 4. Specifically, Fuzy argued that the Arbitrator did not rely upon credible evidence and the charges were not specific. *Id.* at p. 4-7. He indicates that the Arbitrator relied upon hearsay and the unsupported testimony of Westfield employees while ignoring the testimony from teachers, staff, parents, and students with firsthand knowledge of Fuzy's lengthy career and positive interactions in the school community. *Id.* at p. 5. Fuzy requests that the Board carefully review Ms. Alston's testimony because he believes it was biased, impeached, and uncorroborated. *Id.*

Fuzy further indicated that Westfield offered no evidence of Tenure Charge 2; there was an "appalling lack of evidence" for Tenure Charge 5. *Id.* at p. 8-9. He further states that the evidence of yelling at students is "unconvincing and unsubstantiated." *Id.* at p. 10. He further argued that Westfield's disciplinary procedures violated his right to due process. *Id.* at p. 12.

Additionally, Fuzy states that his conduct does not warrant the suspension or revocation of his certificates as it is not sufficiently “unbecoming” to justify such a penalty. *Id.* at p. 13. He argues that the Arbitrator disregarded the *Fulcomer* factors when rendering the award. *Id.* at p. 14. Specifically, he states that the *Fulcomer* factors weigh in favor of dismissing the tenure charges and against imposing the ultimate penalty of revoking his teaching certificates. *Id.* Fuzy includes detailed information on his 23 years of teaching and the exemplary record as an educator. *Id.* at p. 17-21.

In testimony before the Board, Fuzy’s attorney, Ty Hyderally, stated that revocation is not warranted and that Fuzy has a demonstrated good record as an educator. He argued that the *Fulcomer* standards mitigate damages here. Specifically, Fuzy is a lawful gun owner, there was no other progressive discipline, and revocation of his certificates will be devastating. He further cites other cases such as *Liebowitz*, *Flaherty*, *Weckesser*, and *Valencia* to indicate a lesser penalty is appropriate.

Additionally, Mr. Hyderally stated that of 9 board members in Westfield, five (5) voted to bring the Tenure Charges. He also indicates that Fuzy is regarded as caring and committed to students. Mr. Hyderally also indicated that Fuzy had several individuals who wished to make statements on his behalf.

Fuzy presented his wife, Maria Elena Fuzy. Mrs. Fuzy indicated that they have 2 daughters. Fuzy is a kind, caring and effective educator who made a difference. He coaches an 8U softball team; loss of his certificates is a loss to the community. He belongs in a classroom.

Fuzy also presented Jennifer Davenport, who stated that Fuzy is a “standup guy” who is selfless and reliable. Lisa Blitt also testified that her 3 children were always comfortable with Fuzy and he made peace between students. Dr. Blank, a Board-certified psychologist, indicated that Fuzy was likeable and articulate; he was appropriate and calm, anxious but not angry.

M.Z. (a child and therefore identified by initials) offered that Fuzy is an amazing coach and she would love to have him as a teacher. E.Z. (a child and therefore identified by initials) indicated she feels very safe with Fuzy and always knows he is there for her. Jean Jensen, a former nurse at Westfield, offered that Fuzy is kind; he helped students resolve disagreements and was open to suggestions. Fuzy is a proud and strong family man; it would be a disservice to the teaching community to lose him. Gary Zielinski

stated that he is a 14-year teacher in Jersey City, and he trusts Fuzy with his own children and wishes the best for him.

Finally, Fuzy made a statement on his behalf. He is from a long line of teachers and it is very important to him. He wishes he could go back and handle the situation differently. Being out of the classroom is a daily struggle for him. Revocation would be overly harsh punishment as he has already been out of the classroom for four (4) years.

Additionally, Fuzy had several witnesses who were unable to attend the hearing. In lieu of attendance, they submitted written and/or prerecorded video statements. The written/recorded statements were reviewed by the Board prior to rendering a decision in this matter. The statements were from the following people: Tate Esler, Victor Alfonso, Carrie Drake, Patricia Doyle.

The threshold issue before the Board in this matter, therefore, is whether Fuzy's conduct constitutes conduct unbecoming a certificate holder. At its meeting of June 30, 2022, the Board considered the allegations in the Order to Show Cause as well as Fuzy's Answer, Hearing Response and all of the testimony and statements submitted to the Board both live and written or prerecorded. The Board determined that it was constrained by collateral estoppel to accept the facts as found in the tenure hearing and therefore no material facts related to Fuzy's offense were in dispute. *See In the Matter of the Certificates of Richard Barnes-Bey*, Dkt. No. 1314-194 (Bd. Of Examiners September 17, 2015) (Collateral estoppel applies to facts established in a prior tenure hearing for Board revocation proceedings).

The Board notes that while Fuzy zealously argued that the Arbitrator relied on inconsistent testimony, gave credibility where there was inconsistent testimony, along with other concerns, the Board is not the appropriate body to find that the Arbitrator's decision was in error or without sufficient factual basis. Moreover, the Board cannot overturn the credibility determinations made by the Arbitrator. The Board has no information that Fuzy has pursued legal avenues to overturn the Arbitration Award or was successful with regard to such pursuit. Accordingly, the Board determined that summary decision was appropriate in this matter. *N.J.A.C. 6A:9B-4.6(h)*.

The Board must now determine whether Fuzy's conduct, as set forth in the Order to Show Cause and proven in the tenure hearing, represents just cause to act against his certificates pursuant to *N.J.A.C.* 6A:9B-4.5. The Board finds that it does.

The Board 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.* 6A:9B-4.4. In this case the record established that Fuzy made threatening comments about his physical stature and his gun ownership; these comments caused other staff members to be intimidated and fearful. Additionally, the Arbitrator found that Fuzy called a student stupid. The Board agrees with the Arbitrator that this conduct is unbecoming and unfitting of a role model. The threatening comments relating to gun ownership and physical stature, making others in the school community uncomfortable, cannot be tolerated. Nevertheless, given Fuzy's lengthy and otherwise positive educational career, the Board is convinced that the appropriate response in this matter is a suspension of his certificates for a period of three (3) years.

Accordingly, on June 30, 2022, the Board voted to suspend Frank Fuzy III's certificates. On this 16th day of September 2022 the Board voted to adopt its formal written decision and it is therefore ORDERED that Fuzy's certificates are hereby suspended for a period of 3 years, effective immediately. It is further ORDERED that Fuzy return his certificates to the Secretary of the State Board of Examiners, Office of Certification and Induction, P.O. Box 500, Trenton, NJ 08625-0500 within 30 days of the mailing date of this decision.

Rani Singh, Secretary
State Board of Examiners

RS/KAG/cf

Date of Mailing:
via certified and regular mail

Appeals may be made to the Commissioner of Education pursuant to *N.J.S.A.* 18A:6-38.4.