

State of New Jersey
Department of Education

- - - - - *

In the Matter of the *
Tenure Charges *

against *

ARDEENA LONG (Teacher) *

by *

THE STATE OPERATED SCHOOL DISTRICT *
OF THE CITY OF PATERSON *

- - - - - *

ARBITRATION
DECISION AND
AWARD

DOCKET NO.
262-9/15

Before: Joel M. Weisblatt, Arbitrator

Appearances:

For the Teacher
Theodore E. Kyles, Jr. Esquire

For the District
Riker Danzig Scherer Hyland & Perretti
By: Brenda C. Liss, Esquire

D E C I S I O NIntroduction

On September 11, 2015, the New Jersey Department of Education, Bureau of Controversies and Disputes, (the "DOE") received the filing of the tenure charge against Ardeena Long (the "Respondent" or the "Teacher") filed by the State-Operated School District of the City of Paterson (the "District" or the "Petitioner"). The Respondent's answer was received by the DOE on October 16, 2015.

Pursuant to N.J.S.A. 18A:6-16 as amended by *P.L.* 2012, c. 26, the undersigned Arbitrator was appointed to serve, by the DOE, on October 23, 2015.

The arbitration hearing was initially opened on November 9, 2015. The parties indicated that certain global issues with respect to the District's implementation of the evaluation system were to be heard by Arbitrator Robert C. Gifford, consolidating three matters concerning tenure charges of inefficiency. Arbitrator Gifford's Interim Decision regarding the consolidated claims of three teachers (including the Respondent) as to the implementation of the evaluation system was issued on January 14, 2016. Although Arbitrator Gifford raised a

number of questions in the Interim Decision he issued on January 14, 2016, he did not find that, on a global basis, the District's implementation of the evaluation system was in violation of the TEACHNJ statute.

Testimony was presented, with respect to the instant tenure charge, on January 21, 2016, January 27, 2016 and February 8, 2016. A certified stenographic record of the hearings was taken. There was extensive documentary and testimonial evidence presented. The parties both filed post-hearing briefs on March 7, 2016. Due to the complexity of the consolidation of the hearings and the processing of the case at hand, the DOE granted this Arbitrator an extension until April 4, 2016 for the issuance of the Decision and Award.

The Arbitrator has carefully considered the entire record presented by the parties. This evidence has been examined and weighed in light of the charge presented and the statutory standards for the consideration of tenure charges. N.J.S.A. 18A: 28-5, as amended by the "TEACHNJ ACT", P.L. 2012, c. 26, reads as follows [in pertinent part]:

The services of all teaching staff members employed prior to the effective date of P.L. 2012, c. 26, in the position of teacher...serving in any school district or under any board of education...shall be under tenure in good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause...

In the dispute at hand, the Board seeks the dismissal of the Teacher charging, "inefficiency." The Petitioner bears the burden of proving that there is a proper basis for such a result.

Tenure Charge

The following charge and specifications are raised by the District against the Teacher:

Charge
INEFFICIENCY

1. Respondent has been rated Partially Effective in two consecutive annual summative evaluations, as follows:
 - a. Respondent was rated Partially Effective in her 2013-14 annual summative evaluation. This rating was based on a teacher practice score of 2.00 and a student growth objective score of 3.85, for an overall score of 2.28.
 - b. Respondent was rated Partially Effective in her 2014-15 annual summative evaluation. This rating was based on a teacher practice score of 1.60 and a student growth objective score of 0.80, for an overall score of 2.40.
2. Respondent has failed to effectively perform the duties of a teacher.
3. Respondent has failed to effectively prepare for instruction.
4. Respondent has failed to effectively use data to inform instruction.
5. Respondent has failed to effectively deliver quality instruction to her students.
6. Respondent has failed to effectively intervene to meet the diverse needs of her students.
7. Respondent has failed to effectively foster a safe, effective, respectful and collaborative classroom environment.
8. Respondent has failed to effectively exhibit leadership.
9. Respondent has failed to effectively fulfill her professional responsibilities.

Positions of the PartiesPosition of the District

The Petitioner contends that it has met its burden of proving that the Teacher was inefficient under the standards set forth in the statute, TEACHNJ. It points out that the Respondent received only a "partially effective" rating in two consecutive annual evaluations, establishing the proper basis for dismissal.

The District claims that the Teacher was extensively trained as to the evaluation rubric, including substantive and systematic elements of the process. It insists that the Respondent was provided an adequate opportunity to be involved in the CAP [Corrective Action Plan] process. The Petitioner maintains that the support provided to the Teacher, including post-observation conferences, did not result in sufficient consistent improvement in performance to meet the standards necessary for an "effective" evaluation.

The Petitioner stresses that the TEACHNJ statute provides for only four defenses to a charge of inefficiency. The four bases cited are: "(1) the

evaluation failed to adhere substantially to the evaluation process; (2) mistake of fact in the evaluation; (3) improper motive, including considerations of political affiliation, nepotism, union activity, discrimination as prohibited by law, or other conduct prohibited by law; and (4) the district's actions were arbitrary and capricious. N.J.S.A. 18A:6-17(a)."

The District asserts that the Teacher presented evidence only relating (1) adherence to the evaluation process and (4) arbitrary and capricious actions. It emphasizes that the statute requires that the facts presented relating to these defenses must have "materially affected" the outcome of the evaluation, citing N.J.S.A. 18A:6-17(b).

The District characterizes the Respondent's case as "excuses, pleas of ignorance and self-serving answers." It argues that these statements do not establish any material effect upon the evaluations. It maintains that any argument by the Teacher relating to the scoring system should have been presented at the interim proceeding held by Arbitrator Gifford, which, in turn, did not make a

global finding that the District's process was violative of the statute.

The Petitioner suggests that the Teacher's defenses should be limited to areas addressed in the answers to interrogatories, dated December 4, 2015. It maintains that the Teacher's response to inquiry, in interrogatories, as to facts relied upon for asserting defenses based upon the alleged failure to comply with the requirements of the law and arbitrary and capricious action:

Answer 10. Many of the post-evaluation conferences for Respondent were out of time. Respondent was denied the opportunity to timely participate in the evaluation CAP process. The District failed to disclose to Respondent information as to the grading rubric used to calculate the annual summative rating. Information as to the scoring rubric was not disclosed to Respondent. These issues are subject to a continuing discovery and - as counsel is aware - are subject of a pending arbitral determination in companion inefficiency proceedings.

As a matter of law, the District seeks to limit the evidence considered in support of the Respondent's defenses to facts set forth in the answer to interrogatories.

The Petitioner asserts that the tenure charge of inefficiency should be upheld. It insists that the record supports the factual underpinning of the "partially

effective" annual summative evaluation ratings for 2013-14 and 2014-15. The District maintains that it has properly adhered to the requirements of the evaluation process. It argues that the evidence does not establish any failure to adhere to the requirements of the law. The Petitioner further insists that there is no evidence that any claimed failure on the part of the District had a material affect on the outcome of the evaluation.

The Petitioner stresses that the Teacher was provided ample opportunity to be engaged in the process at post-observation conferences and in the ongoing discussion of the CAP, designed to assist in addressing problem areas of performance. It relies upon the testimony of administrators who provided direction to the Teacher and performed the observations and evaluations.

The District claims that there is no evidence establishing arbitrary and capricious action with respect to the Respondent's summative evaluations. It maintains that, "the evidence presented shows that the charge of inefficiency against the Respondent was based on a reasonable, rational, and consistent assessment of her teaching performance."

The Petitioner concludes that, "the evidence in the record supports none of the defenses available to the Respondent under N.J.S.A. 18A:6-17.2(a); and does support a finding that Respondent was 'inefficient' on the basis of her two consecutive annual summative evaluation ratings of 'partially effective.'" The District believes that it has met its burden of proving the statutory tenure charge. It seeks to have the charge upheld and that the Respondent be dismissed from her position.

Position of the Teacher

The Respondent contends that the District did not sustain its burden to satisfy the statutory criteria required to support the charge of "inefficiency." The Teacher asserts that the Petitioner failed to adhere to the evaluation process.

The Respondent relies upon her own testimony that she did not collaborate in the development of the CAP [Corrective Action Plan]. The statutory requirement that the CAP be developed by the supervisor, "in collaboration with the teaching staff member" is emphasized, noting the definitional section of TEACHNJ. The Teacher insists that

the CAP must be developed by two people, the teaching staff member and the supervisor. The Respondent advances the argument that this is a fatal flaw in the process as it was applied to the Teacher, requiring the dismissal of the tenure charge.

The Respondent maintains that the District failed to adhere to the evaluation process in 2013-14 with respect to an absence of "co-observers" during the three observations conducted that year. Further, citing the framework for the evaluation process, it is claimed that there was a failure to conduct the requisite number (six) of walkthrough observations in 2013-14, with evidence of only three such walkthroughs. Similarly, these failures are asserted for the 2014-15 school year, as well.

The Respondent suggests that the District failed to provide a timely meeting (within 15 days) to discuss the CAP following the receipt of the 2013-14 summative evaluation ratings. The meeting did not occur, according to the Teacher, until September. The Respondent also asserts that the District failed to fulfill responsibilities that it set out for itself in the CAP.

The Teacher additionally suggests that the Petitioner "consistently failed to conduct timely post-observation conferences." The requirement cited calls for post-observation conferences within 15 working days, in the imperative "shall" form. The claim advanced is that observations conducted on: January 30, 2014; September 30, 2014; December 1, 2014; February 10, 2015; and April 23, 2015; did not have timely conferences. The Respondent further notes that the collective negotiations agreement between the District and the Paterson Education Association contains a provision requiring those conferences to be held within 5 work days of the observation. The Respondent argues that the Petitioner should be held to this higher standard.

The Teacher suggests that the Petitioner failed to prove that the evaluation rubric for 2013-14, or for 2014-15, was approved by the State Commissioner of Education. The Respondent contends that this is a fatal flaw in the application of the evaluation process rating the Teacher as "partially efficient." The Respondent also assails the claimed failure of the Petitioner to establish "School Improvement Panels" required by TEACHNJ. Additionally, the evaluation procedure is attacked for lacking a "transparent

and reliable" process. Specific elements of the scoring and rating system, including computer-driven calculations, are assailed by the Teacher. The Respondent argues that the, "partially effective rating given...is entitled to no weight."

The Respondent claims that the evaluation system used by the District is arbitrary and capricious. The District's explanation as to the differences between the ratings Proficient I and Proficient II or Progressing I and Progressing II is characterized as being without differentiation. The Teacher complains that the system is unclear and undefined. Similarly the method of scoring subcategories is criticized as unreliable.

The Teacher asserts that the Petitioner failed to demonstrate that the Teacher was properly trained in the evaluation rubric, as required by rule. The contention is that the record is devoid of evidence of appropriate training. The Respondent complains of a lack of support for the Teacher by the District.

The Respondent maintains that the violations noted above as to the evaluation process, as applied to the

Teacher, materially affected the outcome of the evaluation results. Reliance is heavily placed upon the Respondent's own testimony, "that had she been able to contribute to the design of the CAP, she would have ensured that the plan correlated to her class that included classified, learning disabled students." Further, the late post-observation conferences are blamed for "wasting time" during which adjustments could have been accomplished.

The Respondent insists that the penalty of dismissal from employment is not merited. The fact that this is not a misconduct case is stressed. Respondent insists that the termination of the Teacher to is too severe a penalty for the circumstances set forth in this record.

In conclusion, the Respondent contends that the District engaged in multiple violations of TEACHNJ with respect to the evaluation process leading to the two consecutive years of a "partially effective" summative evaluation rating. The score is characterized as "an inaccurate depiction of her performance." The Respondent assails the numerous flaws in the process and asserts that they "resulted in a material degradation of the evaluation process to which Ardeena Long was entitled." The

Respondent seeks that the tenure charge be dismissed and that the Teacher be returned to work.

Discussion and Analysis

The Teacher, Ardeena Long, was employed by the District for 35 years. From 2012 through the filing of these tenure charges (following the 2014-15 school year) she was assigned as an English teacher at the District's YES Academy. The charge of inefficiency is based upon a rating of "partially effective" in the annual summative evaluations at the end of two consecutive school years, 2013-14 and 2014-15.

The record establishes that the Teacher received a summative evaluation rating of "partially effective" for the 2013-14 school year [Exhibit D-7]. This rating was based on the weighted average of scores in seven standards (each with subsections) and a measure of the Student Growth Objectives [SGO]. The scores were reflective of three formal observations conducted during the 2013-14 school year, conducted on: October 29, 2013 [Exhibit D-4]; January 30, 2014 [Exhibit D-5]; and March 24, 2014 [Exhibit D-6].

The seven broad standards, referred to above, used by the District to evaluate the Teacher were:

1. Preparation for instruction
2. Use of data to inform instruction
3. Delivers quality instruction
4. Interventions to meet diverse needs
5. Classroom environment
6. Leadership
7. Professional responsibilities

Each standard might be subject to scoring in each formal observation, noting that some standards may not be addressed in every observation. Those addressed and scored are averaged for the year and weighted for a teacher practice score numerical factor. That weighted average is then placed on a scale to determine whether the teacher's performance has been: Ineffective, Partially Effective, Effective or Highly Effective. In 2013-14, the teacher practice score accounted for 85% of the overall summative rating; the remaining 15% was attributed to the SGO. With respect to the Teacher, the practice rating was partially effective and the SGO was highly effective; the overall rating was "partially effective."

The District presented Nicole Payne, the Principal of the YES Academy during 2013-14 and part of 2014-15, as a witness with respect to the evaluation of the Teacher. Ms. Payne was a particularly credible witness and she provided

significant detail with respect to the process and its application to the Respondent.

Ms. Payne personally conducted the 2013-14 observations on: October 29, 2013 [Exhibit D-4]; January 30, 2014 [Exhibit D-5]; and March 24, 2014 [Exhibit D-6]. She testified that she was accompanied by a co-observer, Wanda Kopic, on the March 24, 2014 occasion. Ms. Payne provided clear and convincing evidence that the three observation ratings for 2013-14 are an accurate reflection of the Teacher's performance in the classroom. Ms. Payne testified that the post-observation conferences for the 2013-14 observations occurred as follows:

October 29, 2013 - November 1, 2013
January 30, 2014 - March 11, 2014
March 24, 2014 - April 1, 2014

Further, she was equally convincing that the annual summative evaluation [Exhibit D-7] was an accurate reflection of the Teacher's performance for the year.

It is important to note that Ms. Payne explained that, following the issuance of the 2013-14 annual summative evaluation, she met with the Respondent on June 27, 2014 to discuss areas for improvement, for example, the use of data in teaching. Ms. Payne testified that she encouraged the

Teacher to improve, noting that the Teacher's performance was not that far below an effective rating. Ms. Payne indicated, that at the June 27, 2014 meeting, the Teacher did not disagree with any remark or score. Further, Ms. Payne explained that the Respondent did not indicate any lack of understanding of the evaluation process and the need to improve.

Ms. Payne testified that it was she who developed the 2014-15 Corrective Action Plan (CAP) for the Respondent [Exhibit D-8]. The CAP was discussed in a meeting on September 5, 2014, the Teacher, Ms. Payne and Tanya Greene were present. Ms. Payne described the fact that she and Ms. Greene (Ms. Payne's successor as Principal) went over each item of the CAP with the Teacher, providing an opportunity for questions or suggestions. Ms. Payne indicated that the Respondent did not suggest any changes in the CAP. Ms. Payne further testified that she believed the Teacher understood the relationship between the CAP and the evaluation process and the need for improvement.

Ms. Payne testified that the teaching staff, including the Respondent, was given extensive training as to the evaluation process. A power point presentation given on

June 6, 2013 [Exhibit D-B] is documentation of a key element in the training process. The Teacher was present for that training session. Exhibits D-2 and D-3 provide proof that the Respondent received the documentation provided by the District in each of the two years in question herein. These documents include the rubric and a handbook (reference manual) for the evaluation process. Numerous training sessions are documented in this record, throughout the relevant time period.

Ms. Payne testified that she co-observed the Respondent (with Ms. Greene) on September 30, 2014 and December 1, 2014. She credibly explained that she met with the Teacher for a post-observation conference within a few days of each observation, although she did not identify or document the specific date. Ms. Payne was certain that the post-observation conferences were held within a week of both the September 30, 2014 observation and the December 1, 2014 observation. The witness explained that the signature dates on the observation reports [Exhibits D-9 and D-11] were mechanical not reflective of the actual dates of the conferences.

Tanya Greene was also a particularly credible witness with respect to the Respondent's performance and the evaluation process. With respect to the September 30, 2014 observation rating, Ms. Greene established that the observation was scored collaboratively with Ms. Payne. She also provided convincing testimony that the post-observation conference occurred in a timely manner, not reflected by the electronic dating on the document.

Ms. Greene notes that, on November 24, 2014, there was a pre-observation conference with the Respondent before the December 1, 2014 observation. She explained that the standards for rating the Teacher's performance were discussed at this pre-observation session. The Respondent's participation is documented by Exhibit D-34.

Ms. Greene noted that the December 1, 2014 observation was also done jointly, with Ms. Payne in attendance. She testified that the post-observation conference occurred shortly after the observation date.

Ms. Greene testified that the ratings of performance for the September 30, 2014 [Exhibit D-9] and December 1, 2014 [Exhibit D-11] observations are accurate. She further

pointed out that certain aspects of each of these ratings were revised upward as a result of the discussions at the post-observation conferences with the Respondent. Ms. Greene testified that, on January 4, 2015, there was a mid-year CAP review meeting with the Respondent [documented in Exhibit D-31].

Danyel Cicarelli, a Supervisor of English and Language Arts, testified as to her involvement in the observation and evaluation process for the Teacher. Ms. Cicarelli was another credible witness presented by the District. She explained that she provided support for the Respondent during the 2014-15 school year in concert with Ms. Greene. She described certain efforts to gain better practices on the part of the Respondent including sending the Teacher to observe other classroom sessions as an example of best practices. Ms. Cicarelli generally observed that the Respondent seemed to understand the concept of best practices but that minimal change was observed in the Teacher's own classroom practices. A problematic example cited by Ms. Cicarelli was that the Respondent consistently answered her own questions in class rather than getting the students to work through the questions themselves.

Ms. Cicarelli performed the February 10, 2015 observation and the ratings are documented in Exhibit D-12. She testified that the ratings accurately reflect the Teacher's performance. Ms. Cicarelli explained that the Teacher exhibited some improvement but only of a limited nature. For example, Ms. Cicarelli observed that the lesson was better planned but not well-executed. Ms. Cicarelli stated that the observation report [Exhibit D-12] was posted and available to the Teacher on February 13, 2015; the post-observation conference was held jointly by Ms. Cicarelli and Ms. Greene on February 24, 2015. Once again the ratings were adjusted in response to the Teacher's input at the post-observation conference.

The April 23, 2015 observation of the Teacher was conducted by both Ms. Greene and Ms. Cicarelli. The two observers compared notes and reached a consensus as to the ratings of that performance, reflected in the ratings of Exhibit D-13. There was a pre-observation conference held on April 21, 2015 [documented by Exhibit D-35]. Ms. Greene credibly testified that the ratings of the April 23, 2015 observation are an accurate reflection of the Teacher's performance on that date.

The record establishes that the Teacher received a summative evaluation rating of "partially effective" for the 2014-15 school year [Exhibit D-14]. This rating was based on the weighted average of scores in seven standards (each with subsections) and a measure of the Student Growth Objectives [SGO]. The scores were reflective of four formal observations conducted during the 2014-15 school year, conducted on: September 30, 2014 [Exhibit D-9]; December 1, 2014 [Exhibit D-11]; February 10, 2015 [Exhibit D-12] and April 23, 2015 [Exhibit D-13].

Ms. Greene prepared the 2014-15 annual summative evaluation of the Respondent [Exhibit D-14]. This process involved the inputting of the ratings of four observations conducted in 2014-15. Calculations as to the weighted averages of the performance values and the overall rating of practice and SGO [now 80% practice and 20% SGO] were entered into a computer program and the report was generated based on a pre-determined formula. Once again, the Teacher received an evaluation below effective; she was rated "partially effective." This was the second consecutive annual summative rating at "partially effective" leading to the tenure charge of inefficiency.

TEACHNJ clearly and comprehensively delineates the considerations for the arbitrator deciding a dispute involving the charge of "inefficiency." N.J.S.A. 18A:6-17.2 *Considerations for arbitrator in rendering decision* provides:

23.a. In the event that the matter before the arbitrator pursuant to section 22 of this act is employee inefficiency pursuant to section 25 of this act, in rendering a decision the arbitrator shall only consider whether or not:

(1) the employee's evaluation failed to adhere substantially to the evaluation process, including but not limited to providing a corrective action plan;

(2) there is a mistake of fact in the evaluation;

(3) the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or

(4) the district's actions were arbitrary and capricious.

b. In the event that the employee is able to demonstrate that any of the provisions of paragraphs (1) through (4) of subsection a. of this section are applicable, the arbitrator shall then determine if that fact materially affected the outcome of the evaluation. If the arbitrator determines that it did not materially affect the outcome of the evaluation, the arbitrator shall render a decision in favor of the board and the employee shall be dismissed.

Section 25 referenced above is set forth in N.J.S.A. 18A6-17.3 and it provides that a teacher rated "partially

effective" in two consecutive annual summative evaluations is subject to a tenure charge of "inefficiency."

The issues presented in this arbitration relate entirely to subsections (1) and (4) above, whether the District failed to substantially adhere to the evaluation process and whether the District's actions were arbitrary and capricious. The Arbitrator determines that there is no issue presented as to a mistake of fact as referenced in subsection (2) or as to an improper consideration as referenced in subsection (3).

The Arbitrator finds that the District met its burden of proving that it has adhered substantially to the evaluation process. The District observed the Teacher on three occasions in 2013-14, applying a structured system for rating teacher performance that appears to have been applied to the Respondent in a reasonably consistent manner. There were multiple observers involved in the observation process and the Teacher was properly given post-observation conferences.

The 2013-14 annual summative evaluation [Exhibit D-7] appears to reflect the ratings of the three observation

reports [Exhibits D-4, D-5, D-6]. Principal Payne met with the Respondent following the issuance of the 2013-14 annual summative evaluation to discuss its implications. Ms. Payne provided convincing evidence that she encouraged the Respondent, noting that the performance rating was not too far off the mark. The District provided ample evidence that the Teacher was given the opportunity for support to improve her position.

Although the CAP was initially drafted by Ms. Payne, there is clear evidence that the Respondent was given opportunity for collaborative input into the CAP, specifically at a meeting held September 5, 2014. The District also proved that it provided numerous training programs about the evaluation system and that it provided a continuing effort to assist teaching staff members to understand the process. This training was available to the Respondent and in many cases there is evidence that the Teacher attended such sessions.

The Teacher was observed on four occasions in 2014-15. Three of the four sessions were conducted by multiple observers. The District produced convincing testimony that the ratings of the four observations accurately reflected

the observers' assessment of the Respondent's performance. Each observation was followed by a proper post-observation conference. The record strongly supports the District's contention that it provided support and direction to the Respondent in order to assist her in improving performance.

It is significant to focus on the testimony of Ms. Greene to gain an understanding of the problems observed in the Teacher's performance. Ms. Greene testified that the Teacher used suggestions when given direction but did not follow up with her own initiative. The Respondent exhibited periods of improvement but her performance lacked the necessary consistency to achieve "effective" ratings.

The Arbitrator finds that the District has also proved that the evaluation process, as applied to the Respondent, was not arbitrary and capricious. It has presented clear and convincing evidence [although the standard necessary is only "by a preponderance of the evidence"] that the administrative and supervisory staff involved in evaluating the Respondent have followed a systematic approach to rating her performance, applying substantive standards for assessing her performance.

Further, the record establishes that the District has provided numerous training opportunities to the Respondent in order to inform her about the nature of the evaluation process. These have included elements designed to provide an understanding of the rating methodology and the scoring system.

It is important to reiterate that there was an interim arbitration proceeding held before Arbitrator Gifford in a consolidation of cases, including this one. That arbitration was designed to deal with global claims as to the evaluation process, independent of the specific facts relating to each Respondent. The parties stipulated to have those global claims handled in a single consolidated decision that was issued on January 14, 2016. There was no finding in that proceeding, that there were global elements of the evaluation process in violation of TEACHNJ.

At this stage, the Arbitrator turns to a discussion of specific points raised by the Respondent. Each has been carefully considered as part of the process to reach the determinations herein.

The Arbitrator rejects the concept that there was a fatal flaw in the corrective action plan as a result of a claimed absence of collaboration. There was specific credible testimony from two witnesses (Ms. Payne and Ms. Greene) that the Teacher was given an opportunity for input into the CAP at a meeting held on September 5, 2014. This meeting satisfied the collaborative requirement.

The Arbitrator rejects the Teacher's claim that there was a failure to use co-observers in the process. There is clear and credible evidence that there were co-observers in many of the formative observations and that the ratings were often reached by consensus of the co-observers.

The Respondent insists that there is not documentation that the requisite number of walkthroughs performed by supervisors during the process. The Arbitrator, noting that there were walkthroughs (albeit fewer documented than the handbooks delineate), does not agree that this constitutes a substantial deviation from the evaluation process. Further, there is nothing to even suggest that, noting adherence in all other areas, this minor shortfall had a material affect on the outcome of the evaluations.

The Respondent assails the timeliness of the post-observation conferences as substantial failure of adherence to the evaluation process. The Arbitrator finds that the evidence does not support that contention. The rules call for a post-observation conference within 15 work days of the observation. There District presented credible evidence that nearly every observation was followed with a timely post-observation conference. The notable exception might have been the March 11, 2014 post-observation conference for the January 30, 2014 observation. There is nothing about this single delay to suggest that it was a substantial deviation from the process or that it had any material affect on the Teacher's evaluations. The Teacher's testimony that she would have performed better with more timely post-observation conferences was simply not compelling or credible.

The Respondent suggests that the collective negotiations agreement between the District and the Paterson Education Association establishes a five work day time frame is not given consideration in this statutory proceeding. The Arbitrator's jurisdiction in this dispute is derived from the TEACHNJ statute and the determinations herein are made within that structure.

The contentions of the Respondent that the Petitioner failed to prove that the rubric was approved by the Commissioner of Education and that there is a process failure relating to the establishment of School Improvement Panels raise global issues that should have been presented to the arbitrator in the interim global proceeding. Therefore, those claims are rejected in the case at hand.

The Teacher's contentions about the scoring system are not convincing. The process appears to have objective intent. There is nothing to suggest that its application to the Teacher was either skewed or inaccurate. There is no evidence of any indication that the scoring system is arbitrary and capricious.

The Teacher assails the rating system, maintaining that there was no adequate explanation as to the differences between Progressing I and Progressing II or between Proficient I and Proficient II. These differences were reasonably explained by the District's witnesses as a matter of degree and consistency.

The Respondent attacks the imposition of the penalty of dismissal as unreasonable. The Arbitrator finds that, under TEACHNJ, the statutory provisions provide for the dismissal of a teacher with two consecutive "partially effective" annual summative evaluations [see N.J.S.A. 18A:6-17.3]. This record establishes that the Respondent received two such evaluations. The penalty contention must be rejected.

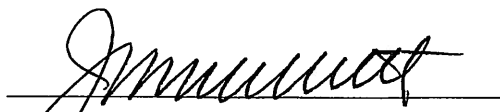
In conclusion, the District has met its burden of proving that the Respondent has received "partially effective" annual summative evaluations in 2013-14 and 2014-15. It has provided convincing evidence that the evaluations were properly conducted under the statute [TEACHNJ]. The charge of "Inefficiency" shall be sustained and the dismissal of the Respondent shall be upheld.

A W A R D

For the reasons set forth in this Decision and Award, finding that the District has met the burden of proving that the Respondent has received "partially effective" annual summative evaluations in 2013-14 and 2014-15, providing convincing evidence that the evaluations were properly conducted under the statute [TEACHNJ], IT IS HEREBY ORDERED that the charge of "Inefficiency" is sustained and the dismissal of the Respondent is upheld.

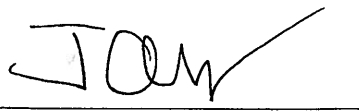
Dated: April 3, 2016

Skillman, N.J.



Joel M. Weisblatt, Arbitrator

On this 3rd day of April 2016, before me personally came and appeared Joel M. Weisblatt, to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



Attorney-at-law