

COMMISSIONER OF EDUCATION, State of New Jersey

IN THE MATTER OF THE PROCEEDING BETWEEN:

State Operated School District, City of Newark, Essex County
“Petitioner” or “District”

And

Tenured Teacher LaRhonda Ragland
“Respondent” or “Teacher”

Petition: “Dismissal, Tenured Teacher L. Ragland, by Newark Board of Education”
Agency Docket No: 209-8/18

AWARD and OPINION

Pre-Hearing Conference [Discovery issues]	November 14, 2018
Hearings [Evidentiary] Newark, NJ	November 20, 30, December 4, 2018; January 24, 30, February 14, 15, 2019
D.O.E. Extension(s) granted:	January 17, March 01, 2019
Transcripts received:	January 28, February 06-28, 2019
Briefs, w/ materials:	March 29 - April 10, 2019
Date of Award:	May 15, 2019

Arbitrator Jay David Goldstein

APPEARANCES

For Petitioner [Newark S. D.]
Brenda Liss, Esq.,
Ashley Higginson, Esq.
Yolanda Mendez, H.R. Exec. Dir, (Acting)
Karisa DeSantis, Principal
Regina Sharp, Vice Principal
Najran Cowins, Vice Principal

For Respondent [L. Ragland, Teacher]
Stuart Ball, Esq.,
LaRhonda Ragland

INTRODUCTION

The underlying dispute over this dismissal action by the Newark School District [Petitioner] arose from alleged ‘inefficient’ and, ‘partially inefficient’ ratings received by ‘Tenured Teacher’ Ms. Ragland [hereafter, “Teacher” or “Respondent”] over a two school year period. As a result of the less-than-efficient ratings described herein, many attempts were made to correct the “Teacher’s” alleged deficiencies through ongoing, continued efforts by supervisory and/or administrative personnel of the Dr. Everett Horton School [“Horton”] where she had been assigned.

Numerous allegations detailing the above were found in the proceedings raised by “Petitioner” and included in the “Notice of Tenure Charges” filed against “Respondent”, wherein her dismissal was sought. These were extensively documented in the record hereunder.

In response to the dismissal proceedings, alleged defenses were raised by Respondent, but in limited fashion. “Respondent” initially answered the charges in an August 17, 2018 position letter wherein Ms. Ragland [By Counsel] contended she was, “...*targeted by administrators who had an agenda hostile to her.*” Later, discovery proceedings in preparation for this arbitration matter showed Respondent’s ‘Answers to Petitioner’s Interrogatories’, including the above. [All underlining herein is for emphasis only and by the author unless noted]

Those filings [et al] also make reference to a prior tenure charge and subsequent Arbitration Award involving ‘Teacher’ [Respondent Exhibit #2; Arbitrator T. Brown] wherein Teacher’s Counsel states unequivocally that, “*Ms. Ragland will rely on the decision of the Arbitrator in the prior case and on other evaluations ...supplied by the Petitioner as well as on her own testimony.*” In answer to other Interrogatories [2nd -3rd] posed by the District, Teacher’s Counsel also contended that she, “...*continued to find success as a dance teacher just as [she had] from 2006-2016*”**and**, “*There are so*

many students, parents and colleagues who could attest to the positive impact [she has] have had on so many students and [her] successes as a dance teacher”

Again by the Teacher’s response, “*Ms. Ragland has been a dance teacher in the Newark Public schools since 2006. She has received a host of favorable evaluations and commendations from parents and students over those years.” Further that, “*She has had excellent training in her field and has had an abundance of high level experience. She will also rely on supporting documents...supplied from her files and on her own testimony.*” [Respondent pleading]*

Notwithstanding the above prehearing arguments and similar tenders by each Party at Hearing, that record is devoid of evidence offered by or on behalf of Respondent in support of her prior contentions to contradict Petitioner’s evidence in support of its charges. Discussed below, there were minor contradictions on cross-examination of Petitioner witness testimony that, while technically correct, did not alter the overall veracity of any District witness. Moreover, any contradiction found did not substantially affect any evaluation overall.

In a linked procedural matter, Parties’ Counsel tacitly agreed that all evidence in this proceeding would be limited to the 2016-17 (and) 2017-18 School Years, as found in the ‘charges’ against this Tenured Teacher. Notwithstanding this agreed to limitation , Teacher testified to, and her post Hearing Brief raised the prior history of her employment at the Newark School District. [Oct. 29, 2018 Pre-Hearing Conference, Board Brief and Teacher Brief]

Additionally, both sides made reference to that prior employment matter in their respective arguments in this case. Each acknowledged that the prior matter had been adjudicated by another arbitrator, and whose decision has been admitted into this record [R-2]. The consequence(s) of that decision, if any, will be addressed below.

Further chronological background events are summarized here, but are presented in greater detail under the Background, Facts, Party Positions, below this section.

School year 2005; *“Respondent LaRhonda Ragland (“Respondent”) is a tenured teacher of dance who has been employed by the Newark Board of Education (“Board”) since 2005*

She received annual summative evaluation ratings of “partially effective” in the 2016-2017 school year and “ineffective” in the 2017-2018 school year, pursuant to the Board’s State-approved system of teacher performance evaluation, the Newark Public Schools Framework for Effective Teaching (“Framework”).”

[Board’s Brief]

2015-2016; in her closing Brief only, the Teacher alleges that the above referenced and current charges, “... brought by Petitioner Board ... “the District” or “Petitioner”) should be seen in the context of her many years as a successful teacher¹ (Tr.7,1320:10-13) – particularly in School Year 2015-2016 (Exhibits R-3, R-4, R-5, R-6, R-7, and R-8) and in the context of a prior attempt to fire her for inefficiency. That prior attempt was entirely unsuccessful. (Exhibit R-2)

[Teacher’s Brief]

End of School Year 2018; *“...the Superintendent of Schools was required to file a tenure charge of inefficiency against her. Accordingly, he did so at the end of the 2017-2018 school year, and the Board submitted the charge to the Commissioner of Education”*

[Board Brief]

September 10, 2018; this Arbitrator appointed to the matter by the NJ State Board of Education.

October 29, 2018; pre-Hearing Conference with parties’ Counsel and Arbitrator, held in person.

November 20, 30, December 4, 2018; January 24, 30, February 14, 15, 2019; Hearing(s) in the matter occur at the Newark Board of Education offices in Newark, NJ. During the seven (7) evidentiary hearings, each side had full opportunity to present its relevant evidence; including written exhibits, sworn testimony, cross-examination and rebuttal testimony. The Tenured Teacher was present during the entirety of the evidentiary Hearings, given opportunity to and did testify in her own behalf. Each Party agreed to written closings and the protocol for those submissions.

January 28, February 06-28, 2019; the transcribed record of hearing was received in several batches.

March 29–April 10, 2019; by their mutually agreed to schedule the Parties filed closing Briefs electronically with the Arbitrator on March 29th. Thereafter however, the agreed upon submission of same by US 1st Class mail, including cited materials copied to one another and the Arbitrator was only complied with by one side. Noncompliance by Respondent’s counsel delayed the closing of the post Hearing process by approx. one week, but both briefs [+ cited materials] were eventually received between the above mentioned dates.

The Hearing record was eventually declared closed at the receipt of all materials on April 10, 2019. Prior, several calendar extensions were granted by the NJ, DOE due to several factors including delay in discovery, protracted hearing schedules, delay in transcript hearing records.

May 15, 2019; decision rendered, filed with the NJ Commissioner of Education.

ISSUE

While the Parties’ did not stipulate *per se* to an issue, the basis for determining whether a dismissal was reasonably taken under all of the attendant circumstances must be determined. Thus in conformity with statutorily mandated principles including limitations or exclusions to them, the following question is deemed relevant and appropriate for the inquiry before this tribunal:

‘Has the Board proven the tenure charges by a preponderance of the evidence sufficient to warrant termination of the Tenured Teacher?’

If a termination was deemed ‘not warranted’, another potentially viable question is: ‘what shall be the remedy?’

Additionally, the ‘Board’ cited the ‘Act’ as controlling a statement of the issue:
“The Act limits the available defenses to four specifically enumerated potential issues, and it strictly limits the arbitrator’s authority to consideration of only those four issues. N.J.S.A. 18A:6-17.2(a).”

The Board also commented on the Respondent’s answer to the ‘enumerated’ issues, being:

“RESPONDENT ASSERTED ALL FOUR STATUTORY DEFENSES IN HER ANSWER TO THE CHARGE, BUT THE EVIDENCE PRESENTED AT THE HEARING SUPPORTED NONE OF THEM. [Board Brief]

As addressed herein and below, the Teacher’s Brief did expand on those defenses.

In addition, the Board made two pre-Hearing Motions. The first was for a “Dismissal”, rejected out-of- hand as not timely for consideration when made. In lieu thereof, another Motion [in effect, *In Liminae*] was given full and complete consideration by the Arbitrator and, despite opportunity afforded Respondent for rectification, none was forthcoming.

As for the limitations requested by the ‘Board’ were deemed persuasive and remained so due to ‘Respondent’s’ failure to complete its statutorily mandated discovery and, to have done so in timely fashion, my ruling follows.. The limitations sought by the Petitioner’s motion are granted, i.e., “...to the facts stated in Respondent’s answers to interrogatories”.

Further, “At an on-the-record conference on October 29, 2018, the Board’s counsel requested a ruling that the factual issues to be addressed at the hearing, and evidence to be presented, should be limited to the facts stated in Respondent’s answers to interrogatories. See October 29, 2018 Transcript (T) at 16. **Respondent’s counsel argued that the evidence should not be so limited, and argued further that as a result of procedural flaws the charge should be dismissed in its entirety** without regard to the four statutory defenses. (T17.) The arbitrator did not rule as to either party’s position, stating, “we’ll deal with it” at the hearing, and he suggested the **parties submit proposed findings of fact.** (Id.) The Board did so, and Respondent did not. “ [Board Brief, citing Conference and Hearing Transcripts]

In addition to the above statement [attributed to ‘Respondent’s Counsel’, as cited by the Board Brief] the Tenured Teacher’s defense to the charges was considerably limited to cross-examination of the ‘Board’ witness’ testimony, ‘Teacher’s’ testimony denying the veracity of the ‘Board’ witnesses and, the legal argument in Respondent’s post-Hearing Brief.

What is more, an additional pre-hearing opportunity in the form of submitting Proposed Findings of Fact were afforded each side to argue for presentation of their respective assertions regarding either limitation (exclusion) or inclusion of, “factual issues’ and, ‘evidence to be

presented'. When the mandated discovery period expired thereafter, the Board had submitted its Proposed Findings of Fact, [cited i.e., reproduced below] and, Counsel for the Tenured Teacher did not submit anything in that regard.

Resultant thereto, certain limitations were placed on the evidence presented by/for the Tenured Teacher's case, as analyzed further below. These procedural limitations are directly attributed to the failure of engagement in the process by Respondent, after both sides were offered opportunity to do so. The Board completed all discovery obligations and the Tenured Teacher did not comply during the discovery process.

Thus the Teacher's failure to comply with 'discovery' and thereafter fail to engage in argument [Propose Findings of Fact] relevant to limitation of evidence thereafter also precludes the Tenured Teacher from arguing certain positions, post-Hearing. The rationale for this ruling is based upon simple fairness inherent to an orderly proceeding which must not allow for even the appearance of disparate treatment in favor of one side.

Allowing only one side to avail itself of the opportunities for the 'discovery' proceedings is to deny the other side fair opportunity to put on and/or defend its position. [Analysis, below] Thus here, Petitioner's Motion to limit Respondent's opportunity to subsequently submit 'Facts and Evidence' not previously and timely submitted according to statutorily mandated guidelines is appropriate and proper. Fuller discussion is in 'Analysis', below.

BACKGROUND, FACTS and PARTY POSITIONS

The discussion above over the "Issue" contents adequately permits each Party Position that was timely and properly presented; and therefore relevant, i.e., as to inclusion or exclusion of evidence. The proper limitation therefore is to: "... *the facts stated in Respondent's answers to interrogatories*", as stated by the Board. The limitations on evidence and facts are thus defined by

what Respondent has presented pre-hearing and, in timely fashion. The following additional background/positions are deemed appropriate for consideration where noted and are gleaned from the Parties respective positions.

Initially, the Board argues its burden of proof by citing a prior Award in this jurisdiction:

“The burden in this case is on the School District to prove by a preponderance of the evidence that the statutory criteria for the tenure charges have been met. Where the School District has met this burden, the burden shifts on Respondent to “affirmatively prove that she has a defense to the Tenure charges brought against her.” I/M/O Tenure Hearing of Roxanne Jastrzemski, Agency Ref. No. 216-8/18 (Ira Cure, Arbitrator, March 7, 2019) at 41.” [Board Brief]

Also discussed hereunder, the Board likewise addresses the basis for that award by referring to the statutory defenses which an Arbitrator may consider on review:

“TEACHNJ provides only four defenses by Respondent which the arbitrator may consider when reviewing a tenure charge of inefficiency, i.e., 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.” [Board Brief, citing TEACHNJ]

The Board evaluates the aforementioned TEACHNJ defenses by providing excerpts of testimonial examples, from documents admitted into the record and, from its submission of:

“PROPOSED FINDINGS OF FACT

Based on the evidence presented, the arbitrator should make the following findings of fact:

1. *Respondent is a tenured teacher employed by the Board.*
2. *The Framework is the Board’s teacher performance evaluation rubric approved by the New Jersey Commissioner of Education pursuant to N.J.S.A. 18A:6-123.*
3. *In the 2016-2017 and 2017-2018 school years, Respondent’s teaching performance was evaluated by the Board in accordance with the Framework. Respondent received annual summative evaluation ratings of “partially effective” for the 2016-2017 school year and “ineffective” for the 2017-2018 school year. Consequently, a tenure charge of inefficiency was filed against Respondent pursuant to N.J.S.A. 18A:6-17.3.*
4. *Respondent’s evaluations in the 2016-2017 and 2017-2018 school years adhered substantially to the evaluation process, including but not limited to providing a corrective action plan. Respondent has identified no substantial failure to adhere to the evaluation process.*
5. *Even if the evaluations on which the Board relies in support of the charge of inefficiency, or either of them, failed to adhere substantially to the evaluation process, that fact did not materially effect the outcome of the evaluation.*
6. *There was no mistake of fact in Respondent’s evaluation for either the 2016-2017 or the 2017-2018 school year.*
7. *The charge of inefficiency was not brought due to considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law.*
8. *Contrary to Respondent’s assertion, the charge was not brought in furtherance of the hostility to Ms. Ragland for standing up to misconduct and successfully defending herself. (Even if proven, this allegation is insufficient to support a finding that the charge of inefficiency against Respondent 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. This allegation does not pertain to any such prohibited considerations.)*
9. *The Board’s actions in connection with the charge of inefficiency against Respondent were not arbitrary and capricious.*

The above referenced “Proposed Findings Of Fact” are, in effect, the equivalent of an opening statement typically offered at the beginning of a Hearing. In doing either one, each side

implies it will prove the proposed facts offered and by an appropriate quantum of the evidence. Respondent did not avail itself of either, an oral opening ‘statement’ or the opportunity to submit its own Proposed Findings Of Fact.

Moreover, there was no dispute over either Paragraph’s 1. or 2. [Petitioner’s, above] Indeed, Respondent offered little or no defense to several of the “Proposed Findings”. Except for Respondent’s general denials of Board evidence/ proof discussed in the Analysis below, there was no further mention of the Teacher’s prior claims of discrimination against her by:

“...political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law” [Board’s Brief]

Instead of proofs offered at Hearing, the summary content of Respondent Teacher’s Brief consisted of broad legal argument, primarily based upon a theory that this case, *“...should be seen in the context of her many years as a successful teacher (Tr.7,1320:10-13) – particularly in School Year 2015-2016 (Exhibits R-3, R-4, R-5, R-6, R-7,and R-8) and in the context of a prior attempt to fire her for inefficiency. That prior attempt was entirely unsuccessful. (Exhibit R-2). Indeed, that prior attempt resulted in an extensive decision by Arbitrator Timothy J Brown.”* [Teacher’s Brief]

Respondent did cite text from that prior Arbitrator’s decision:

“Arbitrator Brown concluded: I do not question the evaluators determinations as to the quality respondent’s classroom performance as reflected in the three observations made respondent thousand 13 – 14 school year. However, when the District’s failures to comply with the provisions of the District’s framework are weighed in full along with the considerations I rely upon below finding arbitrary conduct by the district, I find that respondents 2013 – 14 evaluation “failed to adhere substantially to the [Districts] evaluation process including, but not limited to providing a corrective action plan (Exhibit R-2 at page 37)”” [Teacher’s Brief]

Given that the Findings in this case [below, Analysis] support the evidence of substantial compliance with the evaluation process, Respondent’s premise for the citation was not made clear. The lack of clarity is twofold.

First is that another, prior arbitrator's analysis of facts and pre-decision comments are neither conclusively, nor 'per se', binding upon a subsequent decision maker's view of subjective facts offered in a later case. Despite attempts at comparison, they rarely have identical facts for which the former case is precedent setting.

Accordingly, the Teacher's position in this regard, here, remains unclear. Moreover, in that prior case, except for some similarities as to the 'forms' and formulary used under TeachNJ generally, the final decision in that prior inefficiency case was reached on a set of procedurally deficient grounds clearly distinct from the facts in this case.

Other distinctions between the two cases include that the Teacher –Respondent here was found, by clear and unrefuted evidence, to have been substantially uncooperative with the Supervisory personnel's efforts to rehabilitate her pattern of poor behavior and improper conduct. The evidence points to the resultant effect, either directly or indirectly affecting her peers, superiors, students, and parents. Her contiguous behavior in this case either bordered upon or, clearly rose to the level of insubordination. Further discussion is found in the Analysis below.

Except for the general denial(s) referenced elsewhere herein, there was no evidence presented to refute the allegations made against her. At Hearing before this tribunal, Respondent Teacher testified for only a limited [under two hours] period of time. Moreover, and contrary to information provided in an Answer to Interrogatories provided by Respondent, there were neither ancillary documents to support her view of being an excellent teacher, nor any witnesses made available to testify on her behalf.

Each side submitted post-hearing Briefs containing their significant 'Points' of view. Carrying the burden of proof the District submitted:

“ I. THE TENURE CHARGE OF INEFFICIENCY IS PROCEDURALLY VALID.

- II. *THE TENURE CHARGE OF INEFFICIENCY SHOULD BE UPHELD.* [on the basis of]
- A. *THE ARBITRATOR'S STANDARD OF REVIEW.*
 - B. *THE EVIDENCE DEMONSTRATED THAT THE SCHOOL DISTRICT ADHERED SUBSTANTIALLY TO ITS EVALUATION PROCESS.*
 - C. *THE EVIDENCE DEMONSTRATED NO MISTAKE OF FACT IN THE EVALUATION.*
 - D. *THE SCHOOL DISTRICT DID NOT ACT IN A MANNER THAT WAS ARBITRARY AND CAPRICIOUS.*
 - E. *THE EVIDENCE DEMONSTRATED NO RETALIATORY MOTIVE FOR BRINGING THE TENURE CHARGE.*
 - F. *RESPONDENT HAS FAILED TO MEET HER BURDEN OF PROVING ANY DEFENSE"*

[Board's Brief]

Also, and while not included in the charges *per se*, the record is replete with District's claims alleging Tenured Teacher was also guilty of insubordination. There were disciplinary actions taken, ostensibly due to her ongoing and continued failure to cooperate with the efforts of administrative and supervisory personnel assigned to meet with her to assist in complying with correction of her deficiencies. [Testimony and documentary evidence; Board's Brief]

In rejoinder to the District's Brief the Teacher's defense(s) rest primarily upon a premise that there was a failure of proof required by the Board. Thus, the Teacher's 'Points' claim, in effect, that the District failed to meet its burden of proof:

- I. *THE NECESSARY LEGAL PREREQUISITES FOR THE CHARGES HERE ARE ENTIRELY ABSENT FOR BOTH YEARS AND THEREFORE THE CHARGES ARE INVALID.*
[School Year 2016-2017 School Year 2017-2018]
- II. *THE STATUTORY REQUIREMENT THAT AN ARBITRATOR CONSIDER THE MATERIALITY OF A DISTRICT'S FAILURES IS INAPPLICABLE HERE.*
- III. *THE DISTRICT'S FAILURES TO DEVELOP PROPER ASEs ARE NOT EXCUSED BY ANY WAIVER OR EQUIVALENCY*
- IV. *THE DISTRICT'S FAILURES CANNOT BE EXCUSED BY TRYING TO BLAME MS. RAGLAND;*
- V. *FAILURE TO IMPLEMENT THE LEGALLY MANDATED CORRECTIVE ACTION PLAN AND IPDP INVALIDATE THE ASEs AND CHARGES FOR THE BOTH SCHOOL YEARS.*
 - A. *THE CAP PROVIDED FOR MS. RAGLND IN THE 2017-2018 SCHOOL YEAR WAS INADEQUATE*
 - B.

THE IDPD PROVIDED FOR MS. RAGLAND IN SCHOOL YEAR 2016-2017 WAS INADEQUATE

- VI. *THE DISTRICT'S BIAS AGAINST MS. RAGLAND IS REFLECTED IN ITS OVERALL FAILURE TO CONDUCT A FAIR AND LEGALLY PROPER OBSERVATION AND EVALUATION PROCESS.*

[Teacher's Brief]

Each Party concluded its views of the matter as follows.

In summary of the **Board's Position**, at the 'Conclusion' of its Brief:

"For all the reasons set forth herein, the tenure charge of inefficiency against Respondent should be upheld, and Respondent should be dismissed from her employment by the Board."

[Board's Brief]

In summary of the **Teacher's Position**, at the 'Conclusion' of its Brief,

"For the foregoing reasons, the charges of inefficiency against Ms. LaRhonda Ragland must be dismissed and Ms. Ragland should be restored to full employment by the District with appropriate back pay, benefits and seniority."

[Teacher's Brief]

FINDINGS AND OPINION

All arguments, positions and evidence adduced at a pre-hearing Conference and seven (7) evidentiary hearings were taken into careful consideration. Relevant portions of the statutory sections which the Parties mutually acknowledged being bound to were cited by each side and deemed relevant without further recitation here. Those Statutes impose a, "just cause" standard for dismissal, also granting a School District the right to issue reasonable rules, orders and regulations which are not conflicting. There has been no challenge to those statutory standards for discipline by either side.

Analysis; overview

The clear evidence shows Respondent-Teacher's uncooperative attitude and behaviors linked with her 'evaluation' process by the District occurred during the period in question. Further, those factors were the primary causes to impede the dynamics of that process.

Therefore, any degradation of the evaluation process as challenged by Respondent was misguided and found wanting for lack of evidence against the Petitioner-District. The blame for Teacher's failure to escape the charges of 'Inefficiency' is not deemed to be the fault of District administration, but instead directly on the Teacher.

The School District seeks to justify its 'Dismissal' action. The Teacher responds by seeking re-instatement, "...with appropriate back pay, benefits and seniority". The Board has justified its Dismissal action and its views of the principles involved are sound. While disputed, the District's views are substantiated by the facts.

At the core of the issue(s) was whether a justifiable dismissal occurred or, whether the penalty was too harsh or unfair pursuant to the guidelines promulgated by authorities cited by both parties. Relevant to the underlying considerations are certain indisputable facts occurring both before disciplinary proceedings had begun at the School District level and, after the matter reached the 'Tenured Teacher' dispute resolution level presided over by the NJ DOE [Office of Controversies and Disputes].

The evidence is convincing that Respondent-Teacher demonstrated a blatant lack of cooperation, inattention or indifference to the necessary protocols of her teaching position, consistently and throughout both levels of the above proceeding(s). The District's evidence was replete with documentation and credible testimony concluding that ongoing and continued efforts over an extended time period attempted to correct the Teacher's deficiencies. Borne out by

competent and credible testimony of same, they included both ‘formal’ and ‘informal’ observations by school [“Horton”] administration of this Teacher’s inappropriate teaching methods, her significant lack of basic professional skills and the Teacher’s inability to communicate effectively, both verbally and in-writing; to Students, parents and School Staff.

The District’s evidence started with a showing that its charges were procedurally valid. As evidenced herein, Respondent provided no proof to the contrary when necessary to do so at the ‘Discovery’ stage of this proceeding. Thus, Respondent failed and refused to provide evidence of the procedural deficiencies she alleged but did not prove.

Although Respondent broadly contended that its claim of ‘bias’ was based upon an, “*...OVERALL FAILURE TO CONDUCT A FAIR AND LEGALLY PROPER OBSERVATION AND EVALUATION PROCESS*”; that general condemnation of the evaluation process did not ‘fit’ within the scope or totality of the otherwise credible facts presented by the District witnesses. Moreover, the evidence produced at Hearing by Petitioner against Respondent to substantiate its charges overwhelmingly demonstrated that the District adhered substantially to its evaluation process. While disputed by Respondent, the only showing to support her theoretical insinuation and arguments against the validity of District evaluations and observations came in the form of cross examination of District witnesses. The cross examination was insufficient to overcome Petitioner’s proof.

Furthermore, it is persuasive that any alleged failures of the District proofs were only tenuous possibilities [and not probabilities]. They were drawn out by Respondent’s closing Brief and either unsupported by the transcribed record or, found to be *de minimus* mistakes in calculation or interpretation of the regulations guiding the ‘TeachNJ’. Nonetheless, the alleged discrepancies were determined to actually be based upon the lack of cooperation of the Respondent Teacher. It was the Teacher’s responsibility and failure, absolutely, to contribute to creating her CAP, for example, that

resulted in that document not being finished and, not done timely. That evidence was not refuted, except for a post-Hearing assertion by Respondent that, “the District was responsible also”. Yet the clear evidence showed that the District cannot create something like the CAP without having the Teacher’s input to begin that CAP.

Teacher offered no evidence in support of, or even minimal argument to successfully explain why basic teaching-related administrative functions [i.e., process for grading of students found to be another set of deficiencies] were ignored by her. Moreover and despite the school [“Horton”] administration personnel’s best efforts to correct deficiencies observed, those efforts were met with both an ostensible inability to perform these functions or, with Ms. Ragland displaying an attitude either approaching, or directly engaging in blatant insubordination toward legitimate and direct orders from her Supervisors.

Paradoxically, a mainstay of Teacher’s defense is an onslaught of allegations in the form of complaints/ protests about the District and yet, ignores clear evidence of Teacher’s neglect. In lieu of accepting responsibility for her actions, Teacher referred only to allegations in a prior filing:

“Petitioner failed or refused to insure that its administrators comply with regulations...[pre or post observation conferences...and/or hold them within the permitted time limit...timely complete Respondent’s individual professional development plan (IPDP)...in the development of Respondent’s corrective action plan (CAP)...to insure that it’s administrator’s engage in a collaborative process with the teacher to develop Respondent’s IPDP or CAP...specifically set forth...teacher’s deficiencies...establish timelines for the correction of alleged deficiencies.”] Interrogatory #5

That ‘Answer’ [to an Interrogatory] was not borne out by any credible testimony to the contrary. Instead, despite Teacher’s allegations in defense of the charges against her, the record contains clear and convincing evidence, based upon numerous efforts occurring throughout the period of time spanning these charges consisting of various collaborative attempts to help Teacher Ragland.

These include attempts to hold various meetings and yet, resulted in unsuccessful meetings, conferences, coaching sessions and repeated instructions by and between various administrative personnel and Ms. Ragland. These appeared as genuine efforts to re-educate and rehabilitate certain behaviors and methods engaged in by this Tenured Teacher ["Ragland"]. Yet her closing Brief only argues the District's fault in this regard.

Distressingly, the record shows numerous instances where good faith efforts were attempted to help this Teacher, but rebuffed by her. Unrefuted testimony shows she either openly declined the opportunities offered, failed to agree on suggested dates to meet and did not offer alternative initiatives typically in keeping with commonly accepted educational methods adopted and/ or practiced within a School District.

In addition to clear evidence by Petitioner's witnesses of this Teacher's refusing or ignoring these attempts to assist her, Respondent -Teacher brought forth no evidence to refute the allegations against her negative behaviors and, just as importantly, no witnesses to support her assertions of alleged negative treatment. We are therefore persuaded that despite any of the non-substantial imperfections of her 'evaluation' process, the overriding failure of cooperation by this Teacher forms the basis for her termination.

Even at the beginning point of these proceedings [i.e., appeal of the Board's decision] Respondent could have defended her position but made little effort to provide necessary documentation during discovery [up to and including a failure to offer any Proposed Findings of Fact] and again, at Hearing. Moreover, after 6 ½ days of 'Board' testimony 'Respondent' offered her testimony in approx. 2 ½ hours, offering little more than general denials to what 'Board' witnesses had testified to about her inefficiencies, lack of cooperation and insubordination.

Furthermore, no witnesses were called to testify on her behalf, even though Respondents pre-Hearing pleadings proffered that such evidence in support of her defense was ostensibly available. The prior pleadings of Respondent had claimed:

“There are so many students, parents and colleagues who could attest to the positive impact [she has] have had on so many students and [her] successes as a dance teacher”

Mistake of Fact: Beyond the above, the only conclusion based upon all available and relevant argument and evidence produced determines that the Petitioner School Board must prevail and the Respondent Teacher’s position be denied. The Board’s burden of proof has been met. There were no mitigating circumstances presented by Respondent Teacher to overcome the credible testimony and other evidence of her inability to perform and her behavioral issues. Thus, there was no mistake of fact demonstrated by Respondent in the evaluations of her.

Discrimination, et al.: When the burden shifted to Respondent, her prior defense(s) to the charges against this Teacher were simply lacking. Not only did Respondent present no proof of affirmative defenses claimed in prehearing pleadings [hostile work environment, anti-union animus, etc.] but she failed and/or refused to participate in mandated ‘discovery’. When offered opportunity to argue against a Motion (*in liminae*) Respondent again failed/ refused to participate. Thus, no proofs of discrimination were ever presented; the complete lack of same demonstrating contempt for this process and appearing only as an aggravating circumstance.

In depth analysis of the above follows.

Burden of Proof

As in any matter involving employee disciplinary action, the burden is upon the Employer [here, Petitioner] to establish it had proper cause to take the action and, that an appropriate penalty was meted out under all attendant circumstances. The Tenured Teacher challenged that the

standard was not met, contending that the preponderance of evidence by the District was not conclusive or, that it was found wanting.

The Petitioner's case in the Matter of this Tenured Teacher contained clear evidence to support its overview of the case it presented:

Over seven hearing days ...the Board presented evidence describing the Framework generally and its application specifically to Respondent's teaching performance. The Board's Executive Director of Human Resources explained the Framework, and the four school administrators responsible for evaluating Respondent's performance described their observations and interactions with her, their fidelity to the Framework, Respondent's corrective action plan, the professional development and support provided to her, the opportunities for her to provide data in support of higher ratings and to submit rebuttals to the observations and evaluations, her failure to take advantage of those opportunities, and their calculation of the ratings of "partially effective" in 2016-2017 and "ineffective" in 2017-2018.

[Board Brief]

There was not a scintilla of evidence to demonstrate the District, or any employee, acted in an arbitrary or capricious manner toward this Teacher. Indeed the only argument by Respondent in order to show retaliatory motive, hostility and/or an arbitrary or capricious manner was the alleged improper manner of the evaluation process. Given the conclusions reached hereunder relative to the appropriateness of the evaluation process, none of the discriminatory behavior alleged by Respondent was found. There was nothing in the record to demonstrate any, 'arbitrary and capricious' behavior toward Respondent.

To the contrary and as outlined above by the Petitioner District, all its arguments were directly related to the evidence presented at hearing(s). It concluded with: "*For all the reasons set forth herein, the tenure charge of inefficiency against Respondent should be upheld, and Respondent should be dismissed from her employment by the Board.*"

[Board Brief]

Thus the burden of proof was met by the District and, failed to be overcome by Teacher.

Substantial Compliance

Examples of its compliance with 'TeachNJ' were credited by and through testimony and documentary evidence of the District's administrative personnel. One such instance showed a pattern of ongoing and consistent failure(s), to accomplish timely the ordinary administrative functions performed by teachers. For example, timely grading of students or, providing any viable explanation for, i.e., why all students of a certain class received the same ['D'] grade. The Teacher's defense of this example, and other deficient instances, was that she apparently lacked the time required to accomplish the task. Other examples of both, 'Teacher's' alleged inefficient and insubordinate behaviors and her defenses to those charges follow.

The testimony and evidence presented in support of the charges was clear and convincing. There were instances, described below, where cross-examination by Respondent's Counsel revealed minor inconsistencies in statements made or in the computation(s) of points attributed to the Teacher's evaluations. These 'flaws' however were either corrected by re-direct examination or, upon closer scrutiny by this Arbitrator deemed to be irrelevant due to the insubstantial nature of their alleged 'defect'. None of the 'flaws' alleged by Respondent were found to be substantial enough to overcome the basic test for sufficiency of the TeachNJ concept that requires a School District to achieve when evaluating a Teacher's efficiency. Thus, the 'substantial compliance' factor was achieved here.

The intent of that concept by numerous authorities (and not overturned) mandates that a school district is in compliance with the Teach NJ principles when, "...the 'substantial compliance' standard" has been reached. All the evidence presented by Petitioner has met this 'substantial

compliance' test. When the burden of proof shifted to Respondent, the insubstantial level of evidence produced by the Teacher was found to be insufficient and lacking.

Except for the cross-examination process described above [minimalistic flaws in the evaluation process] there was no evidence produced to support Respondent's overly simplistic theory of her case, to the effect that the District was engaged in a vendetta against her:

"The point here is that the District was so focused on building its case against Ms. Ragland's teaching and attitude that it disregarded its responsibilities and brought a negative prejudgment to its observation and evaluation process. As noted, this same approach led to prior charges and the Arbitrator there kept his focus on the District's failures. The same result should follow here." [Respondent Brief]

The above theme by Respondent, attempting to invoke a hostile work environment appeared throughout the Teacher's brief and yet failed to overcome the substantial quantum of evidence to the contrary brought by Petitioner.

Respondent did not address any significant or incomplete standard of the evidence presented against her except for oblique reference to one arbitrator's dicta in his decision, arguing that the same result must apply here. Respondent's Brief cited from that decision and then argued that:

[Arbitrator Brown]: *'However, when the District's failures to comply with the provisions of the District's framework are weighed in full along with the considerations I rely upon below finding arbitrary conduct by the district, I find that respondents 2013 – 14 evaluation "failed to adhere substantially to the [Districts] evaluation process including, but not limited to providing a corrective action plan (Exhibit R-2 at page 37)*

[Respondent Brief] *That statement is completely and precisely applicable here. Indeed, the charges here are clearly part of an ongoing crusade to discredit and fire Ms. Ragland*"

Thus Respondent tried to attach or attribute the same rationale by Arbitrator Brown, in a prior matter with differing factual circumstances, to the present case and compare the facts therein to charges against this Teacher several years later.

The Petitioner also cited the ‘Brown’ decision to distinguish the similarities and yet, also to show how the same or similar facts were found in both cases. It cited:

“In I/M/O Tenure Hearing of Alexander Gonzalez, Agency Ref. No. 264-9/15 (Timothy Brown, Esq., Arbitrator, March 3, 2016) at 13, the arbitrator found, as here, only the teacher may upload a CAP, and therefore “the teacher subject to the CAP bears significant responsibility to assure that the CAP is completed in full and within the time periods established.” Therefore, “when a teacher is claiming a school district failed to substantially comply with the evaluation process,” regarding a CAP, “such a claim should be strictly scrutinized to determine whether the District exercised such attention and good faith in the process as to satisfy the ‘substantial compliance’ standard and/or whether the alleged [issue with] the CAP was caused by the teacher.” (Id.) [Board Brief]

The Board also cited specific examples in answer to Respondent’s claims of irregularities in the evaluation process.

“Here, Respondent created her CAP document, which was then reviewed together with Ms. Cowins (J-17.) Ms. Cowins provided Respondent with significant feedback, but Respondent did not change the CAP. Instead, Respondent “unshared” the document, so that her administrators did not have access until the deadline by which CAPs needed to be finalized. (6T970.) At the mid-year, again Ms. Cowins stressed that the CAP goals needed to be revised, stating, “It is strongly suggested that student growth goals are revised to be measureable and align with grade-level standards.” (6T1014.) Those suggestions were repeatedly relayed to Respondent, but she ignored them. (6T1016-22.)” [Board Brief]

The examples given were deemed credible, and satisfied the Board's burden of proof. The proofs here were clear by the District's evidence. It is insufficient for the challenging party [Respondent Teacher here] to simply deflect that evidence by a show of minimalistic flaws in computing evaluation points, which did not change Teacher's overall ratings of her efficiency.

Moreover, the more relevant aspects of *dicta* contained within the Arb. Brown decision were references to the shared responsibilities between the Teacher and School District administrators charged with the evaluation process and intended to assist the Teacher in correcting her deficiencies and reaching her goals.

The preponderance of the evidence demonstrates unequivocally that the District met its burden of proving that its actions in seeking termination of this Teacher were for just and proper cause. 'Substantial Compliance' with the Act was demonstrated

This Arbitrator also used other contributing factors to review the evidence.

Credibility

Petitioner- 'Board' presented extensive testimony of four (4) eyewitnesses to Respondent's behaviors and actions described herein. Of import here is that each of them testified under a 'Motion of Sequestration', thus insulating that testimony from the taint of improper repetition.

Including other documentary accounts regarding interactions with Respondent 'Teacher', their testimony can only be described, even in broad general terms, as showing uncooperative behavior by this Teacher. Their accounts credibly described actions including 'Teachers' inattention or indifference to the necessary protocols of her teaching position, including failure to adhere to standard protocols of her teaching position and, conduct approaching, or at insubordinate levels. While Respondent Teacher attempted to minimize her culpability [vis. the Petitioner's allegations] by generally denying that the alleged behavioral actions ever occurred, the Petitioner's

witnesses clearly contradicted Respondent's general denials. Each of the four (4) witnesses' testimony had the 'ring of truth' to the allegations and, Respondent's denials did not approach that level and, were unsupported by any evidence.

Moreover, Respondent's testimony stood unsupported by a lack of veracity and further damaged by internal and external inconsistencies. One example alone was when Teacher was confronted by a failure to report her grades and in a timely fashion. She alternated between denial of that duty and finally, simply claimed that she had insufficient time to complete that important task. .

Notably, the 'Teacher' could not supply any evidence in rebuttal of 'Board' witness testimony beyond general denials, only supported by theoretical supposition. Nor did Ms. Ragland provide, even circumstantially, anything beyond a pre-hearing statement of the evidence [*"...a host of favorable evaluations/commendations...parents students over those years..."*] she purportedly had at her disposal.

Thus credibility was tested by a number of factors, including when the parties' jointly agreed to sequestration. The separation of the witnesses was key, given that the testimony of one could not be influenced by prior testimony of another on similar matters. The joint motion for it was enforced, even over a 'Board' objection to it on the 1st day of evidentiary Hearing and thus, sequestration occurred here for all testifying witnesses.

Accordingly the overwhelming evidence of credible testimony was found to be more than sufficient to satisfy the School Board's burden.

Sufficiency of the Evidence

Despite Teacher's testimonial defense [i. e., general denials] for the events described by District's witnesses, the evidence was overwhelmingly clear to the contrary, thus sufficient. Even using a minimal standard for the degree of evidence necessary, a 'reasonable person' could hardly dispute the veracity and thus the credibility of the District witnesses who testified. Therefore the evidence was deemed sufficient to uphold Petitioner's charges.

Further, several of the witnesses demonstrated more than a modicum of compassion for this Teacher, seemingly in a valiant effort to help Respondent achieve the level of sufficiency necessary to keep her job. Yet, even in that instance, this Teacher did not help herself.

Unsupported vs. Corroborated

There was no basis in fact for the defense's posture that the Board evidence was unsupported by the facts. Thus taking all manner of credible evidence, cited authority and argument into consideration provided a basis for finding that the conduct described in the charges against this Teacher were proven beyond doubt, plainly by a preponderance of the corroborated evidence presented.

Thus the factors analyzed above demonstrate that a preponderance of the evidence found in the charges support a finding that this Teacher was culpable of the charges, including "Inefficiency". Accordingly, the Newark School District has met its burden of proof for this Tenured Teacher's Dismissal.

There were other circumstances addressed, that bear appropriate commentary.

Aggravating vs. Mitigating Circumstances

The Tenured Teacher's Brief contained several veiled and thus elusive references to factors in mitigation of the charges/ penalty. Although the remedy sought implies that alleged circumstances [i.e., hostile environment, et al] were present in this case. Yet the facts upon review, were not persuasively linked to the record of this Teacher.

While no set rule exists for applying mitigation to a particular set of circumstances any neutral must be mindful of the gravity of charges which could have such a deleterious effect on an employee as found here. Balancing that of course is the potential for returning an employee to a workplace environment where, if the charges are deemed credible, there is a likelihood of ongoing and continued conduct deleterious to the mission of teaching. Those aggravating factors are found here.

This neutral has in past applied mitigation standards generously where an employer was found to have meted out an overly harsh penalty. When a long term employee otherwise having served with distinction is precipitously accused of a relatively minor infraction or one involving a singular incident of wrongdoing appearing to be out-of-character, then it is persuasive to and becomes incumbent upon the neutral to correct an injustice.

The 'mitigating' factors suggested above were not found here and instead, substantial evidence of ongoing and continued resistance to change by this Teacher. Consequently, having determined that the charges filed by the Newark School District were appropriate, we cannot adopt the existence of mitigating factors suggested by the Teacher as warranting invocation of progressive discipline. Therefore, correcting a penalty of termination with a less severe penalty is not warranted here, under all the attendant circumstances.

Retaliation, res judicata and/or collateral estoppel:

Another suggested aggravating circumstance calling for mitigation was alleged, retaliation' as a primary defense. The Teacher's Brief argued that a blatant and veiled motive for the current charges against her by the Newark School District existed. Ostensibly she argued that the current charges were only a 'refiling' of prior charges unsuccessfully brought against her for allegedly the same or similar charges previously raised during a previous school year. Also that her "outspokenness" after being re-instated previously, now provides the basis of her claim for 'retaliation' in this current set of charges. [Teacher's Brief] No other 'proofs' were offered.

Moreover, Respondent's veiled attempts to connect the present and prior arbitrations had the overtones of exploring theories of Res judicata and collateral estoppel as factors against the termination penalty. However, for several reasons clearly evidenced in the record before us it is persuasive that there is no plausible reason to doubt the veracity of the current charges under either of those theories.

Teacher's Brief cites the prior Arbitrator Brown decision for the premise that the current charges filed against Ms. Ragland were simply a, '*re-filing*' of the prior incident, i.e., implying a, "...negative prejudgment", or, "*the District's bias against Ms. Ragland that infected the entire observation process*". While not specifically raising the defense of 'res judicata', it is clearly implied here and yet unfounded.

Regardless of the prior charges or arbitration outcome resulting in this Teacher's reinstatement to her tenured position, no one can be immune to or immunized against 'fresh' charges, especially ones involving the nature and seriousness of those found herein. Moreover, we deem these charges to be unconnected, having occurred in/a separate school environment and after having given this Teacher a fresh start within a new environment. A primary requisite of Res judicata is the

requirement for an absolute showing that the person is being jeopardized, twice, for the same offense and, under the exact, same circumstances.

Here, there has been no showing of such duplication, but for the theoretical position taken in the post-hearing Brief. Moreover and further to the contrary of either *res judicata* or collateral estoppel, it was clearly demonstrated by the District that it had an absolute and statutorily mandated legal duty and thus, no choice but to act upon the parent/student complaints due to the nature and timetable of events shown here.

The District had no choice but to act upon the current evaluations, parent/student complaints of inappropriate conduct and/or behavior when brought to its attention. The fact pattern here, despite any ironic similarities to the incidents that this same teacher was accused of in prior litigated matters, involves a fresh set of incidents. Thus, current charges do not fall under the protections afforded by the preclusion theories of *Res judicata* and collateral estoppel.

Thus, other than veiled, vague but unsubstantiated testimony by the Teacher and theoretical suggestions implied in her brief but also unsubstantiated that by virtue of the Teacher's re-instatement and subsequent complaints about her assigned tasks, there is no finding here that she was the victim of retaliation, due to her prior reinstatement. This Teacher, like any other, had the right to file a 'grievance' or complaint over her concerns with her assignments at any time after her re-instatement, but did not take advantage of that right.

The current circumstances involve factually unconnected incidents occurring in prior school years. Accordingly, no evidence of retaliation has been found here and neither *res judicata* nor collateral estoppel can apply.

In **summation** after careful consideration of all evidence and argument in support thereof, it can only be concluded that this Tenured Teacher was properly charged with “inefficiency”. Moreover, other conduct-related rules observed by the School District were violated as well.

This Teacher’s conduct and behavior when approached to help correct her deficiencies were addressed herein and can only be described as insubordination, by her failing and/or refusing to cooperate with the authority over her granted to the School District. Moreover, her actions and deliberate inaction to avoid helping herself to improve, formed the basis for the disciplinary action taken against her.

The corrective measures adopted and attempted hereunder by the District to assist this Teacher were lawful and proper. To have accomplished these goals would also have benefited the well-being of students, faculty and others who came under this Teacher’s far reaching affect.

The preponderance of evidence demonstrates that an evaluation process was in place for teachers in this New Jersey public school system. While a complex and complicated process, the evidence demonstrates the managing authorities of this School (‘Horton’) administered it in a substantially complete way and did so in a full and fair manner with complete regard for this Teacher’s personal rights in efforts to assist her. The process as applied here was more than sufficient to warrant a finding that the charges against this Teacher were proper and that the penalty of termination was just. The Teacher’s claims to the contrary were found to be baseless allegations only and, lacking in proof.

Although pre-Hearing allegations by her claimed, ‘hostility, anti-union animus’ and other forms of discrimination, the Teacher’s evidence at Hearing did not follow through to establish proof of any retaliation or other discrimination. While documents containing these allegations by Teacher were a part of the record and, opportunity to hear testimony from others might have supported them,

no witnesses were called by the Teacher. No such testimony was heard and thus, the assertions remain as merely ostensible and unproven.

Moreover, the preponderance of evidence against her was substantial. The Teacher's testimony was found wanting, both in its failure to complete the gaps between basic allegations made, the proofs necessary to justify them and also to explain inconsistencies between her views and that of District witnesses against her. Accordingly, the Teacher's credibility suffered.

The evidence is clear as detailed hereunder that all appropriate elements required for a just and proper cause dismissal were present in this case. Thus the burden of proof was met by Petitioner, Newark School District. While the concept of progressive discipline is not a factor here, it is both ironic and noteworthy that a similar tenured teacher action involving this Teacher had been taken before.

Teacher's Counsel attempted to rely upon misquoted assumptions from that prior arbitration, thereafter extensively cited in Respondent's post-Hearing brief in this case. As discussed above here, the rationale by a prior arbitrator to find in the Teacher's favor previously, was not relevant now in this case. The only relevance here is that Teacher Ragland did have the benefit of foreknowledge or cautionary advice to understand what would be expected of her when she was (in effect) placed back to work. Yet she failed to heed that information and to be guided accordingly.

Taking all manner of evidence, argument and positions of the Parties into consideration, the decision in this matter follows.

DECISION

The evidence is clear that all appropriate elements for a just and proper dismissal of Respondent were present in this case. The burden of proof was met by a preponderance of the evidence produced through Petitioner, Newark School District.

Overwhelming and credible testimony from four (4) administrative / supervisory personnel of 'Teacher' was elicited by the District and found to be realistic, accurate and trustworthy, meeting the 'substantial compliance' factors of the Act. Moreover, when given opportunity to refute that evidence, no adequate defenses were raised by the Tenured Teacher to circumvent or contradict, in any substantial manner the District's findings, its rationale for discipline, the charges, or a penalty of dismissal.

The Tenured Teacher's only defense was a general denial of the basic assertions and charges. Further, her initial contentions that she had been a victim of hostility and discrimination lacked any evidence or proof of occurrence.

Taking all manner of evidence and argument by both parties into consideration and deliberation, it is the considered opinion of the undersigned neutral that Petitioner Newark School District had the absolute right to have charged Tenured Teacher LaRhonda Ragland with the offenses stated hereunder and to have sought and caused her dismissal thereafter.

In view of the above, the penalty of dismissal for this Tenured Teacher is upheld. No other remedies apply.

Jay D. Goldstein,

Jay D. Goldstein, Arbitrator

Dated: May 15, 2019, Jenkintown, PA