

PURSUANT TO THE REFERRAL BY THE
COMMISSIONER OF EDUCATION, STATE OF NEW JERSEY

IN THE MATTER OF THE TENURE CHARGES

ENGLEWOOD BOARD OF EDUCATION	:	BEFORE THE COMMISSIONER OF
Petitioner	:	EDUCATION OF NEW JERSEY
vs.	:	AGENCY DKT. NO. 25-1/18
JOSEPH ARMENTAL	:	
Respondent	:	

ENGLEWOOD BOARD OF EDUCATION	:	BEFORE THE COMMISSIONER OF
Petitioner	:	EDUCATION OF NEW JERSEY
vs.	:	AGENCY DKT. NO. 26-1/18
LUIS SANCHEZ	:	
Respondent	:	

ENGLEWOOD BOARD OF EDUCATION	:	BEFORE THE COMMISSIONER OF
Petitioner	:	EDUCATION OF NEW JERSEY
vs.	:	AGENCY DKT. NO. 27-1/18
VENUS ROSE	:	
Respondent	:	

ENGLEWOOD BOARD OF EDUCATION	:	BEFORE THE COMMISSIONER OF
Petitioner	:	EDUCATION OF NEW JERSEY
vs.	:	AGENCY DKT. NO. 28-1/18
NICOLE CARTWRIGHT	:	
Respondent	:	

BEFORE: CAROL F. LASKIN, ESQUIRE, ARBITRATOR

DECISION ON MOTIONS TO DISMISS

APPEARANCES:

On behalf of Joseph Armental
Andrew L. Schwartz, Esquire
Robert M. Schwartz, Esquire
Schwartz Law Group, LLC

On behalf of Luis Sanchez, Venus Rose and Nicole Cartwright
Sheldon H. Pincus, Esquire

On behalf of Englewood Board of Education
Dennis McKeever, Esquire
Marcie L. Mackolin, Esquire
Joseph F. Mackolin, Esquire
Sciarrillo, Cornell, Merlino, McKeever & Osborne, LLC

SUMMARY OF PROCEDURAL HISTORY BEFORE EVIDENTIARY HEARINGS

On February 16, 2017, the Englewood Board of Education ("Board", "Petitioner", or "District") approved a Resolution placing ten (10) employees, including Respondents herein on administrative leave until the completion of an internal investigation regarding, *inter alia* transcript irregularities in the School Student Information System. Prior to July 1, 2016, the Board utilized the Power School Student Information System. As of July 1, 2016, the Board migrated data to a new system, Genesis Student Information System.¹ (B-11)

After the investigation, on September 20, 2017, the Board filed a consolidated set of Tenure Charges against eight (8) employees, including Respondents. The Commissioner of Education ("Commissioner") dismissed the charges, Agency Docket Number 216-

¹ Ten (10) Board Exhibits were admitted into Evidence. They are not numbered in sequence. Testimony is identified by the Hearing date, followed by page/line.

9/17, declaring them "procedurally defective", sealing all records on November 9, 2017 because identifying student information was included in support of the charges. The dismissal was without prejudice to refile.

On January 29, 2018, Petitioner filed separate charges against each individual named in Exhibit B-11 who remained in its employ, including Guidance Counselors, Nicole Cartwright ("Cartwright"), Venus Rose ("Rose") and Louis Sanchez ("Sanchez"), along with Vice Principal Joseph Armental ("Armental")

The charges against certificated Guidance Counselor Sanchez consist of one hundred and forty-two (142) separate paragraphs (47 pages). (Agency Docket No. 26-1/18) The charges against certificated Guidance Counselor Rose consist of one hundred and sixteen (116) separate paragraphs (38 pages). (Agency Docket No. 27-1/18) The charges against certificated Guidance Counselor Cartwright consist of one hundred and fifty-one (151) separate paragraphs (52 pages) (Agency Docket No. 28-1/18) Tenure charges against Armental, a certificated staff member holding the title of Assistant Principal at Dwight Morrow High School ("DMHS") consist of one hundred and forty (140) separate paragraphs (49 pages). (Agency Docket No. 25-1/18)²

²On January 29, 2018, the District also filed separate charges against Noel Gordon, Director of Guidance, Testing and Evaluation. Those charges, Agency Docket Number 24-1/18 were dismissed on August 13, 2018, by Arbitrator Joseph Licata for failing to comply with specific requirements of N.J.A.C. 6A:3-5.1(b)(1) and failing to adhere to the Commissioner's prior directives. Again, the dismissal was without prejudice to refile.

On January 25, 2019, the Board refiled Tenure Charges against Dr.

The Tenure Charges against all four (4) Respondents assert unbecoming conduct, incompetence, and other just cause for a series of alleged actions violating the Professional Conduct of a Public School Administrator and detrimentally affecting public respect for the District. Each Respondent filed a Motion to Dismiss all charges before Arbitrator Joseph Licata, Esq.³

On August 1, 2018, Arbitrator Licata denied each Motion to Dismiss, with the following clarification,

"This matter shall proceed to a hearing on the charges of incompetency, unbecoming conduct and/or other just cause to determine whether (1) the Board has demonstrated that Respondent engaged in willful, knowing and/or fraudulent activities which had a deleterious impact on students and/or the school district as a whole; and (2) if so, whether the penalty of removal from employment is appropriate under the factors traditionally relied upon, i.e., the gravity of the offense, prior record of employment, including discipline, if any and a consideration of any other relevant aggravating or mitigating factor."

COLLATERAL MATTERS

A. *Conscientious Employment Protection Act, N.J.C.A. 34:19-1 et seq.* ("CEPA")

In September 2018 Guidance Counselors Rose, Sanchez and Cartwright filed separate civil actions, later consolidated, in Bergen County Superior Court alleging, *inter alia*, actions by Superintendent Robert L. Kravitz ("Superintendent" or "Kravitz") and the Board violated the *Conscientious Employment Protection Act*

Gordon, Agency Docket No. 25-1/19. On July 15, 2019, the Undersigned granted Dr. Gordon's Motion to Dismiss.

³In March 2018, the Board changed its legal representation.

("CEPA") as articulated in *N.J.S.A. 34:19-1 et seq.*

In August 2018, Respondent Joseph Armental, along with other administrators effected by the Board's February 16, 2017 Resolution, B-11, also filed civil actions in Bergen County against the Board and Kravitz asserting, *inter alia*, a violation of CEPA.

The record in the instant consolidated matter is silent as to the status of these civil actions. Their existence, however, hindered attempts by the undersigned and Arbitrator Licata to resolve the Tenure Charges.

B. *Reduction in Force Effecting Joseph Armental.*

During the course of the tenure proceedings, by Resolution, on May 3, 2018, the Board abolished Joseph Armental's position of vice principal, effective July 1, 2018, "for reasons of economy or because a reduction in the number of pupils or of change in the administrative or supervisory organization of the district or other good cause...", *N.J.S.A.18A: 28-9. Reduction of force; power to reduce and reasons for reduction.*

Thereafter, Armental filed a timely Petition of Appeal with the Commissioner of Education questioning the reduction in force. Armental maintains tenure and seniority rights as a certificated Teacher of Math.⁴

⁴There is no reference in this record as to the present status of this proceeding.

EVIDENTIARY HEARINGS

On May 7, 2019, the Hearing on the charges filed by the Englewood Board of Education against Respondents Armental, Sanchez, Rose and Cartwright commenced.⁵ Between May 7, 2019 and June 12, 2019, twelve (12) hearing days were completed, the first eleven (11) of which were primarily focused on the direct (1½ days) and cross examination of the Superintendent.

In recommending the charges, Kravitz revealed his reliance upon an audit of student records of the Dwight Morrow High School graduating classes of 2015-2017 conducted by Pitbull Secure Technologies ("PST"), said audit approved by Board Resolution on December 15, 2016. (B-6) And, on February 16, 2017, within the same Resolution placing Respondents on administrative leave, Jamie Ciofalo, author of the PST report, was appointed Acting Director of Guidance. (B-11)

On day twelve (12) of the Hearing, June 12, 2019, the District offered Business Administrator/Board Secretary, Cheryl Balletto. On July 9, 2019, prior to the next scheduled day of hearing, the District held a special meeting to evaluate the tenure charges, supporting evidence, and Board Counsel's considered synopsis of the testimony provided thus far.

5. Upon his request, the consolidated charges were removed from Arbitrator Licata. These matters were then transferred by the Bureau of Controversies and Disputes to the undersigned Arbitrator for hearing and decision.

Thereafter, on August 15, 2019, Petitioner adopted a Resolution withdrawing all pending tenure charges against Respondents, restoring their employment with a make whole remedy.

Upon notification of the Board's intention to withdraw all charges, the parties conferred. Five conference calls with the undersigned were also conducted to ensure any executed withdrawal complied with standards articulated by the State Board of Education *In re Cardonick*, State Board decision of April 6, 1983 (1990 *School Law Decisions (SLD)* 842, 846. These standards have been codified in the New Jersey Administrative Code, *Controversies and Disputes, N.J.A.C. 6A:3-5.6 Withdrawal, settlement, or mooted of tenure charges*. Subsection (a)(3) expresses, "Consent of both the charged and charging parties," is required for this arbitrator to approve any withdrawal.

During the conference call of September 27, 2019, Respondents' counsel disclosed their clients would not "consent" to any withdrawal unless a certification executed by Kravitz contained language objected to by Petitioner. Consequently, on October 2, 2019, after conferring with the Office of the Commissioner, the undersigned informed the necessity of continuing the hearing.

The Hearing resumed on November 6, 2019 with the cross examination of Business Administrator/Board Secretary, Cheryl Balletto ("Balleto"). In reply to a query by Counsel to Guidance

Counselors Sanchez, Rose and Cartwright, she disclosed the present "cost" to the Board of the litigation was, "roughly up to \$3 million." (November 6, 2019 5/21)

Upon conclusion of Balletto's testimony, determining not to introduce any additional witnesses, the Board rested. After impassioned argument, ten (10) Board exhibits were admitted.

Oral Motions to Dismiss

Prior to offering Respondents witnesses, their counsel requested the opportunity to present, orally, Motions to Dismiss. The statute, *Teacher Effectiveness and Accountability for the Children of New Jersey ("TEACHNJ") Act, P.L. 2012, c.26, N.J.S.A.*, delineates procedures regarding tenure hearings conducted by an arbitrator. *N.J.S.A.18A:6-17.1(c)* mandates, " the arbitrator shall determine the case under the American Arbitration Association labor arbitration rules." *Rule 25, Order of Proceedings* of these rules provides, in pertinent part, "The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute...."

In consideration of this Rule, the undersigned granted Respondents' Counsels request to proffer Motions to Dismiss all tenure charges filed against their respective clients. The arguments presented were thoughtful, impassioned and comprehensive. Relating the tenure charges to the hearing record, both counsel asserted the Board failed in any way, to establish,

by a preponderance of the credible evidence, the bona fides of each charge. Counsel for the Guidance Counselors concluded, "This cries for dismissal, and I respectfully request that you do just that." (November 6, 2019, 88/12 to 14)

Respondents' Counsel were given leave to provide a written supplement to their oral argument; Board's counsel was granted leave to receive all position papers and the certified transcript prior to submitting Petitioner's reply. On November 22, 2019, by letter, Board's counsel set forth its response to the Motions to Dismiss. Therein, he conveyed,

"The Board rested its case on November 6, 2019 after 13 days of hearing. The Board relies upon the proofs that were adduced during the hearing and already provided to yourself and the Respondents. The Respondents offered numerous reasons for the filing of the Motions to Dismiss in this matter; while the Board does not agree with those reasons as offered, it does not oppose the Motions and agrees that the tenure charges should be dismissed."

ANALYSIS

Prior to the enactment of TEACHNJ, tenure revocation proceedings were often lengthy and costly for all concerned. In the early 1990s, this arbitrator had the privilege of serving as an Administrative Law Judge/Temporarily Assigned and witnessed the effect of the lengthy process on a District, staff members, and their representatives.

The legislative intent of TEACHNJ for a cost efficient proceeding with due process protections was not met herein. The Board's February 16, 2017 Resolution, B-11, placing ten (10)

employees on administrative leave, assigning new administrators, contracting for six (6) Acting High School Counselors, and authorizing a post PST review by its author, initiated a tsunami of collateral harm to its employees placed on paid administrative leave, to the District's reputation, and to many of its high school students. The tenure charges and Board Resolutions were published by the media, ushering unwanted and, based upon the record evidence, unfounded negative notoriety upon Respondents.

After twelve (12) hearing days, the District was well served by its counsel who informed this record does not support a finding the District meet its burden to establish any of the tenure charges referred to the Commissioner.⁶

Accordingly, the Motions to Dismiss all tenure charges filed by the Englewood Board of Education against Respondents Joseph Armental, Louis Sanchez, Venus Rose and Nicole Cartwright, are, hereby, **granted**.

AWARD

1. The Englewood Board of Education has not met is burden of proving the Tenure Charges against Joseph Armental as identified in Agency Docket No. 25-1/18.

2. Respondent Joseph Armental is entitled to a make whole remedy including reinstatement, back pay, and all other contractual and statutory entitlements.

3. The Englewood Board of Education has not met is burden of proving the Tenure Charges against Luis Sanchez as identified in

⁶ Arbitrator TeachNJ Decisions are posted online by the New Jersey Department of Education. In light of my Analysis, the charges have not been copied within this Decision.

Agency Docket No. 26-1/18.

4. Respondent Luis Sanchez is entitled to a make whole remedy including reinstatement, back pay, and all other contractual and statutory entitlements.

5. The Englewood Board of Education has not met its burden of proving the Tenure Charges against Venus Rose as identified in Agency Docket No. 27-1/18.

6. Respondent Venus Rose is entitled to a make whole remedy including reinstatement, back pay, and all other contractual and statutory entitlements.

7. The Englewood Board of Education has not met its burden of proving the Tenure Charges against Nicole Cartwright as identified in Agency Docket No. 28-1/18.

8. Respondent Nicole Cartwright is entitled to a make whole remedy including reinstatement, back pay, and all other contractual and statutory entitlements.

I, CAROL F. LASKIN, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Decision and Award.

DATED: 12/30/19

CAROL F. LASKIN, ESQUIRE

COUNTY OF CAMDEN :

STATE OF NEW JERSEY :

I CERTIFY that on 12-30-19 CAROL F. LASKIN, personally came before me and acknowledged under oath, to my satisfaction, that this person :

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as her act and deed.

DATED: 12-30-19

