

COMMISSIONER OF EDUCATION, State of New Jersey

IN THE MATTER OF THE PROCEEDING BETWEEN:

Tenured Teacher Donna Coleman

“Teacher” or “Tenured Teacher”

and

School District of the Borough of Roselle, Bergen County

“Petitioner”, “District,” or “Board”

Petition: Dismissal, Tenured Teacher Donna Coleman, by Roselle Board of Education
Agency Docket No: 18 - 1 /2

AWARD AND OPINION

Pre-Hearing Procedural Motions;
Substantive Hearings, Clark, NJ
Transcripts
Briefs, w/ materials
Date of Award:

March 8 – 30, 2021
May 10 and 11, 2021
May 26, 2021
July 6; revised fr. June 22, 2021
August 30, 2021

Arbitrator Jay David Goldstein

APPEARANCES

For the Roselle School District

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The Busch Law Group LLC

Dr. Nathan Fisher, Superintendent

Bernice Marshall Simmons, Dir. HR

Lisette Gonzalez-Perez, Asst. Sup.

For Donna Coleman, Tenured Teacher

Ben Weathers, Esq.,

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Donna Coleman [Tenured Teacher]

Antoinette Coleman [daughter of Teacher]

Randolph Dorcent [Former student]

INTRODUCTION

The underlying dispute over this dismissal action by the ‘Roselle School District’ arose from a single incident purportedly emanating from, the Tenured Teacher’s posting action on her personal “Facebook” account [hereinafter, ‘website’ or ‘web account’], occurring during the 2019-2020 school year. There was no dispute that the ‘posting’ occurred on May 29, 2020, leaving only inquiries in dispute regarding the technicalities over ‘how’ the incident happened and, the Teacher’s motive(s) or intention behind an incident which caused significant and deleterious effects upon her School District community and the larger external community.

Significant investigation into the incident transpired over many months, with each side ostensibly represented by individuals identified as: “*Roselle Education Association president Rosemary Longo... there to represent Ms. Coleman’s interests.*” [Teacher Brief, Pg. 7]
and, “*District decided to retain an outside third-party independent investigator*” [Board’s Brief, Pg. 9]

Outlined extensively hereunder, both during and after that investigatory process, the parties engaged in disputes ranging from procedural to substantive, including the weight of the evidence, credibility determinations and burden of proof. Added to the above considerations were mitigating or aggravating factors considered.

While there were issues raised concerning adherence to District Policies [i.e., prohibiting certain actions and behaviors] and, whether or not the ‘posting’, and /or its content was protected ‘free speech’ [i.e., 1st Amendment rights], there are overarching principles at stake here. As each Party defined during the Hearing, the Issue for decision here will be determined based upon the factual analysis of the Teacher’s actions, i.e., whether or not this Teacher engaged in ‘Conduct Unbecoming’, Insubordination and other elements of the just cause standard.

The District, believing it had satisfied the just cause requirements needed to do so, filed “Tenure Charges” [by the ‘Board’] on/ about January 26, 2021 against Tenured Teacher Donna Coleman [hereinafter, ‘Teacher’] with the NJ DOE, as referenced herein. Despite questions raised by the ‘Teacher’s Response to the Charges’ [on / about February 10, 2021], the evidence demonstrates this Teacher being charged with causing a message [deemed by the District as inappropriate] to be 'shared' on her social media account.

The content of the post [alleged to be ‘inflammatory, insensitive and racially charged’], including its motive, manner and the methods employed to have ‘shared’ that post are at issue here. The negative characterization of the ‘shared’ message was shaped by a plethora of negative comments [exceeding 200] which were posted and/ or received by the School District (and/or in reply to the Teacher’s account), subsequent to the Teacher’s May 29, 2020 posting.

The gist of the responsive commentary was detrimental in nature, specifically directed against both the Teacher and the School District, for continuing to employ her. Hence, hundreds of people in the community of, in and around the Roselle School District [Bergen County, NJ] commented negatively regarding the incident.

The gravamen of the underlying disciplinary action against the Teacher began with the interception of the offending message by another teacher in the School District. That teacher reported her views to School District authorities who took immediate steps, discussed hereunder, in efforts to contain, control and / or remediate the situation, especially with regard to the onslaught of negative feedback from the external community. Thereafter, the District moved to a formal investigation as more complaints were received. Investigation led to ‘Charges’ being filed against Teacher and finally, the procedural steps leading to a ‘Dismissal’.

In summary presentation, further chronological background events are abridged here and expanded in greater detail under the Background, Facts, and Party Positions below this section.

[*underlining for emphasis has been added by the Arbitrator throughout this document]

May 29, 2020; the date of a [Facebook] ‘post’ at issue here appeared.

Each party hereunder commented extensively regarding the ‘post’. By the ‘Teacher’: *“The events of May 29, 2020 occurred four days after the death of George Floyd when racial tensions, unrest and protests were prevalent across the United States.”* [Teacher’s Brief, Pg. 6; citing Exhibit J-1, at page 5]

Further, *“Ms. Coleman testified that she believed on May 29, 2020, and ... still believes, that an individual, or individuals, that witnessed the first post that she had deleted found a second image which was similar in nature and made it appear as if it was her post. T 292, 12-20. As a result of this second post in question, Ms. Coleman began receiving comments and messages directed to her and/or about her, some of which were threatening in nature. See, Exhibit R-3”*. [Teacher Brief, Pg. 6]

The ‘District’, commenting upon the intentional nature of the Teacher’s actions: *“30. Dr. Fischer concluded that Respondent intentionally made the Post on May 29, 2020. Specifically, he testified (and illustrated an example), that posting something on Facebook requires a two-step process (the second step being the opportunity that you do, in fact, wish to post what you are about to post. T-1, 192:14-22; 200:1-201:14”* [Board’s Brief, Pg. 9; citing Superintendent’s testimony]

June 01, 2020; *“...Director of HR, Ms. Marshall-Simmons, was tasked ... with investigating the Post. T-1, 58:9-13.”* Further, *“...Marshall-Simmons met with Respondent on June 1, 2020. When asked about the genesis of (it), Respondent initially asserted “I saw the post and what it said. It came up on my feed and I did not share the post. There is a fake account with my name. I would never share anything derogatory on my page.”* [Board’s Brief, Pg. 8; citing J-2, Ex. E (Ex. A); T-1, 63:9-15]

Further by the Board, *“Respondent then asserted that her account had been hacked and proceeded to represent that she would obtain a police report indicating same. Id.* [Board’s Brief, Pg. 8]

By the Teacher, *“On June 1, 2020, a virtual meeting was held in which Bernice Marshall Simmons, Ms. Coleman, Assistant Superintendent Lissette Gonzelez Perez and Roselle Education Association president Rosemary Longo, who was there to represent Ms. Coleman’s interests. T 59, 6-25; T60, 1-6; Exhibit A, attached to Exhibit D, of Exhibit J-2. Ms. Simmons testified that at the time of the meeting, no school district policies had been identified as having been potentially violated by Ms. Coleman. T 77, 6-10.* [Teacher Brief, Pg. 6]

June 3, 2020; “...Ms. Coleman made a report to the Bedminster Police Department of what it characterized as “cyber harassment.” Exhibit C, page 1, Exhibit J-2. Ms. Coleman reported to police that “[s]omeone cut photos from her Facebook account . . . and pasted the photos under a new account with her name and attached derogatory/racist comments to it.” Exhibit C, page 2, of Exhibit J-2. Ms. Coleman did as was requested and provided the police report to Ms. Simmons. T 66, 7-15; T 79, 17-25. [Teacher Brief, Pg. 8]

January 26, 2021; the District’s Tenure Charges against Teacher Donna Coleman are filed with NJ DOE citing, among other contentions, that the post was, “...racially charged, racially offensive, racially motivated.” Further that, “...district argues that its ability to provide public services was disrupted because it [had... received daily phone calls, emails” [Motion, Oral Arg.,Tr. 25]] Related arguments followed the underlying evidentiary hearings. [Board Brief, Pgs.12, 14] Pertinent sections of the ‘Charges’ are reproduced hereunder [see Findings, below]

February 10, 2021; in reply to the Tenure Charges, Teacher’s contentions included, “...this entire prosecution is frivolous. Ms. Coleman isn’t accused of harassing students, insulting students, discriminating students, using students, anything like that. In a nutshell she’s being prosecuted because something was said on Facebook that some people didn’t like” [Teacher’s Motion for Dismissal, Tr. 16, Oral Arg.] Related arguments followed the underlying evidentiary hearings. [Teacher’s Brief]

February 12, 2021; this Arbitrator appointed to the matter by the NJ State Board of Education.

March 15 and 23, 2021; by mutual request in writing followed by oral argument conducted in a virtual Hearing, the Teacher’s “Motion for Summary Decision”, and District, “Petitioner’s ‘Opposition Brief’”, are argued in a procedural effort to adjudicate the matter prior to a full evidentiary hearing [prior scheduled hearings held in abeyance were re-scheduled]

March 26-30, 2021; upon review of ‘procedural’ transcript and pleadings, Arbitrator issues an, “Interim Ruling”, dismissing, “Motion for Summary Decision”, without prejudice. Evidentiary hearing(s) re-scheduled to May 10 and 11, 2021.

May 5, 2021; District request for conference call to address, ‘Motion’ for a witness to appear virtually (prior scheduled, ‘live’), due to medical necessity; no objection by Teacher's Counsel. Both advised all witnesses will receive instruction for testimony decorum.

May 10 and 11, 2021; During two (2) hearings scheduled by agreement between Counsel, each side had full and fair opportunity to present written exhibits, sworn testimony, including time for cross-examination and rebuttal. The Tenured Teacher was present during both evidentiary Hearings [Day 1 and 2], given opportunity to and did testify in her own behalf. Each Party agreed to written closings and to protocols for those submissions.

May 26, 2021; the transcribed record of hearing was received.

July 6, 2021; by agreed upon schedule [after extension] to file closing briefs electronically to one another and Arbitrator; thereafter mailing same with cited materials, both briefs [+ materials] were received. Each Party cited from an extensive array of prior arbitration and judicial decisions [30 & 20]. The Hearing record was declared closed at this juncture. All evidence, including the arguments and positions adopted by each party prior to, during and post-hearing were thereafter considered at length, however not all were afforded the same significance for determination, as discussed hereunder.

August 29, 2016; decision rendered to each side and filed with the NJ Commissioner of Education.

ISSUE

During the evidentiary hearings, each Party's Counsel was afforded opportunity to state the issue believed to be before the Arbitrator. Absent consensus, the Arbitrator reserved the right to adjust the 'issue' for determination appropriate to the evidence. [Arbitrator, Tr. 9]

While the parties could not agree *per se* to each other's statement, they came close.

By the District: "...whether or not the board did, in fact, have just cause to seek the termination of Ms. Coleman." [District's Opening, Tr. Pg. 10]

By the Teacher: "whether or not the post was shared intentionally, and if that rises to the level of conduct unbecoming. And further, if it does, whether termination is warranted. [Teacher's Opening, Tr. Pg. 22]

As the parties subsequently enhanced their respective arguments to take account of the statements above, it is deemed more relevant to state the issue as:

***“Whether the District had just cause to dismiss Tenured Teacher Coleman?
If not, what should be the remedy?”***

BACKGROUND, FACTS and PARTY POSITIONS

As learned, the Tenured Teacher had taught, “...English... at Abraham Clark High School in Roselle, ... where she has been employed for 17 years. T 260, 20-24. She was assigned to the high school for the entirety of her career with the Roselle Public Schools District, though she also provided instruction in the District’s alternative school and home instruction programs. T 261, 16-24. In addition to her normal teaching duties she was involved in multiple extracurricular activities and programs including, but not limited to: the JROTC Marine Corps program; the teen arts program; the intergenerational day program; the school newspaper; the school literary magazine. T 261, 25; T 262 1-8; see also, Exhibit J-3, Respondent’s Statement of Position, at pages 1-2; Exhibit J-4, Respondent’s Answer, at page 2. She also served as the school’s senior class adviser for a number of years. T 262, 8-9; Exhibit J-3, at page 2; Exhibit J-4, at page 2. [Teacher’s Brief, Pg. 4]

Of further note is that her lengthy employment was discipline free, “Further, Ms. Coleman’s performance evaluations had been uniformly positive, and the record reveals no prior history of discipline. T 183, 9-10; see also, Exhibits R-1 and R-2.” [Teacher’s Brief, Pg. 4]

The above facts concerning ‘Teacher’s’ employment history were undisputed. Discussed below, each party adopted differing positions regarding its effect on the outcome here.

Each side’s well documented post-hearing briefs contained their respective view-points, i.e., positions. In a preliminary statement the District contended: “...Board has proven, by a preponderance of the evidence, that Respondent, Donna Coleman (“Respondent”), is guilty of unbecoming conduct, insubordination and/or other just cause warranting her dismissal from employment with the Roselle Board of Education”.

[Board Brief, Pgs. 4, 12 -14]

Preliminarily, the Teacher argued, “Petitioner Roselle Board of Education (hereinafter “Petitioner” or “the Board”) failed to meet its burden of proving the tenure charges against Respondent Donna Coleman (“Respondent” or “Ms. Coleman”) by a preponderance of the relevant evidence. [Teacher’s Brief, Pg. 3]

The District's post-hearing arguments urged findings in favor of charges against this Teacher alleging, '*criminal misconduct*', and being, '*...unfit to remain a tenured teaching staff member*', having, '*...intentionally shared and then lied about a racially charged (...) post*', [or] being, '*grossly negligent*', ...and that her, '*post [i.e., of May 29,2020] created a great deal of disruption*' and finally that her post, '*... is not protected speech under the First Amendment*' [Board Brief, Pgs. 2, 4, 5, 9, 10, 11, 12, 14, 16, 28]

Maintaining the charges supported the standard of 'just cause' argued preliminarily, the District urged [post-Hearing] that any conclusions reached include that, "*Respondent should be dismissed from her tenured position based on the egregiousness of her criminal misconduct [and] ...notwithstanding any consideration of her prior record of employment.*" [District Brief, Pgs.2, 26, 27].

Moreover from the District's [post-Hearing] 'Preliminary Statement' regarding 'credibility', it also argued as rationale for dismissal that, "*...the testimony of Respondent illustrates a lack of remorse [which] suggests a likelihood of future misconduct of a similar or more severe nature.*" [District Brief, Pg. 5]

Reiterating similar themes in concluding remarks, the District summarizes by claiming:

"... it is evident that...Respondent has failed to satisfy the standards of a profession predicated on public trust and respect. She has betrayed that trust and breached the high standard enunciated by the Commissioner of Education. Moreover, Respondent's lack of remorse is illustrated by her failure to recognize why members of the Roselle community were upset and offended by her actions, coupled with her constant effort to curry sympathy related to the fallout with which she has had to deal as a result of her misconduct. Indeed, the only remorse articulated by Respondent concerns the impact of her actions upon her own career (i.e., the anger directed towards her by those whom she so deeply offended) and not the damage it has done to this school District, her reputation and her ability to still serve as an effective educator. Notably missing from Respondent's testimony and/or pre-hearing submissions is any statement of apology directed towards the students and the school district she let down. In any case, it's simply unfathomable to imagine a scenario where the Superintendent of Schools has to place the Respondent back in the classroom and explain same to the parents who are now uncomfortable ...with having their children around her. Respondent's misdeeds were not mere oversights, nor simple mistakes. Rather, her misconduct, as well as the manner in which she handled herself after sharing the Post, go to the heart of her character and unfitness to continue to serve as a public-school teacher. Respondent must be dismissed." [District's Brief Pgs. 28-29]

The Teacher's primary arguments address multiple categories, including the burden of proof, factors in mitigation of remedy and the effect of the alleged posting: "*Petitioner has failed to meet its burden that Ms. Coleman failed to share any post, racially insensitive or not, intentionally. Assuming even arguendo that Ms. Coleman did share the post intentionally, the Board cannot show that her intent was to disparage or demean any student, parent, staff member or any member of the Roselle community in general sufficient to support a charge of conduct unbecoming.*" [Teacher's Brief, Pg. 18]

Speaking to the remedy and notwithstanding culpability it contends further that, "*It is Ms. Coleman's position that the Board has not met its burden in showing that she committed the alleged offenses, and even if it has, it is precluded from taking any disciplinary action against her under the First Amendment. However, should the arbitrator find that the District has met its burden and finds that Ms. Coleman did engage in conduct unbecoming and her speech is not protected by the First Amendment the offenses are de minimis in nature and do not warrant the stripping of her tenure.*" [Teacher's Brief, Pg. 22]

Moreover, argues the Teacher: "...*should the arbitrator find that the District has met its burden in proving that Ms. Coleman engaged in conduct unbecoming, an intermediate penalty such as a Corrective Action Plan ("CAP") or increment withholding would be a more appropriate remedy. Revoking Ms. Coleman's tenure under these circumstances would constitute an excessive, draconian penalty, which should be reserved for only the most egregious offenses."*" [Teacher's Brief, Pg. 24]

Further, "*Even if one or more of the charges are sustained, there is significant mitigating evidence – including but not limited to Ms. Coleman's unblemished work performance and lack of disciplinary record, along with her lack of malicious intent – that militates against the imposition of severe discipline. Moreover, the allegations in the charges, even if accepted as true, are not sufficiently flagrant to warrant termination and the Board failed to implement progressive discipline.*" [Teacher's Brief, Pgs. 3-4]

Thus the overarching positions from each party are:
"*Board has proven by a preponderance of the credible evidence that Respondent is guilty of conduct unbecoming a teaching staff member, insubordination and/or other just cause warranting dismissal.*" [District Brief Pg.4]

By the Teacher: “*the Board failed to meet its burden of proving the allegations contained in the tenure charges by a preponderance of the relevant evidence. Consequently, the charges must be dismissed with prejudice and Ms. Coleman made whole for all emoluments withheld during the pendency of this proceeding. Even if Ms. Coleman is found guilty of conduct unbecoming, the substantial mitigating evidence presented in this case militates against the imposition of severe disciplinary action.*” [Teacher’s Brief, Pg. 27]

Further, at the ‘Conclusion’ of Teacher's Brief, “...*PETITIONER DID NOT MEET ITS BURDEN IN PROVING THAT MS. COLEMAN WAS INSUBORDINATE OR UNTRUTHFUL. Ms. Coleman is charged with lying to the District’s investigators and being insubordinate. However, the record proves quite the contrary.*” [Teacher’s Brief; Pg. 20]

FINDINGS AND OPINION

A careful review of all evidence presented, including all documents submitted into the record and transcribed notes of testimony occurred. This take into account the positions taken and arguments advanced by both parties.

Pertinent portions of the District’s ‘Tenure Charges’ [January 26, 2020] as filed against the Teacher are:

- I. Unbecoming Conduct and/or Other Just Cause, Including Insubordination. (Intentional Public Sharing and Lying About a Racially-Charged Facebook Post)**
- II. Unbecoming Conduct and/or Other Just Cause, Including Insubordination. (Grossly Negligent Misconduct in Publically Sharing a Facebook Post)**
- III. Unbecoming Conduct and/or Other Just Cause, Including Insubordination. (Causing Disruption in the District/Effect on Ability to Continue To Serve)**
- IV. Unbecoming Conduct and/or Other Just Cause, Including Insubordination. (Violations of District Policy)**

Relevant portions of NJ statutory sections which the Parties mutually acknowledged being bound to were cited by each side and are deemed relevant without further recitation here.

The statues impose a, “just cause” standard for dismissal and also grant school districts the

right to issue reasonable rules, orders and regulations that are not conflicting. There has been no challenge to the statutory standards for discipline by either side.

While challenges to several Board policies cited in the Tenure Charges dealing with ‘Conduct’ were raised by the Teacher, the allegations dealt with *de minimis* changes to them which, upon examination at hearing when raised, demonstrated that the policy language in question, while edited several months after the underlying incident [May 29, 2020], were edited with language having nothing to do with the content of this matter. Thus the Teacher’s contentions that, “*Ms. Coleman can’t violate a policy retroactively.*” is moot and deemed irrelevant.

As alleged by the District, “*Further, an inspection of District Police 3281-Inappropriate Staff Conduct was edited in September of 2020, subsequent to the events at issue. 1.*” [District’s Brief, Pgs. 6, 13]

1. *Board Policy 3281, Inappropriate Staff Conduct, states, in relevant part, that [t]he Commissioner of Education has determined inappropriate conduct by a school staff member outside their professional responsibilities may be considered conduct unbecoming a staff member...Therefore, school staff members are advised to be concerned with such conduct which may include, but are not limited to, communications and/or publications using e-mails, text-messaging, social networking sites, or any other medium that is directed and/or available to pupils or for public display.” This Policy further states that “[a] school staff member is always expected to maintain a professional relationship with pupils and to protect the health, safety and welfare of school pupils.”¹ J-2, Ex. G*

Analysis; Overview

At the core of the issue stated above was whether a ‘just cause’ dismissal occurred and whether the penalty was too harsh or instead, proper under the principles and precedents espoused by both parties. The overriding principle at arbitration of any disciplinary proceeding

¹ “*Note that this Policy shows that it was edited in September 2020, following the incident at issue. However, as testified to by the superintendent of schools, that the only new language is the language in bold. All other language existed in the Policy on May 29, 2020. T-1, 168:21-169:11.*”

is whether a good faith showing of just cause existed and whether it was properly enforced. Both sides' extensive post hearing briefs exhaustively explored these principles.

The issue stated above is clear, succinct and forms the basis for the underlying decision. As moving party, the School District has the burden to prove its charges against the Teacher. Taking all manner of evidence and argument by both sides into consideration, the overwhelming weight of the evidence favors sustaining the charges for dismissal.

Moreover, another sub-issue involving whether this Teacher had a constitutional [1st Amendment] right of 'free speech' to have uttered, transmitted and/or shared the referenced May 29, 2020 'post' was raised as a defense in this dispute. Counsel for each Party engaged in substantial arguments surrounding that issue. While 'free speech' contentions are important and deserving attention in many settings, the facts of this case demonstrated there were overriding considerations in issue here. This Teacher's self-imposed actions and behaviors here created highly publicized racial discord and community conflict which, in the context of her employment could not allow the 'free speech' arguments to take precedence.

Regardless of whether the Teacher had a constitutionally protected 'right' to have shared the post in question, her behavior and actions in doing so and her shifting excuses thereafter for having done this thing [whether intentionally, accidentally or negligently] amounted to 'Conduct Unbecoming', for any public school 'Teacher'. Regardless of motive or intent, her lack of good judgement exhibited by allowing the 'post' to be shared was confirmed and compounded by her statements and testimony. When confronted by overwhelming evidence that the 'post' was received by numerous offended community members, this 'Teacher' was also unrepentant and unremorseful.

Notwithstanding ‘how or why’ the posting occurred, the Teacher’s lack of remorse when confronted with probative evidence of the hundreds of negative community responses received by her and/ or the District was revealing and instructive. This unrepentant attitude was displayed during investigation and was evident during her testimony at Hearing.

The rationale for propriety in the education of the public’s children is at the core of this matter. While constitutional rights of free speech are important, there was an overriding concern raised by this Teacher’s posting action and subsequent behaviors after the incident which became a superseding set of factors leading to her being dismissed. Those concerns involved the effects of that behavior on this School District and the external community as well. As a result of the racially hostile posting of the Teacher, the District had lost the faith and trust in this Teacher she had accumulated over a substantial [approx. 17 years] period of time.

Moreover and of greater significance is that Teacher Coleman herself acknowledged during the investigation over the incident that, based upon the tone and content of numerous negative texts, emails and postings received, she was fearful of returning to work. *“Coleman began receiving comments and messages directed to her and/or about her, some of which were threatening in nature. See, Exhibit R-3.”* [Teacher’s Brief, Pg. 6]

Shared by the District, its concern over community ‘outrage’ was yet another factor in the rationale for its dismissal decision. *“Respondent’s conduct severely damaged the reputation of the Board and has subjected it to an unremitting onslaught of public outrage.”* [District Brief, Pg. 38]

Thus the factors superseding ‘free speech’ considerations were found to be related to the appropriate operation of a school district, public safety and the well-being of the community.

Indisputable facts established that the Teacher’s version of events shifted, starting out with her assertion that her ‘computer’ [or, other web based device] had been hacked. Ostensibly, that defense might have supported her initial contention that she had no involvement in any way,

shape or form with the posting of the message to a social media [believed to be 'Facebook'] website. However, the Teacher thereafter changed that version or explanation for the posting.

As detailed hereunder, that 'shifting' of events allegedly causing the 'posting' to occur, changed dramatically during the disciplinary proceedings during the District's investigation of the matter. The Teacher had many opportunities to explain her version of events involving the 'posting' at varying times during those proceedings and during two (2) days of Hearing.

Despite all efforts provided by experienced and competent Counsel on her behalf, both the Teacher and a supporting witness [her adult daughter] provided little evidence to assist her or explain any version of how this Teacher was not responsible for the 'posting' to have occurred. Thus the essence of the School District's rationale for dismissal is clear.

The propriety of this Teacher's behavior is measured by such factors as trustworthiness, dependability, integrity and forthrightness. While all employers have the need to depend on every employee to be engaged in a trustworthy and dependable manner for the common good and success of any enterprise, there is an enhanced need for these factors in a public employment-relationship setting. Today's headlines are filled with stories about such requirements, and range from public safety, health and by no means the least, public education. This school district, as any other, must have unequivocal faith and trust in each and every employee, but especially those employees having direct contact with the children entrusted to its care. That faith and trust was broken in this case, by this Teacher.

Paradoxically as this Teacher had a substantial and otherwise clear record, she also had the obligation and clear duty to have thoughtfully and carefully considered the ramifications and potential result, before engaging in her 'posting' actions of May 29, 2020. The undisputed facts are clear that she did not take that care. Whether it was mistake or negligence, her actions broke

the faith and trust between her and her employer, the Roselle School District. Moreover, she displayed no remorse for her actions, instead blaming unidentified others for her actions.

Accordingly, the primary basis for the underlying decision is the effect of her behavior on the Teacher-Student and Teacher-School District relationship(s). Consistent with the indisputable facts presented, these effects extended as well to the School's external community. Further analysis below here leads to the decision at the end hereof.

Burden of Proof

Every matter involving employee disciplinary action places the burden upon the employer [here, Petitioner, Roselle School District] to prove it had just cause to take the action of dismissal including that the penalty was appropriate under the attendant circumstances. Here, the Tenured Teacher challenged that the, "*Board failed to meet its burden of proving the allegations contained in the tenure charges by a preponderance of the relevant evidence.*"

The District's evidence tracked the four major 'points' (*Unbecoming Conduct and/or Other Just Cause, Including Insubordination*) outlined above, including specific sub-categories and directly related to the evidence presented at the hearing(s). As detailed hereunder, the preponderance of that evidence was met. Using the factors below here, it was persuasive that the evidence satisfied the standard of review.

Under the procedures of the Department of Education, State of New Jersey, the appointed Arbitrator must determine the weight and credibility of the evidence presented. It is conclusive and thus persuasive that the 'Unbecoming Conduct' of this Teacher was inappropriate. The District has met its burden of proof for this Tenured Teacher's dismissal.

Just Cause

Just cause required that the elements of a fair disciplinary proceeding were necessary before the final step of dismissal could be imposed by the District on the Tenured Teacher in this matter. This included a full and fair investigation of the charges and careful consideration of any mitigating and/or aggravating circumstances, which occurred.

Despite the diligence of Teacher's Counsel which assured she was well represented, the overwhelming facts herein were not in her favor. A preponderance of the evidence against her was substantially more damaging than any defenses available to her or brought.

Primarily, the Teacher's testimony was found wanting. Instead, the evidence confirmed the documentary proof of her having shared the post shared to her social media page. Her statements thereafter served to authenticate the documentary material and worse, were vague, evasive and shifting, which irreparably damaged her credibility and thus contributed to finding that the remedy of dismissal was necessary.

Teacher Coleman could not explain inconsistencies between the varying statements she proffered during investigatory interviews, including versions to explain what happened, how it happened or especially, why it happened that her internet social media account page suddenly contained an unwarranted and abusive message, deemed racially insensitive by a multitude of her school's external community members. Those failures, both in causing the post to be shared and thereafter, in compounding her rationale for doing it by vague and evasive explanations occurred during an extensive investigation and contributed to the just cause determination against this Teacher. She availed herself of representation during the investigatory process and was afforded ample opportunity to clarify [by Mr. Klein, for the District] several versions of her own account, i.e., being 'hacked' or, some other technical variation to exculpate herself from responsibility.

While the District cited customary elements of the just cause standard in its brief, arbitrators may be guided by those elements but are not bound to them as an absolute standard. In this case it has been determined and is thus persuasive that this Teacher was, by virtue of her extensive period of employment [17 years], on notice of multiple District policies prohibiting inappropriate conduct, and therefore, also to the consequences of her actions. Regardless of the content of any written policy, her acknowledgement of the overwhelming student body being black and Latino [Teacher's Brief, cited above] should have given her pause to think before 'sharing' such a message which she posted on May 29, 2020.

Other elements of just cause established by the District include that the Teachers actions caused serious disruption in the District's operations and its community relations. Further, that its need to contain the resultant disorder is reasonably related to its need for 'business efficiency' and that the detrimental consequences described hereunder did occur. Thus, the after effects cited by the District preclude the Teacher's continued service.

Thus the probative evidence demonstrates the District's investigation was full, fair and conducted in a manner that allowed the Teacher ample opportunity to demonstrate or explain her rationale for how the 'post' shared to her social media page got there. Those attempts by her instead appear as a squandered opportunity, due to the changing descriptions previously addressed. Therefore, substantial efforts were made before dismissal action was taken which determined that the Teacher was properly charged.

Accordingly, there was just cause for the charges brought against Teacher for her actions on and after May 29, 2020 relating to a racially charged statement 'shared' to her social media account and negatively commented upon by people in both her school and external community. Moreover and subsequent to the posting, the Teacher's behavior and actions in attempting to

explain what had occurred amounted to a tangled web of excuse, not reason, and included fabrication or negligent rationalization for her poor judgement.

Under the circumstances addressed, the penalty of dismissal imposed was reasonably related to the seriousness of the Teacher's 'Tenure Charges' and included consideration of her past record. Thus the District's Tenure Charges were appropriate and therefore it is persuasive that the Teacher's dismissal is proper as supporting just cause.

Conduct Unbecoming and Insubordination

The preponderance of the evidence found in this record determined this Teacher was culpable of the charge, "Conduct Unbecoming". Her fabrication of certain details and proposing shifting versions for how the content of the post came to and left from her telephone device encompassed the requisite elements necessary for the District to conclude this Teacher had engaged in behavior and conduct which it deemed as no longer trustworthy.

In addition to the internet posting of a racially insensitive message shared with the community, her behavior in compounding that action by being evasive during investigation of the posting was appropriately found to be, 'Conduct Unbecoming'. The separate charge of insubordination was less about defiance in the face of authority and more analogous to her evasive conduct in lieu of being forthcoming. Thus the characterization of the Teacher's behavior as being insubordinate was more identifiable as 'Conduct Unbecoming'.

An employee engaging in abusive communications may come under the broadest definition of insubordination but the charges and evidence of this charge do not rise to the level of typical insubordination where an employee is given a direct order and intentionally defies authority by failing to perform that specific order. Thus, insubordination is not found here.

The distinction between a justifiable communication and one that is not may occur in the context of the message as well. A simple example is in the context of someone who yells “Fire!” perhaps foolishly to raise alarm, but in an outdoor area with few people around. While such an example might be uncalled for or rude, it is not *per se* abusive. Yet the very same action of yelling “Fire!”, in a darkened movie theater crowded with people is the very definition of an unwarranted and abusive communication. In the context of the present case the Teacher’s posted communication was unjustified and abusive, but only as ‘Conduct Unbecoming’, sustained here.

The explanations offered by District witnesses regarding the effects caused by the Teacher’s posting to her social media page were deemed credible as supporting the charge of Conduct Unbecoming. Each account described how the District’s investigation included processing and follow-up to a multitude of telephone calls, emails and other communications by and between administrative personnel of the District and community members that included parents (and other family members) of school students. The communications received [including copies of emails made a part of the record] were overwhelmingly negative, some threatening and, directed at the continued employment of this Teacher by the District.

While the community’s reaction to an internal disciplinary matter at this School District is not a determinative factor for consideration of the outcome here, the cause and effect of the posting upon the District’s ability to operate efficiently, maintain order and proper decorum within its boundaries of operation are determinative. Based upon a preponderance of the evidence in this record, it is persuasive that the District’s version of the cause and effect of the May 29, 2020 posting formed an appropriate rationale for it to conclude that the Teacher’s actions in sharing the post and behaving evasively thereafter amounted to a finding of ‘Conduct Unbecoming’

Whether or not the Teacher was attempting to exercise some perceived right to have shared this post, she ultimately took no responsibility for her actions and additionally, ignored requests to forthrightly participate in the interview process during investigation. Thus Conduct Unbecoming was charged to this Teacher and is properly within the finding of just cause.

Credibility

There was overwhelming evidence of this Teacher compounding her mistake in posting (regardless of whether deliberately done, thoughtlessly, or through negligence), by also being less than candid when questioned about her actions during the District's investigation. As a highly experienced teacher with 17 years of service including extra-curricular roles, she was constructively on notice of prohibited conduct, appropriate behaviors and in particular, the need to be forthcoming when called upon. Despite the above and being represented during these proceedings, she was less than forthcoming to her employer and evasive: *“Specifically, Respondent’s version of events has changed from, the Post was accidently shared; to the Post was purposefully shared; to she was hacked; to she was cloned and mirrored; to she actually shared a different Post.”*

[Board’s Brief, Pg. 12]

Thus the totality of the Teacher’s evidence is lacking in credibility. The arguments concerning the Teacher’s evasiveness during investigation were evident, continuing as well during the Teacher’s testimony before this Arbitrator. Notwithstanding the District’s characterizations of her statements as ‘bizarre’, it is conclusive that the Teacher’s credibility is lacking and thus a contributing factor in determining that just cause was present for her dismissal.

Unsupported vs. Corroborated Evidence

There is no basis for the defense that the evidence provided by the District was unsupported by the proofs. The Teacher’s testimony [the changing versions regarding the

posting], coupled with that of her adult daughter (Antoinette Coleman; regarding the lengthy time period of Teacher's internet usage/ experience) contributed to a finding that the Teacher was responsible, solely, for the posting. Thus the Teacher's disingenuous attempts to distance herself from the responsibility for her actions were not supported by the Teacher's evidence.

Instead, the totality of the evidence corroborated the District's findings regarding the Teacher's culpability. Taking all manner of evidence and argument into consideration thus provided a basis for finding that the 'unbecoming conduct' described hereunder and included in the charges against this Teacher were corroborated and proven by a preponderance of the evidence presented.

Clearly established, the evidence demonstrated that the Teacher violated basic notions of the faith and trust required between every employee and employer. It should have been self-evident to any public school teacher with 17 years' experience that regardless of any 'written' rules prohibiting specific conduct, certain behaviors are proscribed by common sense. Formal notice prohibiting violence or possessing a weapon on school property are examples.

The injudiciousness of this Teacher's 'mistake in sharing' the underlying post, compounded by her poor judgment in not being forthcoming, instead being evasive about it, operated to undermine the faith and trust required between her as a Teacher and this School District. Thus the District's Tenure Charges were supported and corroborated by the evidence.

Incompetence; alleged 'Criminal Behavior'

There was no express showing of incompetence *per se*, in this matter. While arguably incompetent to have demonstrated the behavior exhibited by the Teacher under the facts here, it is not included in this opinion or otherwise affecting the decision below.

Further, despite use of the term '*criminal behavior*', as alleged by the District below, the term was never explored in greater detail nor specifically attributed to any underlying factual scenario.

As such, there is no basis for attributing any degree of ‘criminal behavior’ to the underlying findings, or in the decision following.

Mitigating vs Aggravating Circumstance

The Teacher’s Brief contained multiple references to factors in mitigation of the charges and severity of penalty. One example requiring attention was that: *“Even if Ms. Coleman is found guilty of conduct unbecoming, the substantial mitigating evidence presented in this case militates against the imposition of severe disciplinary action.”* [Teacher’s Brief, Pg. 27]

While correct that 17 years of discipline-free service typically deserves consideration, the facts here circumvent that argument. Arguably, a one-time mistake in conjunction with a lengthy and otherwise discipline free record might be factors in mitigation, except for the presence of overwhelming aggravating factors. Stated hereunder, this Teacher’s extensive background and experience should have served her to behave more prudently. Had she applied even a marginal degree of wisdom gained from her lengthy experience, it is likely she might have comprehended the probable consequences of sharing the post, in advance of her mistake. Failing to consider the implications of a racially insensitive internet posting to her social media page, within days after the murder of George Floyd, was an overwhelming aggravating factor in this matter, and not one to be considered in mitigation of the dismissal penalty.

Additional aggravating factors included the consequences of the posting to the School District [discussed above]. There was evidence, not refuted, that this Teacher was threatened, or felt threatened, by negative and repeated external communications from community members. The potential effect of those circumstances were additional factors cited by the District as reasons why the District felt it had no choice but to move for the Teachers dismissal. Thus these aggravating factors are also persuasive in concluding there was just cause for termination.

Perhaps more consequential to the just cause standard here was the evidence of this Teacher's total lack of remorse during the investigation and again, demonstrated at Hearing. As stated above, "...*the testimony of Respondent illustrates a lack of remorse [which] suggests a likelihood of future misconduct of a similar or more severe nature.*" [District Brief, Pg. 5]

Therefore it is persuasive to consider the Teacher's demonstrated lack of remorse or regret, if not to her School than to the external community and thus, as a possibility of repeat behavior. Considering all circumstances discussed, any potential for returning this Teacher to a workplace environment where the charges addressed are deemed reliable, risks a potential for ongoing and continued conduct of the same or similar nature. Therefore and without attributing mitigation, the above factors add to the finding of just cause for dismissal. Thus it is determined here that the majority of charges filed by the District were appropriate. Moreover, the penalty of dismissal is warranted under all the attendant circumstances found here.

Also argued by the Teacher but not found to be in mitigation of penalty was the contention that a dismissal in this case would have a potential negative effect upon her pension rights or future education career, including the possibility of a proceeding against her for certificate revocation. While the potential for these were considered, it is notable that this case did not involve any criminal proceedings nor was any criminal behavior established.

Furthermore, there were neither accusations nor suggestions made involving any acts of moral turpitude or inappropriate conduct toward a child at issue here. Hence, unlike a case involving mental or physical abuse toward a child (not present here) nothing in this matter suggests even a hint of moral turpitude that should cause concern for or damage to one's expectations for employment in a school setting.

The fact pattern here involves a singular incident of wrongdoing, punishable as directed.

Conclusions

In summation after careful consideration of all evidence and arguments in support thereof, it is conclusive that the Tenured Teacher was dismissed for just cause. The preponderance of the evidence warrants a finding that the majority of charges against this Teacher were proper.

At Hearing(s) in the matter, both Parties were afforded full and fair opportunity to present evidence and argument in support of their respective positions. The evidence conclusively demonstrates that on May 29, 2020, this Teacher caused a message to be 'shared' on her social media account, the content of which included an inflammatory, insensitive and racially charged statement adversely received by and commented on by hundreds of people in the community of, in and around the Roselle School District, Bergen County, NJ.

Moreover, the content of the posting was not the sole reason for the District's determining 'Charges' against her. Other factors also became the focus of this disciplinary matter.

Initially it was the Teacher's mistake in sending a message she either knew or should have considered before sending, which had the likelihood of exacerbating the sensibilities of an already raw community only days after the death of George Floyd. The second and overriding element involves the Teacher's compounding of her initial mistake by engaging in somewhat 'bizarre', but still less than forthcoming accounts regarding how the posting occurred, all discussed at length hereunder. The net result of these compounded behaviors acted to severely undermine her trustworthiness as a teacher by the School District.

Arguments and positions framed by each Party persuasively demonstrated that the District's investigation of the matter was thorough and fair. The Tenured Teacher was represented during the investigatory process and gave her version of events preceding, during and subsequent to posting.

During the investigation, the Teacher gave several versions of what led up to the posting process, initially stating that her social media account had been “hacked, cloned or mirrored”, i.e., that the posting was, allegedly, not within her discretion or control.

Notwithstanding the initial disclosures, the Teacher subsequently volunteered another version of the posting process, this time declaring that the ‘sharing’ event had occurred accidentally, i.e., while not intending a posting yet, the post was discovered on her electronic device as showing the message had been shared. Teacher’s latter rationale, during testimony, was that it was sent to her social media account by an improper keyboard manipulation or, inadvertent stroke of the keypad.

Despite the above stated versions by the Teacher, School Superintendent Dr. Fisher gave highly convincing rebuttal testimony. Dr. Fisher demonstrated using a similar internet connected telephone to the one utilized by the Teacher, and that an accidental or inadvertent ‘stroke of the keypad’ version was nearly impossible to achieve. Dr. Fisher demonstrated credibly that the act of sending (i.e., ‘sharing’ a post) involved a two-step process whereby the device’s software required the user to reconsider the send command after an initial request was entered, but prior to sending.

Consequently, Dr. Fisher educated all those present in the hearing room, and convincingly to this Arbitrator that the Teacher’s version of events preceding the ‘sharing’ or ‘posting’ was at best a fiction or, under a worst case scenario, a deliberate act. Thus the testimony offered by the Teacher in this regard was a vital contributing factor in assessing her credibility and, confirmed other necessary elements for finding just cause existed in the District’s dismissal action.

Moreover to the above, Dr. Fisher gave convincing testimony concerning the effects upon the District when it concluded that the incident had caused serious, negative and lasting damage to the Roselle School District community environment. He emphasized the deleterious effects caused

by this Tenured Teacher having provided no plausible explanation to justify her actions and her failure to show any remorse for her hurtful behavior.

Accordingly, the Tenure charges filed against this Teacher and her subsequent removal must be sustained. The evidence is clear as detailed hereunder that all appropriate elements required for a just cause dismissal were present in this case.

Despite Teacher seeking progressive discipline as an alternative remedy, the mitigating factors necessary were not found here, as discussed. Moreover, the very fact of her extensive tenure serving in this community should have operated as an early warning for her to have first considered the consequences of her actions, before sending the 'post'.

Taking all manner of evidence, argument and positions of the Parties into full consideration here, there is clear evidence that just cause was served by the District's dismissal action.

Accordingly, the decision in this matter follows.

AWARD

The Teacher's 'Answer' to the Tenure Charges filed against her in this matter, is denied. The District had just cause to dismiss Tenured Teacher Coleman.

In view of the above, the District's imposed penalty of dismissal for this Tenured Teacher is sustained.

No other remedies apply.

Jay D. Goldstein,

Jay D. Goldstein, Arbitrator

Dated: August 30, 2021

Jenkintown, PA

