

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

In the Matter of the Tenure Hearing of:

JODI BOCCO, SCHOOL DISTRICT OF THE
BOROUGH OF WEST LONG BRANCH,
MONMOUTH COUNTY

Agency Docket No. 25-2/22

Walt De Treux, Esq., Arbitrator

Hearing Date: 9/30/22

Briefs Received: 12/17/22

Decision Date: 1/17/23

Appearances: For Petitioner School District – Tracy A. Armstrong, Esq.;
Stephanie D. Gironda, Esq., *WILENTZ, GOLDMAN & SPITZER, P.A.*
For Respondent – Jodi Bocco, *Pro se*

Introduction and Statement of Relevant Facts

Jodi Bocco served as a teacher in the West Long Branch School District since September 1987, most recently as a Health & Physical Education Teacher at Frank Antonides Middle School. Bocco previously served as a school counselor and substance awareness coordinator. In December 2012, the District filed tenure charges to dismiss her from that position for allegedly engaging in unbecoming conduct. Specifically, the District charged Bocco with refusing to cooperate with outside agencies, improper conduct toward supervisors, staff members, and outside authorities, insubordination, and inappropriate comments to a student. In a Decision dated July 14, 2012, Arbitrator James Mastriani upheld those charges.

From the 2014-15 school year through the 2020-2021 school year, the District alleged that Respondent engaged in “troubling behavior,” the details of which are not relevant to the

current proceeding. Bocco asserted that the District, through its treatment of her from 2014 through 2021 and its previous filing of tenure charges, was retaliating against her for reporting or attempting to report complaints of child abuse to proper authorities and from reporting or attempting to report violations of the District's Harassment, Intimidation, and Bullying policy.

On June 8, 2021, the School Board, upon recommendation of Superintendent Dr. Christina Egan and based on its concerns with the alleged "troubling behavior," passed a Resolution requiring Bocco to undergo a psychiatric evaluation. The Board offered her the opportunity to challenge its directive in a hearing before the Board and advised that she had the right to appeal any determination by the Board after hearing to the New Jersey Commissioner of Education. Bocco did not respond, and the Board sent her a follow-up letter on July 13, 2021. The Board scheduled an August 10, 2021 appointment for her with Tosk Psychiatric Services.

One day prior to the scheduled appointment, an attorney retained by Bocco notified the Board of Bocco's request for a hearing. Bocco's counsel attended the August 30, 2021 hearing without his client. At hearing, the Board advised that it would select another date for the examination.

In a September 16, 2021 letter between counsel, the District offered several times and dates for an examination. District counsel sent several follow-up reminders to Bocco's counsel. In one such letter on October 25, 2021, District counsel asked if Bocco intended to appeal the Board's directive for a psychiatric evaluation pursuant to N.J.A.C. 6A:3-1.3. Bocco's counsel responded that his client was considering her options. Bocco did not appeal the Board's directive, and she did not attend a psychiatric evaluation.

On January 10, 2022, the District filed the present tenure charges, alleging that Bocco's refusal to attend the psychiatric examination constituted insubordination and conduct unbecoming. It asserted that her actions warrant dismissal from employment.

On March 15, 2022, the New Jersey Department of Education assigned this matter to the undersigned Arbitrator for a hearing. The parties had difficulty in scheduling a hearing, and the Department granted this Arbitrator's request to extend the statutory time limit for the first hearing. At the end of May 2022, Bocco's counsel withdrew from representation. Bocco asked for and was granted several extensions of time in which to hold a hearing so that she could secure representation. When she was unable to do so, this Arbitrator set a hearing date for September 30, 2022.

Prior to the hearing, the District filed an application for a ruling on the scope of the arbitration. Citing Bocco's failure to appeal the School Board's directive to undergo a psychiatric evaluation in a timely manner pursuant to N.J.A.C. 6A:3-1.3, the District asserted that Bocco "waived her right to challenge the Board's reasons for requiring her to undergo a mental health examination." In a September 9, 2022 Interim Order, this Arbitrator accepted the District's argument and ruled that "the validity of the Board's directive is no longer at issue." The Order further stated, "The arbitration proceeding will focus solely on the issues raised by the tenure charges..." The Order identified the issues as, "did the Respondent's refusal to comply with the Board directive constitute insubordination and conduct unbecoming, and if so, does her conduct warrant termination from employment?"

On September 30, 2022, a hearing was held at the offices of the Wilentz law firm, during which time both parties had a full and fair opportunity to present documentary and other

evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. The parties filed post-hearing briefs and submitted the matter to the Arbitrator for a decision.

Issue

Has the School District of the Borough of West Long Branch established the allegations of insubordination and conduct unbecoming against Respondent Jodi Bocco as set forth in the tenure charges? If so, do those charges warrant dismissal?

Analysis and Decision

Prior to, during, and after the hearing, Respondent has made multiple allegations of retaliation, harassment, and conflicts of interest against the School District. In numerous detailed emails and in her brief, Respondent described reports she made or attempted to make to District officials and outside agencies and her belief that the District has taken adverse action against her for those reports. The allegations, spanning approximately a decade, are too numerous to include in this Decision. I make no finding on the validity of those allegations because they fall beyond the jurisdiction of this proceeding. As stated in the pre-hearing Order, the only issue to be considered in this arbitration is whether Respondent engaged in insubordination and conduct unbecoming by refusing to submit to a psychiatric evaluation. As Respondent did not challenge the validity of the Board's directive in the proper forum through a timely appeal to the Commissioner of Education as was her right, she cannot now challenge the validity of the Board's directive in this forum. Respondent has other forums in which she

can pursue her allegations of harassment, retaliation, and conflicts of interest. This tenure charge arbitration is not the forum to consider or resolve those allegations. The present proceeding only addresses the issues raised in the tenure charges.

Resolution of the issues in this case could not be more straightforward. The School Board directed Respondent to attend a psychiatric evaluation. It gave her multiple opportunities to do so, allowed her to select the medical provider, and reminded her of her right to challenge the Board's directive. Respondent admittedly did not attend the psychiatric evaluation nor appeal the directive. She refused because she did not believe that the directive was valid. She believed it was a form of harassment and retaliation. As noted, the validity of the directive is not before this Arbitrator. The challenge to the validity of the directive should have been filed with the Commissioner of Education, but it was not. With Respondent offering no reason for not complying with the directive other than her opinion as to its validity, I am compelled to find that the charges of insubordination and conduct unbecoming have been substantiated.

The remaining issue is whether Respondent's conduct warrants dismissal from employment. The District cited to several tenure cases in which employees have been terminated for insubordination and the terminations were upheld on appeal. Specific to this case, a penalty less than dismissal would be warranted if a lesser disciplinary sanction would correct Respondent's conduct and ensure that she could return to the classroom without further disruption or consequence. Respondent's repeated refusal to attend the psychiatric evaluation despite several opportunities and her continued insistence that the directive lacks validity demonstrate that a lesser disciplinary penalty would not rehabilitate her conduct or

ensure against further insubordinate behavior. The trust necessary between Respondent and the District has been irreparably broken by her refusal to follow the Board directive. Dismissal from employment is an appropriate penalty.

For these reasons, I find that the School District has established the charges of insubordination and conduct unbecoming and those charges warrant dismissal.

Award

The School District has established the allegations set forth in the tenure charges. Accordingly, the tenure charges are sustained, and dismissal is warranted.

Walt De Treux

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Affirmation

I, Walt De Treux, affirm that I am the individual who executed this Decision and Award.

Walt De Treux

WALT De TREUX