

IN THE MATTER OF TENURE BETWEEN

Jennifer Ferrara

-And-

Board of Education of the City of Newark  
Essex County, New Jersey

**Agency Docket No.: 221-8/22**

**Arbitrator:** Kinard Lang

**Hearing Dates:** January 23, 31; February 21, 22, 23, 24; March 22, 23, 24; May 18 and 19, 2023

**Hearing Locations:** New Jersey Board of Mediation, Newark, N.J.; Offices of Zazzali, Fagella, Nowak, Kleinbaum & Friedman, Newark, N.J.

**Issue:**

Has the School District of Newark borne the burden of proving Teacher, Jennifer Ferrara, must be dismissed, consistent with the provisions of the TeachNJ Act, due to Inefficiency; if not, what shall the Remedy be?

APPEARANCES:

Adam Herman S., Esq. - Petitioner

Colin M. Lynch, Esq. - Respondent

**Post Hearing Briefs Filed:** July 31, 2023

## **BACKGROUND**

This matter comes to us as the result of the District's decision to pursue revocation of Respondent Jennifer Ferrara's Tenure. Respondent began her employment at Rafael Hernandez School in November 2014. Her performance for the 2014-15 school year was evaluated as *Partially Effective*. However, from the 2015-16 school year, until the 2020-21 school year; where much instruction was performed virtually due to the Covid Pandemic, Respondent's teaching performance was observed and evaluated as *Effective*.

We will review Respondent's observations and evaluations for the 2020-21 and 2021-22 School years; the latter taught while on a Corrective Action Plan, due to the former. The following is a summary of those Observations and Evaluations, and their circumstantial context:

- A) Due to the Covid pandemic Respondent did not receive an annual Summative Evaluation for the 2019-20 school year; that school year she received two *Effective* Observations, and was selected to be the school's "*model*" English Language Arts teacher, before the pandemic curtailed in-classroom instruction.
- B) In November, 2020 with Ferrara's support, S. Montague became the Newark Teachers' Union representative at RHS.

C) The preceding only occurred after Pared refused to accept NTU membership's acclimation of Montague as their representative, and required an election.

1) **Effective rating** of Ferrara's performance; Vice Principal Hill's December 15, 2020 Observation.

D) January 21, 2021; during a meeting Montague advises Principal Pared that Respondent and other teachers fear "repercussions" from Administration if they "speak out" at Union meetings, regarding complaints against RHS Administration.

2) **Partially Effective rating** of Ferrara's performance; Vice Principal Bird's March 2, 2021 Observation.

E) On April 27, 2021 Principal Pared issued a written reprimand to Respondent for her April 26<sup>th</sup> violation of the RHS Covid mask protocol.

F) April 28, 2021 WebEx faculty meeting: The record establishes at this meeting Pared questioned the necessity of the Union as a communications "intermediary" between she and its members, she also publicly rebuked Respondent for the cited Covid protocol violation.

3) **Partially Effective Annual Evaluation** of Ferrara's 2020-21 performance; Vice Principal Hill, May 13, 2021, resulting in Respondent's CAP status for the 2021-22 school year.

G) Early in June 2021 Pared changed Ferrara's teaching cohort and assignment for the 2021-22 school year: From 6<sup>th</sup> and 7<sup>th</sup> Grade ELA to 8<sup>th</sup> Grade ELA; the record contains the unsuccessfully rebutted testimony of then ELA Coach Carnemolla, that she asked Pared not to make those changes while Respondent was teaching on a CAP.

H) Sometime in June 2021 Respondent made a written complaint to the School District Office of Labor and Employee Relations regarding the Pared Administration's treatment of teachers. That complaint was in conjunction with a June 17, 2021 WebEx meeting between District Labor Relations Director, J. Watson, Respondent, Montague and other teachers: They complained about asserted *"Extremely Toxic and hostile work environment, Targeting, Falsifying information, Slander, Intimidation, Bullying"*.

I) On or about October 25, 2021 Respondent's scheduled coaching from ELA Coach Carnemolla was aborted; on October 31<sup>st</sup> Principal Pared notifies Respondent *"...At this time we have to cancel the additional coaching prep..."*

4) **Effective rating** of Ferrara's performance; Vice Principal Hill's December 3, 2021 teaching Observation.

J) On January 5, 2022 Principal Pared called an Emergency faculty meeting.

Because of Pared's agenda, this becomes known as the "*climate and culture meeting*"; Respondent spoke at the meeting about her sensed "*lack of trust with staff toward administration*". On January 6<sup>th</sup> Vice Principal Vargas replaced Vice Principal Hill as Respondent's immediate supervisor and observer.

K) On January 13, 2022 Pared began preparing for Ferrara's removal; she sought evidence from H. Daughtry, School District HRS Office, to support her revocation of Respondent's tenure.

L) Respondent is on approved Bereavement and FMLA leaves from January 10 to February 7, 2022.

5) ***Partially Effective rating*** of Ferrara's performance; Vice Principal Vargas' February 17, 2022 teaching Observation.

6) ***Partially Effective Mid-Year Evaluation***; Vice Principal Vargas, February 23, 2022.

M) On March 16, 2022 Respondent received treatment for a "work related injury" at N.J. Concentra Medical Center; she experienced Elevated blood pressure and anxiety as the result of Vice Principal Vargas' unscheduled visit of her classroom. There in front of students, Vargas demanded data regarding lesson plans. Weeks following these events, Respondent was approved for FMLA leave from April 25<sup>th</sup> to the June 23<sup>rd</sup> end of the 2021-22 school year.

7) **Partially Effective rating** of Ferrara's performance Principal Pared, March 29, 2022 teaching Observation.

Based upon the preceding Observations and Evaluations, on May 10, 2022 Principal Pared recommended Respondent's loss of Tenure to the N.J. Commissioner of Education; that resulted in this Arbitration.

### **POSITIONS OF THE PARTIES**

#### **Petitioner**

Respondent earned Partially Effective ratings for the 2020-21 and 2021-22 school years, thus, the TeachNJ Act requires revocation of her Tenure. We are told that in our review of the proper application of the Act to Respondent, we may **only** consider whether:

*"a. ...(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 activity prohibited by state or federal law;*

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

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

*c. The evaluator’s determination as to the quality of an employee’s classroom performance shall not be subject to an arbitrator’s review.”*

The District tells us it has produced a preponderance of relevant evidence, documented in the records of RHS administrators’ Observations and Evaluations during the 2020-21 and 2021-22 school years, showing Ferrara’s professional Inefficiency. She must be Dismissed.

### Respondent

Of course, Respondent tells us those Observations were made through eyes jaundiced with anti-Union animus; that the evaluations were, at best, procedurally defective. In that connection there are unexplained *discrepancies* in RHS administrators’ Observation ratings.

We are told the testimony of several teachers, including Montague and Ferrara, provides evidence of Principal Pared’s anti-Union statements.

According to their testimony, she made those statements at faculty meetings, as well as claims that she “*knows what goes on at your little meetings*”; during the Pandemic NTU meetings were held on WebEx, to which Pared had access.

For all these reasons the District’s charges against the Respondent must be dismissed.

### **Discussion and Analysis**

We will begin at the end of the preceding chronology listing the events leading to this arbitration. According to the Respondent, Pared’s March 29, 2022 Observation was unannounced, with no pre-Observation conference; that it was not a *normal* class but rather a Test Preparation lesson, with a lesson plan Respondent had no role in developing. In that connection, we have Principal Pared’s Cross-Examination Testimony:

*“ ...Q. All right. So when you did the final observation of Ms. Ferrara, you were conscious that this was a test prep because she had the test prep package; correct?”*

*A. She had a test prep document. Yes.*

*Q. Okay. And then you made that choice to utilize that test prep **and not a lesson** to give her her last final observation; correct?”*

*A. Yes. (Emphasis added)*



It is clear from Pared's testimony that she chose to personally conduct what her testimony shows she knew was a "*make it or break it*" Observation of Ferrara. Nothing in the *Newark Board of Education Teacher Evaluation Guide* **requires** the Principal to conduct an Observation under those circumstances.

I) I find Pared's actions here Arbitrary.

Preceding Pared's March 29<sup>th</sup> Observation Ferrara was treated for a "work related injury" at Concentra Medical Center on March 16<sup>th</sup>; that medical attention occurred approximately three weeks after Vice Principal Vargas' February 17, 2022 Observation, where Respondent was *ultimately* rated Partially Effective.

However, for reasons not adequately explained by the District, following the February 17<sup>th</sup> Observation Vargas recorded Respondent's performance as Effective; only at the conclusion of their post-Observation conference did Vargas tell Respondent her Observation was rated Partially Effective.

Respondent argues that *late change* effectively denied her *due process*; her right, as acknowledged in the testimony of Vargas and Pared, to come into the post-Observation conference armed with evidence to persuade Vargas her *changed* rating of Respondent was *unjustified*.

II) I find Vargas' behavior here Capricious

Vargas' February 23, 2022 Mid- year evaluation of Respondent's teaching performance as Partially Effective relied, at least in part, on the cited February 17<sup>th</sup> Observation; we are told that evaluation "*...was infected with the flaws of Vargas' observation of Ferrara undertaken immediately prior*", and therefore has little validity.

On May 6, 2022 Vice Principal Vargas completed the District's Annual Summative Evaluation of Respondent, she rated her Partially Effective. The testimony of Vargas, Pared and Assistant Superintendent Jose Fuentes, establishes that a post-Evaluation conference is required. Their testimony is consistent with Article V, Section 12, C. of the parties' Collective Bargaining Agreement:

*" C. OBSERVATION/EVALUATION CONFERENCES*

*Observation/evaluation conferences shall be held within (10) calendar days of the classroom visit. The (10) days may be extended by the number of days that either party is absent."*

The District's "Teacher Evaluation Guide" says, following this "*summative performance review*", the teacher and administrator should meet for a conference, where "*...The Administrator will then revise (if necessary) or complete the Annual Evaluation, **based on this conference.***" (Emphasis added)

Clearly, the District knew, or should have known, Respondent was on an approved FMLA leave of absence on the day it chose to do her Annual Evaluation, and that her absence would deny her the post-Evaluation conference opportunity to which she was entitled; her last best chance to produce evidence supporting her assertion of professional Effectiveness.

III) I find the Respondent’s Annual Evaluation failed to adhere substantially to the TeachNJ Evaluation process.

### Conclusions

With respect to Tenured teachers with a Corrective Action Plan, the Newark Board of Education Teacher Evaluation Guide says: “*Work with HRS Office to pursue tenure charges if applicable*”, **in June**. The evidence shows that on January 13, 2022 Principal Pared contacted H. Daughtry in the HRS office seeking data to support her *opined* pursuit of Tenure charges against Ms. Farrara.

The record tells us about the Observations and Evaluations following Pared’s data request from Daughtry. However, when that request for Tenure revocation evidence was made, Respondent had only one Observation for the 2021-22 CAP school year; that Observation rated her performance Effective.

I find Pared’s action here tantamount to a self-fulfilling prophecy.

Pared's intrusion into Union meetings, antipathy for Montague and interference in RHS Union leadership selection, convince me Ms. Ferrara's participation in NTU complaints tainted Administration's ratings of her teaching performance.

Based on the entire record in this matter I find the District's Ratings of Respondent violated the Provisions of TeachNJ; that they were influenced by Farrara's Union activity, were arbitrary and capricious, and failed to adhere to prescribed evaluation processes. I find all of that materially affected Ms. Farrara's Observations and Evaluations.

**AWARD**

The Grievance is sustained. The charge of Partial Inefficiency is Dismissed

Kinard Lang, Arbitrator/Mediator \_\_\_\_\_ September 18, 2023



