

**STATE OF NEW JERSEY
COMMISSIONER DEPARTMENT OF EDUCATION**

IN THE MATTER OF THE TENURE OF)	
)	
Heather Grey)	
)	
and)	Docket Number 254-9/15
)	
School District of the Township of Lower)	
Cape May County, New Jersey)	
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OPINION AND AWARD

Before: Alan A. Symonette, Esq.
Impartial Arbitrator

Appearances:	Heather Grey	Ned P. Rogovoy, Esq.
	Lower Township Cape May County,	John B. Comegno, II, Esq. R. Taylor Ruilova, Esq.

Dates of Hearing
November 24, 2015
December 7, 2015
January 13, 2016
January 14, 2016

Statement of the Decision: Based upon the evidence presented I must find that the School District has established a sufficient basis for the charges set forth herein. The charges are sustained.

INTRODUCTION

This matter was brought to arbitration before the undersigned arbitrator pursuant to P.L. 2012, Chapter 26 of Title 18a *N.J.S.A.* These involve certain charges filed on September 10, 2015 against the Respondent Ms. Heather Grey by the School District of the Township of Lower Cape May County, New Jersey. The charges seek to remove Ms. Grey from her position as a school bus driver for the School District. The Statement of Tenure Charges is set forth herein as follows:¹

STATEMENT OF TENURE CHARGES

INTRODUCTION

Ms. Grey, a bus driver employed by the Board, has engaged in a pattern of dangerous, reckless, unlawful and unbecoming conduct sufficient to support tenure charges brought against her. Specifically, Ms. Grey's conduct includes, but is not limited to: (1) improper use and false reporting of sick/medical leave; (2) repeatedly failing to comply with Board Policy and applicable law regarding use of a cellular telephone while operating a school bus; (3) repeatedly failing to safely operate a school bus; (4) failing to comply with Board policy regarding mandatory child safety school bus inspection procedures; (5) repeatedly causing damage to private property while operating a school bus; (6) failure to comply with procedure to maintain updated bus routes, maps and seating charts; and (7) general failure to comply with administrative directives.

As a result, the Board seeks to terminate Ms. Grey.

BACKGROUND

1. Ms. Grey began her employment with the Board as a bus driver as of September 1, 2006.
2. As a bus driver, Ms. Grey is a member of the Lower Township Elementary Education Association ("LTEEA"), which is party to a collectively negotiated agreement with the Board (the "CNA").
3. Pursuant to the terms of the CAN, as of September 2009, Ms. Grey became a tenured employee of the Board.

¹ References to paragraphs in the Statement of Evidence at the end of each specification have been excluded from the text.

CHARGE ONE
“UNBECOMING CONDUCT” AND “OTHER JUST CAUSE”
IMPROPER USE AND FALSE REPORTING OF SICK/MEDICAL
LEAVE

4. Without providing any advance notice, in the afternoon of October 3, 2014, Ms. Grey produced to the Board’s Transportation Department Secretary a handwritten note written on a prescription sheet blank from Burton Waisbren, Jr., M.D. (“Dr. Waisbren”), which indicated the patient as Heather Grey and “NO WORK 10/3/14 – 10/17/14,” but provided no further detail.
5. Prior to submitting the note, Ms. Grey worked a full day on October 1, 2014 and half days on October 2, 2014 and October 3, 2014.
6. Based upon the note, Ms. Grey indicated that she was unable to appear for work for the time period specified.
7. After she was informed by the Transportation Department Secretary of Ms. Grey’s doctor’s note, on October 3, 2014, the Transportation Supervisor sent Ms. Grey a text message asking Ms. Grey to call her.
8. Ms. Grey responded in a text message indicating that she could not talk because “[t]hings are Crazy here. I have a lot going on Dr. didn’t think I should be driving until we got everything situated.”
9. Ms. Grey further indicated she would call the Supervisor back shortly, but no such call was ever received.
10. Out of concern for Ms. Grey’s wellbeing, on October 6, 2014, the Transportation Supervisor inquired with some of her co-workers as to how she was, but received no responses.
11. The Transportation Supervisor then contacted the central Administration, informed them of the situation and expressed her concern regarding Ms. Grey’s wellbeing.
12. On October 6, 2014, after receiving no further communication from Ms. Grey or information on her wellbeing, the Transportation Supervisor went to Ms. Grey’s home at 8:20 AM and 11:20 AM to attempt to see if she was okay, but she received no responses at the door on either occasion.
13. At 8:20 AM, Ms. Grey’s vehicle was not observed at her residence, but it was observed there at 11:20 AM.
14. Given the lack of specificity in the Dr. Waisbren note, on October 6, 2014, the Administration contacted Dr. Waisbren’s office to attempt to obtain further information regarding the requested leave and to confirm that Dr. Waisbren had supplied the note.

15. On October 6, 2014, Betsy Young, the Office Manager for Dr. Waisbren, responded via email, attaching a copy of the same handwritten prescription sheet note from Dr. Waisbren, along with another handwritten note signed by Ms. Young which read "I checked with Dr. Waisbren and he did write this note for Heather Grey. She was seen here in the office by Dr. Waisbren on 10/1/14 and he did put her out of work from 10/3/14 until 10/17/14."
16. The response that Dr. Waisbren had seen Ms. Grey on October 1, 2014 but did not put her out of work until October 3, 2014, couples with the fact that Ms. Grey had reported to work on October 1, 2014 through October 3, 2014, appeared confusing to the Administration.
17. Accordingly, on that same day, the Administration responded to Ms. Young and asked for further clarification given that Ms. Young's note indicated that Dr. Waisbren saw Ms. Grey on October 1, 2014, but did not explain why she would be unable to work until two (2) days later.
18. Ms. Young responded later that day and indicated that Dr. Waisbren saw Ms. Grey on October 1, 2014 and wrote the note on that day excusing her from work beginning on October 3, 2014, but that his notes did not indicate anything about her ability to work on October 1, 2014 or October 2, 2014.
19. In response, the Administration wrote back to Ms. Young and specifically indicated that they were not inquiring as to what Ms. Grey was being treated for, but requested confirmation that her illness is severe enough that she would be unable to work for two (2) weeks.
20. The final communication from Ms. Young was a response on the evening of October 6, 2014 which stated "I asked Dr. Waisbren the question you relayed and he said that he is not at liberty to discuss this any further."
21. On October 7, 2014, the Transportation Supervisor telephoned Ms. Grey at 9:50 AM and left a message, but received no response.
22. At 10:05 AM on October 7, 2014, the Transportation Supervisor sent Ms. Grey a text message indicating that she was coming over to her home, but received no response.
23. When the Transportation Supervisor arrived at Ms. Grey's home, her vehicle was observed at the residence, but there was no response at the door.
24. On October 8, 2014 at 10:00 AM, the Transportation Supervisor went to Ms. Grey's home, but no response was received at the door and Ms. Grey's vehicle was observed at the residence.

25. Despite her numerous attempts to contact her, the Transportation Supervisor received no further contact from Ms. Grey from October 3, 2014 until October 20, 2014.
26. Ms. Grey did not appear for work from October 3, 2014 to October 17, 2014, and she recorded her absence as the use of paid sick days.
27. On or about October 17, 2014, the Administration was informed by the Lower Township Police (the "LTPD") regarding an incident that took place at Ms. Grey's home.
28. The LTPD were dispatched to the location on October 14, 2014 in connection with a report that a dog had been hit by a car.
29. Upon further investigation, the LTPD was informed that the dog belonged to Ms. Grey, but that it was being watched for her by a friend who was "pet-sitting" because Ms. Grey was away in Florida.
30. After receiving the information that Ms. Grey was apparently in Florida during the time when she was supposed to be out of work on medical leave and unable to work, the Administration began an investigation in the matter.
31. As part of that investigation, the Administration received information from other employees that Ms. Grey was apparently travelling to Florida on vacation with another Board transportation employee.
32. On November 3, 2014, a meeting was held with Ms. Grey, an LTEEA representative, the Transportation Supervisor and the Superintendent at which time the information received regarding Ms. Grey's apparent trip to Florida during her purported medical leave was presented to her.
33. Ms. Grey responded that she was at home during that time period, and denied being in Florida.
34. On or about November 12, 2014, Ms. Grey produced a second handwritten note from Dr. Waisbren on a prescription sheet, dated November 12, 2014, which noted "THIS PATIENT WAS OUT OF WORK, AT MY DIRECTION FROM 10/3 – 10/17 –PLEASE SEE MY EARLIER NOTE."
35. Thereafter, by letter to the Superintendent dated November 18, 2014, Ms. Grey explained she was under the care of Dr. Waisbren for the period in question in October, 2014, and that he had ordered her to stay out of work as she was unable to perform her duties.
36. In that letter, Ms. Grey also stated "I was at home for most of this absence."
37. Attached to the November 18, 2014 letter was a two (2) sentence letter from Dr. Waisbren which stated:

This letter is confirmation that had ordered Heather Grey to remain out of work from 10/3/14 to 10/17/14 as she was unable to perform her work duties during that period

Please see all previous documentation.

38. After receiving Ms. Grey's letter and upon further consideration, a second meeting was held on December 22, 2014 with Ms. Grey, who was also accompanied by James Jameson, the local New Jersey Education Association ("NJEA") UniServ representative.
39. At that meeting, Ms. Grey ultimately admitted that she went to Florida during part of the time period during which she took paid sick leave in October, 2014.
40. Given the fact that the Administration had confirmed Ms. Grey admittedly travelled to Florida during the period in which she claimed she was unable to work, the Administration sought to dock her pay for the eight (8) days during which she was out on the suspect leave.
41. Following the subsequent discussions with NJEA representative Jameson who was seeking a lesser penalty for Ms. Grey, the Administration agreed to only dock her for four (4) days of the paid leave, provided she entered into a "Last Chance Agreement" (the "Agreement") provided by the Board.
42. The Agreement provided that although the Board could have sought to pursue far more severe consequences, including terminating Ms. Grey's employment as a result of the falsely reported leave, the Board agreed to the lesser penalty of docking Ms. Grey for four (4) days of pay from the period of her medical leave.
43. The Agreement further provided that in exchange for the Board agreeing to forego any action to terminate her employment, Ms. Grey accepted the docking of her pay and further agreed that her continued employment was conditional upon her good standing with the Board and that she would not engage in any other breach of the Board's expectations of her employment.
44. The Agreement was provided for review to NJEA representative Jameson.
45. The Administration did not receive a response from the NJEA until a month later at which time, a revised version with minor language changes was submitted.
46. The Administration responded and indicated that they would accept the minor language changes.
47. However, the NJEA then submitted another version of the Agreement which was further revised to remove some of the language in the original version, including that Ms. Grey had

admitted to travelling to Florida or had improperly taken paid sick leave.

48. The Administration responded that the second revised version of the Agreement was not acceptable and that if a signed version of the initially accepted Agreement was not received that day, the Agreement would be withdrawn and the Board would seek other disciplinary sanctions.
49. Neither Ms. Grey nor the NJEA representative produced a copy of the signed Agreement.
50. Despite the fact that Ms. Grey never signed the Agreement, she was ultimately only docked for four (4) days of pay, which was spread out over four (4) pay cycles.
51. Ms. Grey filed no objection to the docking of the four (4) days' pay.

CHARGE TWO

“UNBECOMING CONDUCT” AND “OTHER JUST CAUSE”

**REPEATED FAILURE TO COMPLY WITH BOARD POLICY AND
APPLICABLE LAW REGARDING USE OF CELLULAR
TELEPHONE WHILE OPERATING SCHOOL BUS**

52. On December 12, 2002, N.J.S.A. 39:3B-25 was enacted making it unlawful for the driver of a school bus to use a cellular or other wireless telephone while operating a school bus. This law has remained in effect during the entire term of Ms. Grey's employment as a bus driver.
53. In that regard, Board Policy 8630 “Bus Driver Responsibility” further provides in pertinent part as follows:

A school bus driver, during the driver's work schedule, may only use a cellular or other wireless telephone, for school related business. The driver is prohibited from using a cellular or other wireless telephone, while operating a school bus. A cellular, or other wireless telephone may only be used for school related business by the school bus driver while operating the school bus, when the school bus is parked in a safe area off a highway or in an emergency situation.

54. Bus drivers were regularly reminded of the prohibitions on use of cellular telephones during the driver's work schedule. For example, a memorandum dated August 28, 2012 which was provided to all drivers, including Ms. Grey, stated as follows:

Please be advised that **no bus driver** is allowed to use their cell phone for either conversation or texting, **while operating the bus**. This jeopardizes the safety of children and staff and is in violation of law.

Anyone caught violating this procedure will face disciplinary action. (Emphasis in original)

55. Another memorandum to all bus drivers and aides dated September 3, 2013, which Ms. Grey received, reviewed procedures and expectations for bus drivers, including the following statement:

NO ONE is to use their cell phones while driving their bus, this includes texting. If you have an emergency please pull your bus over to a safe spot. **THERE WILL BE NO EXCEPTIONS...**Please remember the safety of your students. Remember the public is watching, also the video system records everything. (Emphasis in original)

56. On October 23, 2012, the Transportation Department received a telephone call from a concerned parent of a student who reported that Ms. Grey was texting on her cellular telephone and speeding while operating a school bus on Suzanne Avenue in Lower Township while children were present on the bus.
57. That same day, Ms. Grey met with the Transportation Supervisor, was informed of the issue and presented with a write-up regarding the incident. That write-up was accompanied by copies of memoranda previously distributed by the Transportation Department to all Board bus drivers.
58. Ms. Grey signed the acknowledgement portion of the October 23, 2013 write-up without providing any comments on the write-up form.
59. On April 2, 2014, Ms. Grey was observed by a LTPD Officer talking on a cellular telephone while driving a school bus.
60. The LTPD Officer issued a written Warning to Ms. Grey in connection with the incident.
61. That same day, Ms. Grey met with the Transportation Supervisor, discussed the violation and was presented with a write-up regarding the incident. That write-up was accompanied by copies of memoranda previously distributed by the Transportation Department to all Board bus drivers.
62. On April 2, 2014, Ms. Grey signed the acknowledgement portion of the April 2, 2014 write-up form.
63. In the employee comments section of the April 2, 2014 write-up form, Ms. Grey admitted that she was talking on a cellular

telephone while she was driving a school bus on school property.

64. Given that this was a second reported incident of Ms. Grey violating applicable law and Board Policy regarding the use of a cellular telephone while operating a school bus, a formal Official Reprimand dated April 4, 2014 regarding the incident was also provided to her and placed in her personnel file.
65. In addition to the Official Reprimand, a meeting was held with Ms. Grey, accompanied by LTEEA representation, and the Board's Business Administrator on April 9, 2014 to further discuss the incidents and the additional disciplinary sanctions that would result if she continued to violate applicable law and Board Policy regarding the use of cellular telephones.
66. Following reports in March 2015 of certain Board bus drivers not complying with mandatory requirements for child safety checks on school buses, the Transportation Department conducted a review of the video footage from the video cameras located on all Board school buses to attempt to determine any violations by bus drivers.
67. All Board school buses are equipped with a dual camera system, with one (1) camera at the back of the bus directed forward showing the student passenger compartment, and a second camera mounted above the driver to observe the driver's conduct.
68. The school bus camera systems also automatically record and note on the video footage certain information, including the speed of the bus in real time.
69. All bus drivers, including Ms. Grey, were aware of the school bus video camera systems, as well as the use and purpose of those systems.
70. The use and purpose of the school bus video camera systems was further memorialized in Board Policy and Regulation 8690 "Monitoring Devices on School Vehicles."
71. On the March 17, 2015 video footage from Ms. Grey's school bus, Ms. Grey was observed using her cellular phone to both send text messages and make a telephone call while students were present on the school bus.
72. On the March 27, 2015 video footage from Ms. Grey's school bus, Ms. Grey was observed, among other improper activities, to use her cellular phone to send text messages while students were present on the school bus.
73. On or about March 30, 2015, Ms. Grey was made aware that she was observed on video footage using her cellular telephone while operating the school bus.
74. Despite being made aware that she had been recently observed via the video system on her school bus, on the May 1, 2015

video footage from Ms. Grey's school bus, Ms. Grey was again observed using her cellular telephone to send text messages while students were on the school bus.

75. However, upon information and belief, because she was aware that school bus video footage was being monitored, Ms. Grey attempted to conceal her use of her cellular phone by placing her purse in her lap and using the phone inside her purse.

CHARGE THREE

"UNBECOMING CONDUCT" AND "OTHER JUST CAUSE"

REPEATEDLY FAILING TO SAFELY OPERATE A SCHOOL BUS

76. On October 1, 2014, the Transportation Department received a call from a citizen who reported that the bus being operated by Ms. Grey, while students were on board, was tailgating him while travelling on Bayshore Road. The citizen further reported that he sped up his vehicle to 55 miles per hour, but that Ms. Grey continued to tailgate him despite his increased speed.
77. On October 1, 2014, the Transportation Supervisor met with Ms. Grey, discussed the incident and provided her with a write-up advising her to maintain a safe following distance from vehicles in front of her bus.
78. Ms. Grey refused to sign the acknowledgement portion of the write-up form, but did provide comments in the employee comment section indicating that she did not believe she was tailgating anyone.
79. On the May 20, 2015 video footage from Ms. Grey's bus, she was observed not correctly wearing her seat belt and removing the seat belt while the bus was still moving.
80. On the May 21, 2015 video footage from Ms. Grey's bus, Ms. Grey was observed to engage in the following behavior while operating the school bus:
- Permitting a student to walk from the back of the bus to the front while the bus was moving;
 - Using a broom to sweep the bus with the entry door open and travelling in excess of 45 miles per hour;
 - Removing both hands from the steering wheel to telescope the broom handle while travelling in excess of 40 miles per hour;

- Removing both hands from the steering wheel to access her purse while travelling in excess of 20 miles per hour.
- Removing hands from the steering wheel to reach down and open a container of wipes while travelling in excess of 40 miles per hour; and
- Removing one hand from the steering wheel to wipe down an area while travelling in excess of 40 miles per hour.

81. On the June 1, 2015 video footage from Ms. Grey's bus, Ms. Grey was observed to be filling out her daily bus condition report while the bus was moving.

82. On June 4, 2015, the Transportation Supervisor met with Ms. Grey, discussed the recent series of incidents observed on video footage from May and June 2015 and provided her with a write-up indicating that it is a safety concern for Ms. Grey to operate a school bus in such a manner.

83. Ms. Grey signed the acknowledgement portion of the June 4, 2015 write-up and added the explanations of some of the incidents, including the following:

- As to the May 20, 2015 seat belt violation: "due to time restrictions, I remove just prior to entering my spot"
- As to the May 21, 2015 incidents of sweeping/cleaning her bus while it was moving: "wasp-trying to swat it away"

84. On the June 4, 2015 write-up form, Ms. Grey also added general comments, including the following: "Feel like this is harassment in order to remove me from my position. (camera is directed at me not student) Also, most of this wouldn't even be an issue if the camera was fixed like we discussed last school year."

CHARGE FOUR
"UNBECOMING CONDUCT" AND "OTHER JUST CAUSE"
FAILURE TO COMPLY WITH BOARD POLICY REGARDING
CHILD SAFETY SCHOOL BUS INSPECTION

85. In order to ensure that no students are left on school buses, the Board has a long-standing mandatory procedure whereby all bus drivers are required to physically check that no students remain on the bus.
86. As part of that procedure, each school bus is equipped electronic safety system which requires that a button located at the rear of each bus be pressed by the driver when the school bus is parked, thus ensuring that all bus drivers get up and physically check the bus. If the button is not depressed within approximately sixty (60) seconds, an alarm sounds.
87. All Board bus drivers receive training regarding the requirements of the physical checks of school buses and the operation of the bus safety system.
88. For example, on January 20, 2011, Ms. Grey attended the “New Child Alert System/How to properly check all seats” in-service training.
89. Following that training, Ms. Grey signed an acknowledgement form which stated that “I understand how the system works and the proper procedure to check all seats. I understand this is my sole responsibility as the bus driver.”
90. In addition, all Board bus drivers are regularly reminded regarding their obligations to physically check the buses and of their operation of the bus safety system. For example, a written memoranda dated October 29, 2013 issued to all Board bus drivers, including Ms. Grey, provided as follows:

While we all understand that driving a bus is a difficult job, it also important and critical that it be done safely.

When you arrive at any school and the students have disembarked the bus, you must physically check that no student is remaining on the bus. This is your responsibility and you cannot delegate this to anyone else. Follow all the safety procedures is important and crucial. They are there for a reason. Checking your bus for any students at the end of your run must be done as well. Failure to follow this procedure can and shall lead to the termination of your employment. Please follow all the procedures and review then with your supervisor.

91. As noted above, following reports in March 2015 of certain drivers not complying with mandatory requirements for child safety checks on school buses, the Transportation Department conducted a review of a video footage from the video cameras located on all District school buses to attempt to determine any violations by bus drivers.

92. On the March 27, 2015 video footage from Ms. Grey's school bus, Ms. Grey was observed to not follow the required procedure to disengage, but rather had a student press the button at the rear of the bus so that she did not have to walk through the bus to do it herself.

CHARGE FIVE

"UNBECOMING CONDUCT" AND "OTHER JUST CAUSE"

**REPEATEDLY CAUSING DAMAGE TO PRIVATE PROPERTY
WHILE OPERATING A SCHOOL BUS**

93. On December 15, 2014, the owner of a property located at the corner of Congress Avenue and Texas Avenue located in the Villas section of the District reported that on December 12, 2014 during her morning bus run, Ms. Grey cut the corner of the roadway while making a turn and drove across the private property, causing damage and leave tire track ruts on the property.
94. On December 15, 2014, the Transportation Supervisor met with Ms. Grey, discussed the incident and provided her with a write-up reminding her to be mindful of property lines when making turns with the school bus.
95. On December 15, 2014, Ms. Grey signed the acknowledgment of write-up form without providing any comments.
96. On May 13, 2015, the Transportation Department received another complaint from the same homeowner that Ms. Grey was causing damage to his property by running over the corner of his yard and leaving tire marks in his grass.
97. On May 13, 2015, the Transportation Supervisor met with Ms. Grey, discussed the second incident of property damage and provided her with a second write-up again reminding her to be mindful of property lines when making turns with the school bus.
98. Despite having the meeting and being provided with a copy of the write-up, Ms. Grey refused to sign the acknowledgment section of the May 13, 2015 write-up form.

CHARGE SIX

"UNBECOMING CONDUCT" AND "OTHER JUST CAUSE"

**FAILURE TO COMPLY WITH PROCEDURE TO MAINTAIN
UPDATED BUSROUTES, MAPS AND SEATING CHARTS**

99. Board bus drivers are responsible for maintaining updated bus routes, maps and seating charts for their bus runs at all times in the event a substitute driver is needed.
100. Board bus drivers are regularly reminded of their responsibility to maintain these updated documents on their buses.
101. For example, a March 13, 2013 memorandum was distributed to all bus drivers, including Ms. Grey, which indicated “All routes, maps and seating charts are to be kept up to date NO EXCEPTIONS.”
102. On April 14, 2015, Ms. Grey was scheduled to be absent from work for an appointment.
103. However, Ms. Grey left no routes, maps or seating charts for her bus runs to be used by the substitute driver covering for her, resulting in a disruption of the transportation of students to school, among other issues.
104. On April 15, 2015, the Transportation Supervisor met with Ms. Grey, discussed the incident and provided her with a write-up directing her to ensure that all bus routes, maps and seating charts are updated and maintained on her bus at all times.
105. Ms. Grey signed the acknowledgement portion of the April 15, 2015 write-up and added comments indicating that she had intended to provide updated maps, but that she did not. Ms. Grey further admitted that once she was informed of the situation, she made an arrangement for the updated maps to be delivered later on April 14, 2015.

CHARGE SEVEN
“UNBECOMING CONDUCT” AND “OTHER JUST CAUSE”

**GENERAL FAILURE TO COMPLY WITH ADMINISTRATIVE
DIRECTIVES**

106. As noted above, despite being advised in writing of the expected responsibilities of a bus driver, including in multiple write-ups and reprimands issued to her, Ms. Grey continued to disregard directives from the Administration.

107. Perhaps the most significant examples of Ms. Grey's disregard for Administrative directives came after Ms. Grey was made aware that video footage from school buses of driver conduct was being actively monitored as of March 2015.
108. In that regard, despite being fully aware of the fact that her actions were being video-taped and monitored, she was observed to continue to violate Board Policy and applicable law by using her cellular telephone while operating a school bus and attempting to conceal same in her purse) and attempting to clean her bus while operating it at speeds in excess of 45 miles per hour.
109. The Administration has engaged in multiple and repeated attempts for years to advise and counsel Ms. Grey regarding the expectations regarding her conduct as a Board employee and bus driver, as well as to repeatedly impose disciplinary sanctions on Ms. Grey for violations of Board policy and applicable law.
110. Notwithstanding the Administration's continued efforts, those Administrative interventions appear to have had little or no effect as Ms. Grey has continued to engage in inappropriate conduct, including through the end of the most recent 2014-2015 school year.

CONCLUSION

WHEREFORE, for the foregoing reasons, Respondent Heather Grey should be terminated for unbecoming conduct and other just cause.

On September 23, 2015, Respondent's attorney entered his appearance and submitted an answer to the charges. The answer stated "after reviewing all the charges, I have elected to defend as I do not believe that there is sufficient cause for the taking of my tenure." After the receipt of the Respondent's answer, the Commissioner of the Department of Education of the State of New Jersey reviewed the charges and determined that they were sufficient, if true, to warrant dismissal or reduction in salary.

Accordingly, the matter was referred to the undersigned arbitrator pursuant to N.J.S.A.

18A:6-16 as amended by P.L. 2012, Ch. 26.

After a brief discovery period, a hearing was convened and held on November 24, and December 7, 2015 and January 13 and 14, 2016 in the offices of Respondent's counsel in Vineland, New Jersey. The School Board presented the testimony of the following witnesses: Kelly Hewitt, Transportation Supervisor and George Drozdowski, Superintendent of Schools. Respondent testified as well as Police Officer Darrin Hickok, Pamela Gittle, Bus Aide, Ryan Adams, Head School Bus Mechanic and the Respondent's father, Robert Stansbury.

Throughout the hearing both the School District and the Respondent were represented by counsel who presented evidence through the sworn oral testimony of witnesses as well as through documents. Each side had the opportunity to confront the evidence presented by the opposing party. The hearing was officially closed upon the receipt of written post-hearing letter/briefs.

BACKGROUND AND THE EVIDENCE PRESENTED

The Lower Township Board of Education operates an elementary school district that consists of 4 schools located in the vicinity of Cape May, New Jersey. These schools are the Sandman Consolidated School, the Maud Abrams School, Memorial School, and the Carl T. Mitnick School. The superintendent of the School District is Mr. George Drozdowski.²

² Throughout this opinion there will be references to a number of transcript pages and party exhibits [T#. #] represents the Transcript, followed by the volume number then the page. Documentary exhibits will be referred to as [B#] for Board or School District exhibits or [R#] for Respondent exhibits.

The alleged infractions that have served the bases for the charges herein are based upon the interpretation and application of a number of Board policies regarding the operation of the school buses. Specifically, in 2008 the Board promulgated Policy 8630 regarding bus driver responsibility. The relevant paragraph in this particular case concerns the use of cellular or wireless telephones on the buses. In particular the policy states as follows:

A school bus driver, during the driver's work schedule, may only use a cellular or other wireless telephone, for school related business. The driver is prohibited from using a cellular or other wireless telephone, while operating a school bus. A cellular, or other wireless telephone, may only be used for school related business by the school bus driver while operating the school bus, when the school bus is parked in a safe area off a highway or in an emergency situation. A driver who violates this policy provision is subject to fines pursuant to N.J.S.A.39:3B-25. [B7]

The Board has pointed out that bus drivers receive reminders concerning this policy especially with respect to the use of cell phones as part of the orientation at the beginning of the academic school year. It is asserted that individuals received copies of these reminders in 2012 and 2013 at the beginning of each academic year. [B8, B9] Specifically it is noted that in August 28, 2012 the Board through Ms. Kelly Hewitt the Transportation Supervisor advised all bus drivers that "no bus driver is allowed to use their cell phone for either conversation or texting while operating the bus."

Another policy that has been involved in this case concerned the notice of the use of monitoring devices in school vehicles. This was also edited and created in October 2008 as policy number 2690 entitled Monitoring Devices on School Vehicles. In relevant portion the policy states as follows:

"To maintain the safe and secure conditions for all pupils transported on school owned or contracted school vehicles, the Board may use devices to

monitor and/or observe pupil behavior, teacher and support staff behavior, school bus driver discipline procedures and/or school bus driving techniques. The device may be a sound video camera, a voice monitoring device or other appropriate devices...” [B14]

Another policy which addressed the safety of students on school buses was issued in 2013 and concerned the assurance that all students be accounted for at the end of a designated or assigned run. In a memorandum from Mr. Drozdowski dated October 29, 2013 it was stated that all school bus drivers must physically check that no student is remaining on the bus at the end of the driver’s run. This was the result of an incident that occurred in 2011. As part of the policy the Respondent received in-service training for a new child alert system which must be shut off from the rear of the bus. According to the testimony provided, the bus driver is required to walk to the back of the bus to turn off the alarm. By making this trip to the rear of the bus, drivers will have to check all of the seats to ensure that no child has remained on the bus. [B19]

The third policy considered in this case involves an internal memorandum concerning the maintenance and upkeep of route and emergency binders. According to a memo distributed by Ms. Hewitt, all bus drivers were expected to maintain a route/emergency binder that are to be kept up to date and on the buses at all times. [B22]

The Respondent was initially hired by the Lower Township Board of Education in December 1999 initially as a bus aide. She worked continuously for Lower Township with the exception for one year in 2003. She subsequently qualified to become a bus driver in 2008. At all times material herein she was supervised by Ms. Kelly Hewitt [T3.10-12]. Ms. Kelly reported to the District’s Business Administrator Mr. Frank Onorato who reported to the superintendent Mr. Drozdowski.

As a bus driver, the Respondent was responsible driving four separate routes in the morning from pickup points throughout the School District to transport children to the elementary schools. On or about 4:00 p.m. she would pick up those students from their elementary schools and drop them off at pre-designated locations. According to the testimony, her first run of the morning involved the transportation of between 20 and 55 students from designated locations to the Sandman School [T1.1-2].

The first incident that served as a basis for one of the charges set forth herein arose on October 23, 2013. On that date, the Respondent received a warning as a result of a complaint from a parent who accused her of driving and speeding while texting on her cellular phone. In the warning letter, she was reminded of the 2003 policy that addressed this issue. The Respondent signed the warning and receipt. Even though the Respondent was represented by a collective bargaining representative there is no evidence that she had attempted to file a grievance challenging the warning.

On or about April 2, 2014 Respondent was informed by Ms. Hewitt that she “had received a concern that you were talking on the cell phone while driving the bus.” [B12] In her testimony, Ms. Hewitt could not recall who submitted the concern [T1.56]. Nevertheless, as a result, she requested that the video tape on the bus be viewed. After she viewed it she contacted the School Resource Officer [SRO] Darren Hickock, an officer with the Lower Cape May Police Department. Officer Hickock reviewed the video and as a result issued a warning ticket to the Respondent for talking on the cell phone in violation of NJ State statutes. [B11]

Two days later, the Respondent was issued an “official reprimand” for driving while talking on her cell phone. Her response in writing and through her testimony stated

that while she was driving and about to pull her bus into the driveway leading to the bus parking lot, her cell phone rang. Her bus aide Pamela Gittle informed her that the number showing on the phone was from the Lower Cape May Regional school nurse. Surmising that it may concern one of her own children, she asked the aide to answer it. As she was pulling into the driveway leading to the bus lot, the aide handed her the phone. She subsequently pulled over in the driveway to speak to the nurse. [T3.72] She maintained in her testimony moreover that she never saw the disputed video and maintains that it never existed [T3.70]

Respondent's counsel during the hearing called both Officer Hickock and Ms. Gittle. Officer Hickock testified that Ms. Hewitt explained to him that there was a complaint about a driver using a phone and that led him to go to the Transportation Department and watch the video [T4.10-11]. In viewing the video Officer Hickock stated that he observed the Respondent on the cell phone as she was pulling into the Mitnick school driveway. He therefore decided to issue the warning ticket.

The Respondent's response to the warning was not reflective of what she saw on the tape. According to Officer Hickock the Respondent had the cell phone in her hand as she pulled off Seashore Road into the driveway [T4.13]. Therefore he used his discretion and issued the warning ticket [T4.17].

Ms. Gittle stated that she was assigned to assist the Respondent on the bus and as they were concluding their run and turning into the Mitnick School driveway, Respondent's cell phone rang. Ms. Gittle testified that she answered the call and handed the phone to the Respondent. It was the school nurse who said one of her children was

sick and she had to pick them up. She testified that she only handed the Respondent the phone when she had pulled into the driveway [T4.29].

There were no further incidents that semester until October 1, 2014 when Respondent received a warning based upon a complaint from another motorist who noted the bus number (Bus 7) and asserted that the Respondent was speeding and tailgating. While the Respondent admitted being in the area at that date and time, she denied she was ever speeding and tailgating. She refused to sign the warning letter under protest, based upon advice received.

Two days later, the Respondent submitted to Ms. Hewitt's office a doctor's note that was dated on the date of the warning letter of October 1, 2014. The doctor's note stated that the Respondent would not be able to work from Friday, October 3, 2014 to Friday, October 17, 2014. [B1][T1.25]. According to Ms. Hewlett's testimony, she received a text from her secretary stating that the Respondent was out with a note. It was noted that the Respondent had worked on October 1, and 2 and the morning runs of October 3 before presenting the note. She did not volunteer any diagnosis or basis for the upcoming absence. Ms. Hewlett testified that she tried to follow up with the Respondent and texted her to find out if she was okay. She recalled that the Respondent said things were "crazy there" and that the doctor did not want her to work. She then forwarded the matter to Mr. Drozdowski the Superintendent [T1.28].

Mr. Drozdowski testified that when he received the note he was confused. Specifically, he did not know what the doctor meant when he stated that the Respondent was not to work [T2.23]. Mr. Drozdowski stated that he had never seen a restriction given days before it was to take effect. He felt it was necessary to request specifics with

respect to the absence [T2.24]. He therefore asked his secretary to contact the doctor's office to confirm the reason for the absence. On cross examination Mr. Drozdowski maintained that he inquired about the note because he wanted to ascertain when the Respondent was seen by the doctor and he wanted to determine the degree to which she was disabled or whether she would be able to work in a light duty capacity. [T2.93]

On the following Monday, October 6, 2014 Mr. Drozdowski's secretary emailed the doctor's office to query and clarify the doctor's note. In the email, the secretary informed the office manager that Mr. Drozdowski understood the HIPPA laws but needed to confirm whether the Respondent's illness was severe enough that she was unable to work for two weeks. After several email exchanges the doctor's office manager replied that the doctor was not "at liberty to discuss the matter any further." [B2] In addition the following Monday and Tuesday October 6 and 7, Ms. Hewlett physically visited the Respondent's home. She stated that she did so out of concern for the Respondent's wellbeing. She testified that when she visited the home she noticed that Respondent's car was present but no one responded to her knocks on the door. [T1.30]

Subsequently on October 14, 2014 Ms. Hewitt and Mr. Drozdowski became aware of a police incident in which the Respondent's dog was struck by a vehicle. The investigation showed that the Respondent was not present but in Florida [B3]. The fact that the Respondent was indeed in Florida was confirmed by one of the Respondent's co-workers. [T1.32].

On November 3, 2014 Ms. Hewlett and Mr. Drozdowski convened a meeting which was attended by Ms. Hewlett, Mr. Drozdowski, the Respondent and a Union representative. Ms. Hewlett recalled that she specifically asked the Respondent if she

was in Florida to which the Respondent stated that she was not. Rather she maintained that she was at home. [T1.40] Subsequently by a letter to Mr. Drozdowski dated November 18, 2014 the Respondent stated among other things that:

“I am writing this letter per your request in reference to my absence from 10/3-10/17/14. I was under the care of Dr. Burton Waisbren during that time period. He ordered me to stay out of work as I was unable to perform my duties. I was at home for most of this absence.”
[B5]

After receiving this letter, Mr. Drozdowski convened another meeting on December 22, 2014 which was also attended by Ms. Hewlett, the Respondent and the Union representative. During that meeting she was asked again by Mr. Drozdowski about her whereabouts during her absence. According to Ms. Hewlett, the Respondent first said that she was home and then she got agitated and disclosed that she was indeed in Florida. She then according to Ms. Hewitt, called Mr. Drozdowski a “bully.” Mr. Drozdowski immediately terminated the meeting [T1.41-43]. On cross, Ms. Hewlett admitted that there is no policy that mandated that a person has to remain home if they are out sick [T1.181] but nevertheless maintained that the Respondent lied to management. This testimony was confirmed by Mr. Drozdowski who stated that the Respondent finally admitted that she was indeed in Florida and became agitated and referred to him as a bully [T2.43].

Mr. Drozdowski testified that management considered docking the Respondent’s time for the period that she was absent which would have been eight days. Subsequently supervision entered into discussions with the union concerning the penalty and as a result decided to reduce the penalty from 8 to 4 days provided that the Respondent signed a last chance agreement [B6]. The Union representative took the draft and returned it to Mr.

Drozdowski with minimal revisions which Mr. Drozdowski felt was acceptable. The Union however returned with another version which management considered not to be acceptable because it took out any admission of using the time inappropriately. Ultimately, management never received a signed document but it still docked her for the four days. [T2.41-47]

The Respondent testified that she began seeing her doctor, Dr. Waisbern in 2012 for a number of reasons but disclosed that she was having anxiety attacks beginning in September 2014 and thought that it was having a deteriorating impact on her concentration and ability to drive. She stated that “I explained to him how things at work had just progressively gotten worse, how I felt like Ms. Hewlett was harassing me and constantly calling me in over things that were not true or happening, and we discussed them.” [T3.26]

The Respondent recalled that there was an event on October 2 that increased her anxiety such that she was crying uncontrollably and she had to call the school nurse. This was exacerbated by the conversation during the meeting that resulted in the October 2 warning [T3.28]. Her doctor had previously given her the note [B1] and said that she could use it if she felt anxiety. She said that she spoke to her Union representative and school nurse and felt that she was under stress so she called the doctor and informed him that she was using the note. She testified that on that day she felt “distracted” and could not drive [T330-32]. So therefore on October 3 after her morning run she presented the note.

The Respondent stated that her father had indeed made plans to have a family trip to Florida before she asked for the note from her doctor. She had originally planned to

drive with her husband on October 9 and return on the following Monday with her children. School was closed for the four day weekend and her children would be flying down with her father. As a result of her illness she stayed home from October 3 to October 9 and then drove to Orlando. Once they arrived and she was out of work she decided to remain with her family until October 16. She drove home and arrived back home on October 17 [T3.42].

She stated that after she returned she was called into the superintendent's office and was nervous when she was asked about the absence. She recalled that Mr. Drozdowski had asked for a letter explaining where she was during her leave. He also asked her to sign over her medical records from one year prior to her leave. The Respondent testified that she felt that this was unnecessary and was unreasonable. Yet she said that she would talk to her doctor about it. The Respondent stated that her doctor also felt that the request was "absurd" and recommended that they should not be turned over. Rather, she informed Mr. Drozdowski that she was at home for most of the absence but was indeed in Florida from October 10 to October 16. [T3.45-49]

The Respondent's trip to Florida was confirmed by her father's testimony. He testified that he began to make plans during May or June of that year. He wanted to take his grandchildren to Disneyworld. Therefore, he rented a house for 10 days in order to host his three daughters, their spouses and grandchildren. The plan was for Respondent's children to fly to Orlando while Respondent and her husband would drive down on October 9 and return with the children [T4.56-61].

Respondent's father further testified that he noticed that the Respondent appeared to be stressed and upset. She had told him that she was afraid of her job and of other things that were happening at work [T4.61].

The Board challenged the veracity of the Respondent's explanation. During the hearing, after reviewing her medical records, the Board noted that at no point in those doctor's notes did the Respondent mention a concern for driving or anxiety to her doctor or any type of distress [T3.96, 98]. Rather, the notes indicated that she saw her doctor on October 1 saying that she could not concentrate and drive yet; she continued to drive her students on October 1, October 2 and in the morning of October 3 [T3.88-90] [B24].

It was pointed out by the Board that the Respondent never mentioned to Ms. Hewlett that she did not think that she was medically able to drive. Rather she returned to work and worked as normal on October 20 and never spoke to her superintendent or the administrator [T3.103]. The Board also noted that there was no documentation from the school nurse indicating that the Respondent visited her on October 1 or 2. It also argued that the nurse was also a representative of the union and that there was no evidence saying that she approached her claiming that she was suffering an anxiety attack due to harassment from management. [T3.107]. On December 15, 2014, the Respondent again received a transportation incident form based on a complaint from a homeowner on her route who alleged that on December 12 as she was turning the corner she took the corner "too close" to the homeowner's property and left tire marks on the grass. The Respondent signed the memorandum without protest [B20]. At the hearing, a photograph of the corner was attached to the December notice. Respondent disputed this because it appeared that there was only one tire track in the grass while the bus had two tires on its

rear end. Moreover Respondent's counsel contended that in the photograph there were leaves on the trees which would not be indicative of a photograph taken at the time of the December incident. [T1.109, 157]. As described below, a similar memorandum was issued on May 13, 2015 [B21].

Subsequently, according to Ms. Hewitt, in March 2015 she began regularly monitoring videos in response to a request by Mr. Drozdowski to review activity on the buses. This increased monitoring was the result of an incident in which a child was inadvertently left on a bus at the conclusion of a driver's run. To management, this showed that the driver had failed to adequately check her bus as required. Therefore, Mr. Drozdowski testified that he gave Ms. Hewitt a specific order that the bus videos be reviewed [T2.56].

Ms. Hewitt documented a number of violations involving the Respondent which had occurred on March 17 and March 27, 2015. On March 17, 2015 it is alleged that she was observed using a cell phone and texting while students were on the bus and she was also placing a cell phone call while students were on the bus. Furthermore, on March 27, 2015 Ms. Hewitt stated that she observed the grievant driving one handed with a coffee cup in her hand. Moreover on that day she had failed to deactivate the rear alarm system which according to policy required bus drivers to walk to the rear of the bus to deactivate the alarm. Thus the driver would have to scan all of the seats to make sure no one was left behind. It was noted that in this particular video a student had deactivated the rear alarm system. Moreover, the Respondent was observed using her cell phone and texting while students were either on the bus or disembarking the bus. Finally, it was asserted that she did not check her bus prior to departing. [B15]

The Respondent challenged the violations especially with respect to using a cell phone while students were on the bus. In this regard, the Respondent contended that she was parked and the bus engine was been turned off while she was waiting for a word to have the students disembark. Therefore under her interpretation of the policy and state law she was not “operating the bus”, therefore there was no violation [T1.122-139].

Ms. Hewitt and Mr. Drozdowski on the other hand testified that the Board has always interpreted its policy as stating that the driver is operating the bus whenever there are students present. This would mean that even though the driver may not be actually driving a bus, according to Ms. Hewitt and Mr. Drozdowski, the driver is still directly responsible for observing and monitoring the children. Moreover, the policy itself only allows for the use of a cell phone only on those occasions which involve school business. [T1.205, T2.19]

Two weeks later, on April 14, 2015 the Respondent received a memo stating that she violated school district policy when she failed to have updated routes, maps and seating on her bus. According to the memorandum, the Respondent was scheduled to be off on the day in question. However, when the substitute driver arrived there were no route maps available for him to utilize [B23]. According to Ms. Hewitt’s testimony the Respondent said that she took the maps home to update them but was not able to get them to the substitute by the next morning [T1.115]. In her response to the memo, the Respondent stated that she had taken the maps home to update but intended to send them in with another driver but did not get them to her in time. The substitute did eventually have maps by the time he made his run to the Maude Abrams School.

In her testimony, Respondent acknowledged that even though she had a scheduled day off she was supposed to have the maps and routes updated. She stated that the substitute had accompanied her on the route before and had rode with her the prior Friday and Monday. However on that Monday, she had to add three students to her route. Therefore, she took the maps home to update them. She maintains that she intended to update them and give them to another driver to return them to the school and deliver them to the substitute the next morning. However, since she had missed the driver she gave the maps to her children to make sure that another driver got them to the substitute but the children forgot. Eventually, she gave the maps to her father to deliver which he promptly did. [T3.81-83]

On May 13, 2015 the same homeowner who had complained on December 15, 2014 contacted the school that stated that Respondent had again run over the corner of his property. [B21].

On June 4, 2015 the Respondent received a disciplinary memo citing five more violations of policies, they were: On May 1, 2015 she was seen using the cell phone while students were on the bus as it was parked at Sandman school at 7:41 a.m.; on May 20, 2015 she was improperly wearing her seatbelt, she was not wearing it correctly and removed it while the bus was moving.; On May 21, 2015 again a student was observed walking from the back of the bus to the front while the bus was moving. In addition, she was observed sweeping the bus while the bus was moving. Finally, on June 1, 2015 she was observed filling out a daily condition report while the bus was moving. [B17]

The Respondent responded to many of the incidents directly on the form. First, she continued to dispute the fact that using a cell phone with students on the bus is a

violation of policy and law. She also stated that she was removing her seatbelt while entering her spot “due to time restrictions.” Finally she stated that she was using a broom to swat at a wasp that had gotten into her bus. Overall she claimed that this feels “like this is harassment [sic] in order to remove me from my position.” Most of this wouldn’t have been an issue if the camera was fixed like we discussed last school year.”

Indeed, during the hearing, the Respondent claimed that she was “targeted” by Ms. Hewitt and management because the forward camera on her bus was focused on her rather than on the children. She stated that she complained to Ms. Hewitt and Mr. Onorato about the camera after an incident in April 2013. She realized that the camera was inappropriately focused on her when she attempted to see a video of an incident on her bus which involved a special needs student. However, they could not see the student who was apparently sitting on the front of the bus because the camera was focused rather on her. She stated that she was being harassed by having the camera exclusively focused on her. She stated that “I feel like I am under scrutiny constantly. It’s not safe for me to be driving when I feel like I’m being spied on basically.” [T3.57] According to the Respondent, Mr. Onorato and Ms. Hewitt promised that they would repair the focus but it was never changed. [T3.58]

Ms. Hewitt on the other hand claimed that the cameras were all focused the same way on all buses [T1.104]. Moreover, Mr. Drozdowski stated and it was stipulated that the drivers were aware of the camera system on the buses [T2.51]. Therefore, consistent with policy in the notice one of the cameras was always pointed on the driver [T2.63].

Nevertheless, the Respondent presented the testimony of Mr. Ryan Adams the senior mechanic at the bus garage. According to Mr. Adams, he was instructed in the fall

of 2013 to change the focus of the camera on the Respondent's bus. Before that the camera was focused toward the rear but he moved it to view the driver. This was not the same with all of the other 25 buses [T4.44]. Moreover, he was required to pull the Respondent's tapes more frequently than the other 24 drivers [T24.49].

Mr. Drozdowski maintained that the Respondent's continued employment was not safe and that her termination was in the best interest of the school district. [T2.69] Accordingly, he eventually showed the videos, especially of the March and May incidents, to the Board and recommended the non renewal of the Respondent's contract. However, he was advised that drivers are tenured employees and thus subject to a due process hearing. Therefore, the non renewal notice was withdrawn and tenure charges filed.

SUMMARY OF THE ASSERTIONS OF THE PARTIES

The Board

The Board acknowledges that it has the burden of showing by a preponderance of the evidence that the Respondent was terminated for the reasons as charged. According to the Board, the Respondent is tenured in her position as a bus driver due to a prior administrative grant of tenure to transportation workers in the School District. Tenure protects certain public employees from arbitrary dismissal for an "unfounded, flimsy or political reasons." Admittedly, according to the Board, there is no reported authority directly relating to tenured disputes involving bus drivers. In this case, the Board maintains that its basis for terminating the Respondent's tenure was founded on facts that clearly indicated that she had engaged in unbecoming conduct as a bus driver. The Board maintains that unbecoming conduct is a term that is broadly defined to include any

conduct which has a tendency to destroy public respect for government employees and confidence in the operation of public services. As such, a determination of unbecoming conduct may be based merely upon the violation of any particular rule or regulation but also may be based upon the violation of an “implicit standard of good behavior which develops upon one who stands in the public eye as an upholder of that which is morally and legally correct.”

The determination of whether to remove an individual from a tenured position requires consideration of the nature of the act, the totality of the circumstances and the impact on the individual’s career. In this case, the Board asserted that it has presented sufficient evidence to show that the Respondent is unfit to perform her job as a bus driver and that her conduct destroyed public respect and confidence in the operation of a critical public service. According to the Board, the Respondent was counseled and cautioned and disciplined by supervision which put her on notice and gave her a chance to correct any issues with her performance. However, if one reviews the totality of the circumstances in this case, the Board’s decision to terminate the Respondent’s tenure was appropriate and should be upheld.

In addressing specific charges, the Board has maintained that the Respondent violated her obligation to safely perform her duties. According to the Board it provided a number of instances in which the Respondent was observed violating the clear safety rules which applied to her as a school bus driver. This conduct was contrary to her essential employment obligations which are to safely and properly operate a school bus. The term “operation” according to the Board includes not only safely driving the vehicle but also in supervising the children on the bus. In this respect, the grievant had been

previously warned that it is inappropriate to use her cell phone while on the bus even though the bus may be parked and turned off as long as there are children that needed supervision. Therefore, given the Respondent's continued pattern of dangerous and troubling behavior, the Board asserted that it has demonstrated that it has lost confidence in her ability to continue to be a driver for the school district.

The Board further argues that even though there is no evidence that anyone was injured as a result of the Respondent's actions, the evidence is clear that the Board does not have to wait for harm or an injury to occur before it can terminate the employee who placed children in such a vulnerable position.

The Board also maintained that the Respondent improperly used her sick leave. According to the Board the Respondent improperly claimed to be too sick to work so that she could join her family on a pre-planned trip to Disney World. Although the Board did not take immediate action to terminate the Respondent following her act, the incident played a significant role in the totality of the circumstances and must be seriously considered in determining the future of the Respondent's tenure.

The Board also maintained that the Respondent's testimony with respect to the allegations is simply not credible. According to the Board the testimony was not corroborated by any actual facts or persuasive evidence. Virtually all of the excuses that she presented are undercut by the consistent and credible testimony of the Board representatives. Indeed, according to the Board it produced ample evidence and testimony to demonstrate that not only had the respondent been provided with proactive training regarding reminders and memoranda regarding cell phone usage, she had been repeatedly disciplined for the improper use of her cell phone over the course of several

years. The Board can only describe the Respondent's testimony as "self serving" and was riddled with inconsistencies and convenient "truths", therefore this testimony should be given little or any weight in this matter.

In summary, the Board claims that the Respondent engaged in a "pattern of dangerous, reckless, unlawful and unbecoming conduct" that was demonstrated through a significant amount of testimony and supporting documentation. Accordingly, the Board had met its burden of proof showing that the Respondent's termination was not only appropriate but given the degree of her responsibility as one entrusted with the safety of children in a public school, termination was also necessary.

Respondent

The Respondent had been working for the Lower Township Board of Education for approximately 17 years, half of her life. She became a qualified school bus driver in 2008. According to Respondent's counsel, since she is a tenured employee she may only be terminated for just cause. Accordingly therefore, the Board carries the burden proof of showing by a preponderance of the evidence that the Respondent is guilty of the charges set forth herein. The Respondent's counsel addressed each of the charges through its arguments.

With respect to Charge 1 regarding the use and false reporting of sick and medical leave, the Respondent alleges that if there had truly been a question of whether the Respondent could or could not work, the School District did not take advantage of its rights and request that the Respondent undergo a fitness examination. Respondent also reviewed the testimony of Mr. Drozdowski and Ms. Hewitt as well as the Respondent. Mr. Drozdowski testified that he found that the note saying that the Respondent could not

work, to be unusual. Therefore, he falsely believed that somehow the Respondent and the doctor were in “cahoots.” In that respect, Respondent contends that the Board did not meet its burden of substantiating a finding of improper use and false reporting of sick leave. Instead Respondent contends that the superintendent’s motives were driven by his preferences as to how he thought the respondent should have handled the matter. This according to the Respondent does not amount to a violation of policy. Respondent testified credibly that she had been complaining about stress at work and was having anxiety. She was forthright with her explanations. Therefore, there was no improper use or false reporting of sick or medical leave.

In addressing the second charge alleging that the Respondent repeatedly failed to comply with Board policy and applicable law in using her cellular phone while operating the school bus, the Respondent challenged the language of the policy itself. There is no dispute that during the ten minutes in which the Respondent was parked at the Sandman school, she was not “operating the bus.” Rather, the clear language shows that in order to operate “a bus” the Respondent would have to drive it.

Just because supervision said this does not necessarily mean operation does not in and of itself make it so. The Respondent reviewed the policy and statute cited. Based upon the language any use of cell phone while parked is allowed by state law and policy. The supervision’s interpretation is contrary to the plain language of the policy.

With respect to the April 2014 incident where Officer Hickock issued a warning against the Respondent for using a cell phone while driving on Seashore Road without any substantiation. Rather, the Respondent denies that this happened and her testimony was clearly substantiated by the testimony of the bus aide Pamela Gittle. Moreover, one

must note that the video that Officer Hickock apparently reviewed was never presented.

Therefore, the charge must be denied because there was insufficient proof that the Respondent was indeed operating the bus.

With respect to the third charge, in which it was alleged that the Respondent repeatedly failed to safely operate a school bus, the Respondent asserted that there was no evidence to show that the Respondent was tailgating or speeding as complained. There could be no corroboration except for the hearsay representation by an anonymous motorist. This is insufficient to support a charge to revoke the Respondent's tenure.

With respect to charge four alleging the failure to comply with the Board policy regarding the child safety school bus inspection, the Respondent denied violating the policy. Moreover, it was noted that this policy was imposed because another driver had inadvertently left a student on her bus. There is no allegation that the Respondent left a student on the bus. Therefore, this allegation is not founded.

Charge five alleges that the Respondent repeatedly caused damage to a private property while operating her bus. This is denied by the Respondent. Moreover, the Respondent's counsel claims that the photographic evidence attached to the December 15 allegation did not support the written allegation. It was noted by the Respondent that the photograph appeared to have trees with leaves on them which would not have happened during winter. Also the Respondent asserts that the rear wheels of the bus are double wheels and the evidence of any damage shows it was done by only one tire. The Respondent alleges that there is no corroboration of video or other testimony from the citizen homeowner. Therefore the Respondent asserts that the Board did not meet its burden in proving the charge in that instance.

In Charge six, it is alleged that the Respondent failed to comply with procedures to maintain updated bus routes, maps and seating charts. In this regard, the Respondent's counsel asserts that Respondent's testimony and explanation was forthcoming and honest. The Respondent had taken the bus routes, maps and seating charts home to update them and even though she attempted to return them in time, she was unable to do so. However, there is no evidence that this was somehow detrimental to the children. Indeed, the substitute had previously ridden with the Respondent. Therefore, no one was disadvantaged by not immediately having the bus routes, maps and seating charts. At most, it was an honest mistake that was rectified as soon as possible. It was not sufficient to sustain the invocation of tenure charges.

Finally, in Charge Seven it was alleged that the Respondent generally failed to comply with administrative directives. Respondent's counsel asserts that this charge was "not specific enough to defend."

To the contrary, Respondent points to the fact that she received evaluations from 2008-2013 which did not show any alleged disregard for her responsibilities. Moreover, after the events that gave rise to the charge occurred, the Respondent was given additional duties. She was asked to take an additional run with a preschool student who had special needs. If the Respondent was such a challenged driver then the question must be raised as to why the School District would have entrusted her with the responsibility of taking an additional new route.

In general, the Respondent maintains that after the sick leave incident the supervision became and still is prejudiced to the fact that there was wrong doing on the part of theft of time. Everything else thereafter was geared toward collecting additional

evidence to try to take away her tenure. In short, the Respondent's counsel asserts that there was significant animus toward the Respondent simply because she refused to sign a last chance agreement and subsequently disagreed with her supervisor in writing and refused to sign any disciplinary memoranda. No matter what the Respondent did in her job performance, she was not going to be successful.

In conclusion, the Respondent alleges that she has worked for the District since she was 19 years old and there have been no other write ups but when the note of no work came from her doctor the whole attitude and temperament of the District changed and even though she had a sufficient number sick days in her bank and an excuse note, she has not been believed to this day. The Respondent has been a good employee for 17 years and wants to continue as a driver. Therefore the Respondent requests that the charges be overturned and the Respondent reinstated to her position.

ANALYSIS AND OPINION

The New Jersey statute that provides tenure for teachers and other covered employees provide that a person protected under the statute cannot be dismissed from employment "except for inefficiency, incapacity, unbecoming conduct, or other just cause." NJSA 18A: 6-10(b). The general purpose of such a statute is to protect individuals under the statute from dismissal for "unfounded, flimsy or political reasons" Spiewak v. Board of Education, 90 NJ 63, 73; 447 A.2d 140 (1982).

In order to sustain charges for dismissal the charges filed must be substantiated by a fair preponderance of the evidence. In Re Polk, 90 NJ 550, 560; 449 A.2d 7 (1982). The standard has been interpreted as one of reasonable probability. For example, the decision maker has to determine whether or not the evidence presented is of sufficient

quality to generate a belief that the submitted theory of the case is in all likelihood the truth of what occurred. The evidence must be such as to lead a reasonably cautious mind to the giving conclusion. It should be noted that the evidence presented does not have to have the indicia of certainty but must be well founded in “reason and logic. Lesniewski v. WB Furze Corp., 308 NJ Super. 270, 279; 705 A.2d 1243 (App. Div., 1998).

The School Board is seeking to remove the Respondent Heather Grey from her employment as a school bus driver based upon seven distinct charges of unbecoming conduct and other just cause. The term unbecoming conduct has been interpreted in some New Jersey case law even though the cited law has not been applied to individuals in the Respondent’s position. Nevertheless, it has been defined as conduct that has the tendency to destroy public respect for such employees as well as the confidence and the operation of the Board. Karin v. City of Atlantic City, 152 NJ 532; 706 A.2d 706 (1998). This may include any conduct which adversely affects the morale or efficiency of the Board. The substantiation of conduct as being unbecoming does not have to be predicated on a violation of any particular rule or policy. Such a conclusion maybe based merely on the violation of an implicit standard of good behavior which devolves upon one who stands in the public eye as an “upholder of that which is morally or legally correct” Karin v. City of Atlantic City, 152 NJ 555.

In determining whether an individual has engaged in such conduct, the arbitrator has to take into an account “any harm or injurious effect which the [teachers] conduct may have had on the maintenance of discipline and the proper administration of the school system.” In Re Grossman, 127 NJ Super 13; 316 A.2d 39 (1974).

The term unbecoming conduct and other just cause must be viewed in the context of the Respondent's responsibility as an employee of the School District. The Respondent has been employed as a school bus driver responsible for the safe and efficient transport of school children both to and from home. The Respondent is a skilled and professionally trained driver who holds a commercial driver's license. Therefore she is held to a higher standard as an individual whose conduct in fulfilling this responsibility is clearly in the public eye. Parents have an interest in insuring that the drivers pick up their children, transport them to school and return them home in the safest and most responsible manner possible. These parents are also members of the motoring public who constantly observe the school bus drivers conduct in driving their bus. So evidence of negligence or carelessness in the performance of the driving assignment must be given weight in determining whether a driver has engaged in unbecoming conduct.

In order to future appreciate the nature of the conduct which serves as the basis for these charges, one must consider the evidence presented in the chronological order in which each incident occurred. The evidence shows that prior to 2013 Respondent worked under another supervisor and then worked under Ms. Hewitt beginning in 2013 [T3.12-13] According to the Respondent, the mere presence of Ms. Hewitt as a supervisor has resulted in constant harassment over the course of her employment.. In other words, according to the Respondent, the charges constituted nothing but "harassment in order to remove me from my position."

Overall however, the acts raised by the School Board clearly have a negative impact on its interest in insuring the safe and professional transportation of its children.

As indicated in detail below, the conduct taken as a whole did have a destructive impact on the maintenance of discipline and the proper administration of the school system.

During the academic year ending in June 2013, the Respondent had only two concerns that had been raised by Ms. Hewitt. On October 23, 2013 the Respondent received a “write – up” based upon a complaint from a parent alleging that she was speeding and texting. In that instance, the Respondent acknowledged the complaint without question.

Six months later however, the Respondent received a complaint that also included an official warning from Officer Hickock. While Respondent disputed the warning saying that she was on “school property” and the aide had handed her the phone to respond to a call from her child’s school nurse, there were no other incidents or warnings for the remainder that academic year. In essence, the Respondent finished the 2013-2014 academic year and entered the summer break without any further incident. To the extent in which the Respondent was the subject of debilitating harassment during that time period, it was not apparent. These were the only complaints on the grievant’s record prior to the events that led first charge in which the Respondent allegedly engaged in the improper use and false reporting of her sick leave.

If one continues to review the charges within the chronology of the underlying events, one would discover that even though the Respondent had no disputes and possibly did not interact with Ms. Hewitt for three of the prior six months, Respondent still felt that it was necessary to complain to her physician that she was under substantial harassment from Ms. Hewitt. Specifically, the Respondent testified “I explained to him how things at work had just progressively gotten worse, how I felt like Ms. Hewitt was

harassing me and constantly calling me in over things that were not true or happening, and we discussed them.” [T3.25 Line 21]. For some reason, in September 2014 she began complaining of stress saying that she could not drive or concentrate even though she had only been driving a few weeks into the academic year. It is difficult to credit an assertion of such anxiety based upon a hostile workplace environment when the academic year had just begun. While I am not in a position to question whether she was indeed feeling anxious, it is difficult to conclude that such anxiety was entirely the result of her relationship to Ms. Hewitt to the extent that she could not drive. Yet, she relied on that perception to convince her physician to give her a “just – in - case” medical slip allowing her to take two weeks off during the time in which she was previously aware that her family had a preplanned vacation over the Columbus Day holiday.

According to the evidence presented on October 1 the Respondent received a complaint form alleging that she was speeding and tailgating. In that moment, the Respondent refused to acknowledge the complaint and then decided to use the slip provided to her by her physician two days later. Suddenly, the Respondent presented the slip on October 3 stating that she could not work until October 17 due to insurmountable stress and anxiety even though this condition was never disclosed to her employer. She was so stressed and anxious that she could not fulfill her responsibilities as a professional driver of children.

Mr. Drozdowski questioned the note because of the timing. Respondent argued that in raising these questions, Mr. Drozdowski somehow overstepped his authority as superintendent. I must disagree, if the source of the Respondent’s illness is related to her responsibility as a school bus driver, she is obligated to disclose that limitation to her

employer. The note itself raised a number of questions are the District's interest. For example, if Respondent could not drive, should the employer engage a substitute? Can she perform light duty? Was her illness compensable under worker's compensation? Yet the Respondent through her physician decided to stonewall her employer's queries.

The Respondent claims that she is somehow not obligated to disclose the work – related nature of her illness since she entitled to the benefit since she has accrued sick days and there is no inherent violation in her going to Florida while she was on leave. The issue here is not about the trip to Florida. If the Respondent was truly stressed out and could not work she could have disclosed this to her employer and engaged in finding a solution for the overall problem. She still may have been able to work out an accommodation which would have allowed her to spend time in Florida with her family.

Such conduct indeed did have the impact of destroying any confidence in the Respondent's ability to meet her obligations as a driver. It is the mendaciousness of the explanation for her leave and, even if she was suffering from debilitating stress, her refusal to disclose it to the employer that provides a reasonable basis to support the allegations of the first charge in this matter. It also serves as a basis to question her honesty and ability to be forthright to her employer for the remainder of her academic year.

The second charge concerns the Respondent's repeated failure to comply with Board policy and applicable law regarding use of cellular telephones while operating a school bus. An assertion that was raised by counsel in the context of this charge concerns the interpretation and application of Board policy. Specifically, the issue concerns the interpretation of the following sentence as presented in Board Policy 8630: "the driver is

prohibited from using a cellular or other wireless telephone, while operating a school bus.” The policy goes on to cite state statute. The evidence relating to the charge shows that the Respondent was disciplined for using a cellular phone on October 23, 2013, April 2, 2014, March 17, 2015, March 27, 2015 and May 1, 2015

In this regard the Respondent claims that in those instances in which she received discipline she was not “operating” the bus. Indeed, she notes that at the times she was alleged to have violated the policy, her bus was parked and the engine was turned off. She was sitting on the bus waiting for the school to release her children to travel from the bus to the school entrance. The Board interprets “operating” in this context that the times in which students are present on the bus. It is expected that even though the driver is not in the act of driving, he or she must be actively monitoring the children’s behavior. While one may question the wording of the policy, it is reasonable to expect the drivers to be active monitors while waiting to release the children. The Board’s interpretation therefore is not arbitrary or capricious especially in light of the fact that the Board through the testimony of all of its witnesses has consistently applied this interpretation.

On the other hand, no witnesses were provided other than the Respondent to show that there was some confusion among the bus drivers with respect to the policy. Indeed, one must note that even though the Respondent was disciplined five times no one has ever challenged the policy, not the Union and not the Respondent. Furthermore, the evidence shows that since the Board has consistently applied this interpretation. Accordingly by the third or fourth time in which she was advised of the issue she should have been fully aware of this interpretation and the Board’s expectations regarding compliance. Therefore to continue to violate the policy on numerous occasions

regardless of the interpretations is insubordinate and is conduct unbecoming. Therefore the second charge is sustained.

In the third charge, the Board alleges that the Respondent engaged in unbecoming conducted by repeatedly failing to safely operate the school bus. In support of the charge in addition to the incident on October 1, 2014 the Respondent was observed on video footage engaging in a number of activities on the bus which the Board considered to be unsafe. These are noted specifically in paragraphs 79 and 80 in the Statement of Tenure Charges including incorrectly wearing her seatbelt and removing it while the bus was moving, permitting a student to walk from the back of the bus to the front while the bus was moving, removing a broom, using that broom to swat at a wasp and then wiping down the area all while the bus was moving and finally accessing her purse while the bus was moving.

The Respondent did not substantially challenge these incidents except to say that these are examples of how the Board in general and Ms. Hewitt in particular had targeted her by using the camera devices. Respondent testified that she had raised the issue regarding the position of the cameras with Ms. Hewitt and Mr. Onorato as early as April 2013. According to the Respondent even though she alleged that they would look into it she admitted that the cameras continued to be on her in 2014 and 2015. [T3.60]

In 2008, the Board promulgated a policy that put the Respondent and other drivers on notice regarding the use of “devices to monitor and/or observe pupil behavior...school bus driver discipline procedure and/or school bus driver driving techniques.” The School District has an interest in monitoring driver performance on the bus. Based upon the language of this policy, it has been consistently applied.

One must note that the testimony that most supports the allegation of disparate treatment in this regard is that of mechanic Mr. Ryan Adams who said that the tapes from the Respondent's bus was requested to be viewed more often than others [T4.48]. There is no dispute that the Board began to view more tapes after an incident in which a student was left on another bus. This did not involve the Respondent. Even though more of the Respondent's tapes may have been pulled, one could argue that it was justified given the issues raised by the Respondent during that year and behavior in October 2014. In sum, there is insufficient evidence to show that the violations which were visible in the video could somehow be excused because she was being disparately targeted by placing video cameras and the review of the tapes. Accordingly, in and of itself the violations that were observed on the tapes given the definition of unbecoming conduct as cited above, clearly contrary to the expectations of one who is responsible for the transport of children and also someone who is professionally licensed and charged to exercise that responsibility. Accordingly, I am sustaining charge number three.

Charge four alleges that the Respondent failed to comply with Board policy regarding child safety bus inspection. The evidence in this case is based upon a video which showed a student going to the rear of the Respondent's bus to release the child safety alarm. In this regard, the Respondent had provided little testimony to disprove what had occurred. The Board's policy is quite clear. The driver is expected to walk to the back of the bus to disengage the alarm in order to ensure that there are no other students that remain on the bus after a route has been concluded. In my opinion, the policy as stated is clear and is very reasonable in its purpose. Nevertheless while this does not in and of itself constitute serious misconduct, in light of the overall conduct that

has occurred within the short period of time, I do find that this is a basis to support this particular charge.

In Charge five, the grievant is alleged to have repeatedly caused damage to private property while operating her school bus. This charge centers around two complaints by a property owner asserting that the Respondent had cut her bus short and drove across the corner of his property. The two incidents occurred in December 2014 and May 2015. The Respondent generally denied riding across the individual's property. Nevertheless, the complaint that was registered identified the Respondent's bus on both occasions and the corner is on the route.

The basis of the denial in addition is based upon the issue of the photographs taken by Ms. Hewitt who visited the property after the complaints were submitted. The photographs were attached to the complaint dated in December 2014. In that regard, Respondent's counsel accurately pointed out that the photograph showed leaves on the trees in the background of the photograph. Therefore, I agree with the conclusion that those photographs could not have been taken during the investigation in December incident. At the same time however one must keep in mind that the second incident occurred in May 2015. In that regard, the photograph would have supported what was seen in the investigation. Given these circumstances there is a presumption that the photographs were mistakenly attached to the wrong complaint.

Respondent also noted that it appeared that there was only one wheel on the property which would not identify the Respondent's bus. I must disagree with the observation and note that it appeared to this arbitrator that indeed two wheels cut the corner of this property. Therefore I believe that the Board has met its burden in showing

that the incident did occur and that the Respondent's bus definitely was identified and there is no dispute that the property was on the Respondent's bus route. Therefore, I will sustain charge five.

In Charge six the Respondent allegedly failed to comply with procedures to maintain updated bus routes, maps and seating charts. During testimony, the Respondent freely admitted that the route charts were not present because she had taken them home to update them. However, she was not able to return the document prior to beginning of the first route the following morning. At first, she had asked her children to drop off the necessary documents before they reported to school, but they failed to do so. Eventually, the Respondent's father delivered the packages. He arrived too late to meet the beginning of the morning routes.

The Respondent further maintained that the substitute driver had ridden with her previously and therefore there should have been no problem with him understanding the route. However, this conclusion is inconsistent with the fact that the route as well as the identification of one of the children to be picked up was changed on the day before which necessitated the update. It would not be fair to assume that a substitute, even though he did preview the route, would have been able to pick up and respond to the adjustment which required the update of the list. This is why the School District placed this requirement. In this regard, therefore I find that the Respondent violated the policy.

Finally, the Board stated that the Respondent had engaged in a general failure to comply with the administrative directives. This represents a compilation of all of the directives that have been mentioned above and the Respondent's failure to comply with them. It is noted that the Respondent has alleged that she had been the subject of


harassment by management in general and Ms. Hewitt in particular. In all of these cases it is noted that the Respondent in meeting with Ms. Hewitt, Mr. Onorato and Mr. Drozdowski did have union representation. In addition, the Respondent also has asserted that the policies which were cited were unreasonable and to a certain extent, administered in an unfair manner. Yet over all of this time the Respondent did not grieve a single discipline or policy application even though the evidence showed that she did have the representation of her union. In addition it is important to note that even though the Respondent felt that she was harassed to the extent that she could not work, that she did not place any grievance or claim alleging that there was a hostile work environment due to such harassment.

One must also ask whether these disciplines and charges warranted such a severe discipline as the removal from a position given the fact that the Respondent did have a number of moderate to positive annual evaluations. The one evaluation that was critical in this case was the one that was issued in April 14, 2015. The reviews were indicative of moderate to satisfactory performance with the exception of poor dependability due to an unsatisfactory attendance record. [R3] In addition, this evaluation was issued before the numerous violations noted in May and June, 2015. Therefore, despite these reviews, the Board has met its burden by showing by a preponderance of the evidence that the Respondent did commit the actions that served as the basis for the charges set forth herein.

It is important to note that all of these disciplines with the exception of one or two occurred within one academic year. This demonstrates a clear pattern of misconduct that warrants consideration of the removal of one's tenure. In this regard, I must find that the

weight of the evidence presented support this conclusion. Therefore, based upon the
evidence presented I must find that the School District has established a sufficient basis
for the charges set forth herein. The charges are sustained.

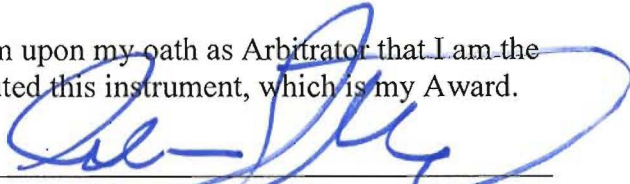
Dated: May 23, 2016


Alan A. Symonette, Arbitrator
For the Commissioner of Education
State of New Jersey

Commonwealth of Pennsylvania)
) ss.:
County of Philadelphia)

I, Alan A. Symonette, do hereby affirm upon my oath as Arbitrator that I am the
individual described in and who executed this instrument, which is my Award.

Dated: May 23, 2016


Alan A. Symonette

Megan Mubra 5/23/16

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Megan Mc Crea, Notary Public
City of Philadelphia, Philadelphia County
My Commission Expires Aug. 31, 2017
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES