

# **In the Matter of the Tenure Hearing of Thomas Williams**

**Agency Dkt. No. 264-9/12**

**For the Employer Newark, New Jersey School District Board of Education**

**Mr. Bernard Mercado, Esq.**

Associate Counsel

Office of the General Counsel

2 Cedar Street, 10<sup>th</sup> Floor

Newark, New Jersey 07102-3091

973 733 7139 ph; 8771 fax

BMercado@NPS.K12.NJ.US

**For the Employee Teacher Respondent Mr. Thomas Williams**

**Mr. Stuart Ball, Esq.**

661 Franklin Avenue

Nutley, New Jersey 07110

973 661 4545 ph; 4646 fax

sball@workplacelawyers.com

**Arbitrator David L. Gregory**

gregoryd@stjohns.edu

718 990 6019

**Date of Arbitrator's Decision, Award, and Order: December 8, 2012**

## **Introduction**

Mr. Thomas Williams (Respondent) is charged with Inefficiency pursuant to the TEACHNJ Act. The Board of Education of the Newark, New Jersey Public Schools (the Board) seeks his dismissal via these proceedings pursuant to the TEACHNJ Act.

Respondent has a quarter century of service as a Newark, New Jersey public school teacher. Principal Miller-Harrington is his supervisor at the Miller Street Academy, 47 Miller Street, Newark, New Jersey.

Shortly after I accepted appointment as the Arbitrator in this matter, New Jersey and New York were especially hard-hit by the hurricane/superstorm "Sandy." Following several telephone conference call conversations and various email communications with the parties' attorneys, my November 4, 2012 written request for additional time was granted by the Office of the Commissioner.

Scheduling hearing date(s) in the immediate aftermath of the storm's devastation would have been a risible exercise bordering on the perversely naïve.

During a conference call with the parties' attorneys, we scheduled Wednesday, December 12, 2012 as the contingent hearing date.

The parties, however, also reaffirmed their strong preference that this entire matter be decided on their various motions. The Board's October 1, 2012 letter motion in reply to Respondent's motion to dismiss and cross motion for summary judgment is a particularly erudite synopsis of the classic legal and equitable principles governing the summary judgment dynamic, and with which I am in full accord.

The Motion papers filed by the parties are, to say the least, voluminous. The lawyers' arguments are extraordinarily well-presented. Each party seeks summary judgment and dismissal of the opposing party's case. Although the norm in labor arbitration is presentation of the case at the hearing, and of the defense, via sworn testimony also at the arbitration hearing, the parties are certainly entitled to alternatively seek full decision via their submitted Motions.

I have carefully read and studied the hundreds of pages of submissions, the TEACHNJ Act, and the authorities cited in the parties' papers. I render my Decision, Award, and Order pursuant to law.

## **Findings, Analysis, and Discussion**

### **Procedural Issues**

Felix Frankfurter, Associate Justice of the United States Supreme Court, was the preeminent proponent of the pithy axiom that the law is the history of procedure. It is indubitable---procedure matters.

Respondent argues that the Board did not comply timely with the plain black-letter requirements of TEACHNJ.

The Board, meanwhile, contends that it is the Respondent who neglected to observe the chronological bench marks.

I find that the presumptive preference of the pertinent law strongly favors reducing, if not entirely eliminating, undue barriers to the resolution of tenure hearings in the forum provided by TEACHNJ,

This does not merit bifurcation for resolution of procedural matters, for the obvious reason that the statute melds procedural and substantive matters into a closely woven seamless web of inextricable procedure and substance. Occan's razor continues to have high utility in ascertaining the legislative chronology for the appropriate sequential resolution of both the procedural and substantive elements of this matter.

The black-letter of the statute sufficiently illuminates the matter, and, as Arbitrator, I am the creature of the black-letter law, including, certainly TEACHNJ.

### **Substantive Issues**

Consonant with the Board's position, I find that this proceeding is one of alleged inefficiency by Respondent.

The evaluator's determination as to the quality of the Respondent's classroom performance is not subject to arbitral review.

"The board of education shall have the ultimate burden of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met."

I am thus expressly constrained by TEACH NJ to consider only four factors. If any of the four factors is applicable, I must then determine "if that fact materially affected the outcome of the evaluation." If I find that the fact "did not materially affect the outcome of the evaluation, the arbitrator shall render a decision in favor of the board and the employee shall be dismissed." Respondent contends that the scope of defenses in this arbitration is not defined exclusively by the four factors, because the rubrics and paradigms mandated by TEACHNJ have not yet been created and effectuated. For purposes of this proceeding, I find that I do not have to decide this particular point. I instead find that I can resolve this matter working entirely within the four factor framework of the TEACHNJ statutory structure and, assuming arguendo, that the entire law became effective August 6, 2012, as urged by the Board.

In light of all of the above and the voluminous papers and exhibits of record before me, contextually important supplementary considerations include the Modified Individual Improvement Plan given to the Respondent on March 7, 2012, to help Mr.

Williams address and overcome any shortcomings in his teaching.” (Respondent’s September 28, 2012 letter motion to dismiss).

Principal Miller-Harrington, Respondent’s supervisor, exhaustively sets forth a lengthy and thorough litany of the particular inefficiencies of the Respondent.

The most recent-- June 20, 2012-- Annual Teacher Evaluation Report of Respondent by Principal Miller-Harrington is a devastating critique of Respondent’s at best “marginal” abilities with regard to Domains 1 and 2, Planning and Preparation, and Classroom Environment, respectively.

Next, however, a stark and stunning 180 degree turn by the Principal, in favor of Respondent, substantially vitiates the essence of the charge.

Although she numerically ranked Respondent with a zero in four of five subcategories, the Principal is thoroughly laudatory in her supervisory narrative commentary regarding Respondent’s actual classroom “Instruction”: “The teacher’s oral and written communication is clear and expressive anticipating possible student misconceptions. Teacher’s well chosen vocabulary enriches the lesson and serves as a positive model. Teacher’s use of questioning and discussion techniques usually reflect both high level questions, discussion, and broad participation. Adequate time is available for students to respond and when appropriate teacher steps to the side during discussions. Teacher is engaging the students throughout the lesson in significant learning that is facilitated throughout the use of appropriate activities and materials. The structure and pacing of the lesson allow for student understanding, reflection, and sharing of the learning. Teacher’s verbal or written feedback to students is accurate, substantive, constructive, specific, and timely. Students make use of feedback from Teacher and peers in their learning. Teacher’s facilitation of the lesson promotes students’ achievement of the curricular objectives as evidenced by assessments and/or performance evaluations.”

I find that this critically important evidence proffered by the Board is internally contradictory at the micro-level, in that the numerical rankings of Respondent’s purportedly abysmal actual classroom Instruction (zeros in 4 of 5 subcategories) are wholly contradicted by Principal Miller-Harrington’s glowing narrative supervisory commentary regarding Respondent’s actual classroom Instruction.

Shortly thereafter, on July 11, 2012, the Principal nevertheless enumerated a parade of horrors in the inefficiency charges she proffered against the Respondent.

With reference to the TEACHNJ “four factors,” I find that “the employee’s evaluation failed to adhere substantially to the evaluation process.” As set forth above, much of the Board’s purported best evidence is internally and irreparably contradictory when it comes to the heart of the work of a teacher---actual classroom instruction. The most recent annual performance evaluation of June 20, 2012 reflects a supervisory evaluation that is internally and egregiously irreconcilable. The evaluation is much more blatantly internally contradictory than a “mistake of fact.” It is, obviously, at least that. I

am not reviewing the evaluator's determination as to the "quality of the employee's classroom performance." Rather, I simply note the stunning facial contradiction on the annual performance review, with its blatant contradictory results shattering any norms of process. Charging the Respondent with inefficiency within days of this narrative is the quintessence of arbitrary and capricious action. The facial contradiction of the wondrous narrative regarding Respondent's actual classroom Instruction makes this matter ripe for resolution by motion. In light of the Principal's narrative, there is no dispute on the salient facts---namely, the Respondent is much more than a four out five zeroed unsatisfactory classroom teacher. The Principal's narrative supervisory comments materially affect the outcome of the evaluation; they make it impossible for the Board to fulfill the Board's ultimate burden of demonstrating that the statutory criteria for the tenure charges have been met.

Respondent acknowledges a problematic history of tardiness and absences, but, standing alone, it does not rise to the level of warranting dismissal for Inefficiency.

**Decision, Award, and Order**

The Respondent's Motion to Dismiss and for Summary Judgment is granted. The charges are dismissed. The Respondent shall be made whole.

So Ordered,



David L. Gregory  
Arbitrator

I, David L. Gregory, affirm that I have executed this document as my Decision, Award, and Order dismissing this matter on this Saturday, December 8, 2012.



David L. Gregory