

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

-----X

In the Matter of the **TENURE** Hearing of:

THOMAS STRASSLE,

Respondent,

and

**SCHOOL DISTRICT OF THE TOWNSHIP OF OLD
BRIDGE, MIDDLESEX COUNTY**

Petitioner.

-----X

Before **MELISSA H. BIREN, Esq.**, Impartial Arbitrator

Agency Dkt. No.
131-5/16

**OPINION
AND
AWARD**

APPEARANCES:

For the Petitioner

Kenney, Gross, Kovats & Parton
Daniel Roberts, Esq.

For the Respondent

Mellk O'Neill
Edward A. Cridge, Esq.

Pursuant to *N.J.S.A. 18A:6-16*, as amended by *P.L. 2012, c. 26* and *P.L. 2015, c. 109* ("TEACHNJ"), the tenure charges brought by the School District of the Township of Old Bridge, Middlesex County (the "District") against Thomas Strassle ("Strassle") were referred to me for a hearing and decision. I conducted a hearing at the offices of the Old Bridge Board of Education on July 7, 2016, July 20, 2016 and August 24, 2016.¹

At the start of the hearing, the parties agreed that the issue to be decided in this tenure hearing is as follows:

Has the School District of the Township of Old Bridge, Middlesex County, established that the Respondent, Thomas Strassle, engaged in misconduct as alleged in the charges brought against him. If so, what shall be the penalty?

Both parties were represented by counsel and had a full opportunity to adduce evidence, to cross-examine each other's witnesses and to make argument in support of

¹ A request for additional time to conclude the hearing and to issue the Opinion and Award was timely made to the Commissioner, which request was granted.

their respective positions. A stenographic record was taken of the hearing. The parties submitted written closing memoranda, each citing legal authorities to support its position. Neither party has raised any objection to the fairness of this proceeding. Whether or not expressly referred to herein, all of the evidence adduced, authorities cited and arguments set forth by the parties have been fully considered in the preparation and issuance of this Opinion and Award.

Background:

Strassle is a tenured teacher in the District, beginning his employment in September 2003. At all times relevant to these charges, Strassle was assigned to the Old Bridge High School where he was an industrial arts teacher.

By letter dated September 29, 2015, the District Superintendent, David Cittadino (“Cittadino”), notified Strassle that he was being placed on paid administrative leave “pending the outcome of a criminal and administrative investigation into conduct unbecoming a teacher, in reference to student contact.” (District Exhibit 14.) On April 5, 2016, Strassle and his attorney, Edward Cridge, Esq., were given notice that tenure charges would be filed against Strassle seeking termination of his employment. The Old Bridge Board of Education (the “Board”) certified the charges on April 28, 2016 and forwarded them to the Commissioner of Education. The Statement of Tenure Charges include four charges alleging conduct unbecoming a teaching staff member as well as incapacity. (District Exhibit 1.) On May 18, 2016, Respondent filed an Answer to the Tenure Charges denying each of the allegations set forth. After review, the Commissioner of Education deemed the charges sufficient, if true, to warrant dismissal or reduction in salary. The matter was then referred to arbitration by me pursuant to TEACHNJ.

Tenure laws are meant to protect teachers from dismissal for “unfounded, flimsy or political reasons.” *Spiewak v. Rutherford Board of Education*, 90 N.J. 63, 73 (1982). *See also, Santiago v. Elizabeth Board of Education*, 2000 WL 1235359, OAL Docket No. EDU-7135-98, Initial Decision (August 30, 2000). By statute in New Jersey, tenured teaching staff “shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause...” *N.J.S.A. 18A:28-5*. “Conduct unbecoming” is not specifically defined in the statute. It has been called an

“elastic standard that incorporates any conduct that adversely affects the morale or efficiency of the [public entity] ... [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.” *In re Emmons*, 63 N.J. Super. 136, 140 (App. Div. 1960). See also *Karins v. City of Atl. City*, 152 N.J. 532, 554 (1998). The touchstone of the decision as to whether particular behavior is properly considered conduct unbecoming “lies in the certificate holder’s ‘fitness to discharge the duties and functions of one’s office or position.’ (citation omitted)” *In re Young*, 202 N.J. 50, 66 (2010). “Conduct unbecoming is a type of disciplinary charge that is determined on a case-by-case basis and can embrace a wide range of conduct.” *Santiago, supra*, 2000 WL 1235359 at *2. Under appropriate circumstances, “unfitness to remain a teacher may be demonstrated by a single incident if sufficiently flagrant.” *In re: Fulcomer*, 93 N.J. Super. 404, 421 (App. Div. 1967.)

The District has the burden of proving that Strassle engaged in conduct unbecoming a tenured teacher as alleged in these charges and that such conduct warrants his removal from the District. It must do so by “a preponderance of the competent, relevant and credible evidence. (citations omitted)” *Ashe-Gilkes, Sch. Dist. Of City of East Orange, Essex County*, 2009 N.J. Agen LEXIS 12, 52, OAL Kdt. No. 07135-08 (2009). For the reasons set forth below, while the District has proven one of the factual allegations against Strassle, it has not proven the most serious of the factual allegations underlying the charges against him requiring dismissal of most of the tenure charges. The misconduct that has been proven warrants disciplinary action for conduct unbecoming but is insufficient to demonstrate that Strassle is unfit to meet his responsibilities as a teacher. The District has not proven conduct unbecoming or incapacity warranting Strassle’s removal from his teaching position.

The Motion to Dismiss:

The gravamen of the four charges against Strassle involve allegations that Strassle gave money to a female student, N.C., over a period of time, that he then requested sexual favors in exchange for the money and that he engaged in inappropriate sexual contact with that student. The District presented four witnesses, including: (a) L.Q., a student in Strassle’s photography class; (b) Michael Machen, a detective with the Old Bridge Police

Department; (c) Sally Fazio, Vice Principal of Old Bridge High School; and (d) David Cittadino, Superintendent of Schools. The District also admitted various exhibits into evidence.

These serious allegations against Strassle arise from a complaint made in September 2015 by a female student, N.C., who was in Strassle's photography class during the 2014-2015 school year. The underlying factual allegations in the tenure charges are based entirely on N.C.'s statements. Significantly, however, N.C. did not testify at the hearing. Further, none of the District's witnesses had any first hand knowledge of N.C.'s allegations against Strassle. Given this lack of competent, reliable evidence, Respondent moved to dismiss these charges at the close of the District's case-in-chief. After careful review of the record, this motion was granted on the record at the hearing held on August 24, 2016. As indicated, the District had the burden of proving the factual allegations in the tenure charges by a preponderance of the competent, relevant and credible evidence. It has not met this burden.

Although hearsay may be admissible in arbitration, hearsay evidence alone is insufficient to prove an allegation. This is especially true where, as here, a tenured teacher is subject to termination. "Respondent has a fundamental due process right to face his accusers at trial." *IMO Tenure Hearing of Richard Vencenti, State Operated School District of the City of Paterson*, DOE Dkt . No. 255-14, Opinion and Award at p. 17 (Arbitrator Howard C. Edelman, June 11, 2014). Although N.C.'s sworn statement to the police on September 30, 2015 was admitted as evidence of the investigation that was performed leading to these tenure charges, N.C.'s statement to the police was a hearsay statement that could not, and was not, admitted for the truth of the matter asserted therein. N.C. was not subject to any cross-examination when providing her statement, much less cross-examination by Respondent's counsel. Because N.C. did not testify at the hearing, N.C. could not be cross-examined to test the veracity of her claims. Respondent was unable to question N.C. about significant inconsistencies between her first sworn statement to the police made on September 28, 2015, in which she denied any sexual contact with Strassle, and her second sworn statement on September 30, 2015, in which she alleged that she engaged in a sexual act with Strassle. Further, Respondent was unable to question N.C. about possible bias, improper motivation or any other facts that might indicate that the allegations were

fabricated and should not be believed. Further, because N.C. did not testify at the hearing, I did not have any opportunity to assess her credibility.

In addition, there was no other competent, reliable evidence presented at the hearing that corroborated N.C.'s claims that are at the core of these tenure charges. No other witness had direct knowledge of any facts that would support N.C.'s allegations that Strassle gave her money, that he requested sexual favors in return or that there was sexual contact between the two.² Moreover, while the Old Bridge Police Department and the Institutional Abuse Section of the Department of Children and Families separately investigated N.C.'s allegations, no criminal or other charges (apart from these tenure charges) were filed against Strassle as a result of N.C.'s statements and the resulting investigations. Significantly, at the conclusion of the police investigation which included N.C.'s sworn statements, Detective Machen wrote that he "was advised by the Middlesex County Prosecutor's Office that no criminal charges were going to be pursued in the matter" and that "there was not sufficient probable cause to proceed." (District Exhibit 23.)³

These allegations, if proven, would have established conduct unbecoming and just cause for dismissal. Due process, however, requires that the District prove these serious charges by a preponderance of the evidence before a 12-year tenured teacher, with no evidence of prior discipline, is dismissed for the reasons set forth. To uphold these charges in the total absence of competent and reliable evidence to support them would result in the type of miscarriage of justice that these tenure proceedings are intended to prevent. Accordingly, all of the charges relating to allegations that Strassle gave N.C. money, that he requested sexual favors in return or had any inappropriate physical contact, including sexual contact, with N.C. were properly dismissed at the conclusion of the District's case-in-chief.

² In fact, there are inconsistencies not only between N.C.'s statements to the police, but also between her description of a conversation with Strassle in the dark room (discussed below) and the testimony of two other students who were present for that conversation.

³ There was no evidence presented at the hearing with respect to the conclusions reached by the Institutional Abuse Section of the Department of Children and Families, including whether the investigation resulted in any factual findings as to N.C.'s allegations. Nor is there any evidence in this record that any action was taken against Strassle as a result of this investigation.

The Remaining Charges:

While a substantial portion of the tenure charges were dismissed for the reasons set forth above, allegations regarding a conversation with several female students in Strassle's photography class were not dismissed at the conclusion of the District's case-in-chief. Specifically, Tenure Charge No. 1 alleged, in part, as follows:

- b. During January 2015, Strassle had a discussion with several female students in his charge in his period 5/6 photography class, including [L.G., K.H., A.A., M.S.A., and N.C.] in a darkroom/office adjacent connected to (sic) his classroom at Old Bridge High School. (citations to the Statement of Evidence omitted.)
- c. During the course of that conversation, Strassle discussed prostitution with the female students, and asked them if any of them would have sex for money. (citations to the Statement of Evidence omitted.)

The charges allege that by such conversation (along with the conduct that was dismissed), Strassle violated the provisions of "Board Policies and Regulations, Employee Handbook, and any standard of conduct that a diligent professional would undertake or condone" and that he engaged in conduct unbecoming warranting his dismissal. (Joint Exhibit 1.)

Two students who were present when this conversation occurred testified at the hearing. L.Q. testified for the District. She was in Strassle's photography class in the 2014-2015 school year. She explained that the class was taught in the classroom, with a separate dark room used to develop film. L.Q. recalled a conversation in the dark room during that school year. There were approximately 16 or 17 students in the dark room when the conversation took place, although the conversation involved only five female students, including L.Q., K.H., M.S., A.A. and N.C. It occurred in the middle of the class period. L.Q. could not recall who started the conversation, but testified that one of the students commented that the fastest way to make money is to become a stripper; in her statement to the police, however, L.Q. indicated that the topic was prostitution, not being a stripper. (Respondent Exhibit 4.) According to L.Q. most of the students in the conversation said that they would not "do that," i.e., engage in prostitution or work as a stripper. Although she could not recollect Strassle's exact words, L.Q. testified that Strassle, who was present at the time the conversation took place, asked if they would do anything for money, "like

[with] someone around his age". (Tr. I at 62.)⁴ According to L.Q., the girls responded "like umm, not really." (Tr. I at 35.) L.Q. testified that she did not have a reaction, other than to say she would not do anything. According to L.Q., when the class ended, her friends left the dark room together, including N.C. who went to her English class.⁵ L.Q. and her friends did not discuss the conversation again. The conversation ended, "and that was it." (Tr. I at 53.) When asked whether, beyond the conversation described above, Strassle had ever discussed anything of a sexual nature with students in a class that she witnessed, L.Q. testified "no." (Tr. I at 37.) L.Q. testified that even after this conversation, she continued to visit Strassle's classroom with N.C. and sometimes others on several occasions "to hang out", stating that "at that point Mr. Strassle, he was all right to hang out with. He was a cool teacher." (Tr. I at 49 -51.)

A second student, K.H., testified on Respondent's behalf. She was in the same photography class as L.Q. and N.C. during the 2014-2015 school year. K.H. did not have a specific recollection of the conversation that L.Q. testified about as summarized above. She recalled telling the police that:

We have had times when all the girls in the photography room have been like that's it, I give up, I'm going to be a hooker, I'm going to be a stripper, that's it. And jokingly Mr. Strassle will be like ha-ha, give me a call then, and we would be just like chill and that was it. Because it was always jokes. (Tr. II at 19.)

⁴ On direct examination, L.Q. elaborated on her initial statement, indicating that Strassle had asked if they would "sleep with" anyone for money. (Tr. I at 36.) On cross-examination, however, L.Q. testified that she did not recall Strassle's exact words and had no specific recollection that he actually used the words "sleep with." (Tr. I at 62.) In her statement to the police, L.Q. stated that the topic of prostitution came up and Strassle asked the group "if we ever did prostitution and how much we would offer to do it." (Tr. I at 64.)

⁵ In her statement to the police, N.C. indicated that in this conversation, in front of her friends, she said she would become a prostitute and that Strassle asked if she would do it with somebody like me. She "laughed and shrugged it off." She also claimed that after class, she stayed behind and Strassle asked if she was serious and how much she would charge him to have sex and that she responded \$100. This statement is inconsistent with L.Q.'s testimony both as to what was said in front of all the students and whether N.C. stayed behind for a separate conversation with Strassle. Once again, N.C. was not called to testify and could not be cross-examined to address these additional inconsistencies.

K.H. told the police, and testified at the hearing, that the conversation with Strassle in the dark room was not serious. It was a joking conversation.⁶ She felt comfortable going to speak to Strassle about her problems, and stated “Strassle would never hurt a fly. He is one of the kindest people I’ve ever met...” (Tr. II at 20.)

Strassle did not testify at the hearing. He did not deny that this conversation took place or otherwise dispute the substance of the conversation in the dark room with these students in the 2014-2015 school year. Based on the testimony of both L.Q. and K.H., therefore, it is clear that some conversation took place in the dark room where this group of female students made comments regarding prostitution and/or becoming a stripper as a way to earn money and that Strassle then joined in the conversation. He did not seek to end the conversation as inappropriate for the classroom, but rather participated in the conversation asking in some manner whether any of the girls would do “it” for money. Both witnesses testified that the conversation did not have a significant impact on them, with K.H. saying that Strassle was joking around and L.Q. stating at the hearing that she did not have any reaction to his comments and in her statement to the police that it was not serious. These two students did not speak about the conversation again with their friends or with Strassle. Significantly, their testimony overall indicated that they did not feel uncomfortable with Strassle, even after this conversation in the dark room. Moreover, the evidence does not support that this conversation was part of a pattern of inappropriate comments of a sexual nature with his students. To the contrary, L.Q. expressly testified that she had not witnessed Strassle making any other comments of a sexual nature. (Tr. I at 37.)

Nonetheless, inserting himself in a conversation with female high school students about becoming prostitutes or strippers, and asking whether they would do anything for money, even if intended as a joke, was improper for a teacher. It was entirely unrelated to the curriculum for the class. As Cittadino testified, “stripping has very little to do with photography and the curriculum that is supposed to be imposed.” (Tr. 1 at 181.) Further, Strassle could not know how any student would react to his comments – whether they would think he was joking or was serious about the question or whether such comment could have other detrimental consequences. As a tenured teacher Strassle should have

⁶ In L.Q.’s statement to the police, she also stated that “it wasn’t serious” when describing what was said in the conversation. (Respondent Exhibit 4.)

known that joining a conversation with female students about the students' willingness to engage in prostitution or stripping was inappropriate without a specific rule expressly addressing such conduct. As the District argued, "a finding of unbecoming conduct does not require a violation of any specific rule or regulation, but rather may be based primarily on a violation of an implicit standard of good behavior. *Emmons, supra*, 63 N.J. Super., at 140; *Newark v. Massey*, 93 N.J. Super. 317, 323 (App. Div. 1967)." (Closing Memorandum at p. 2.)

Strassle's comments, however, did violate certain District policies.⁷ While most of the policies and regulations identified in the tenure charges and in Cittadino's testimony were relevant to the more egregious allegations that have been dismissed (see above) and not to the limited factual allegation that was proven, Strassle's decision to engage in this conversation in the dark room with female students violated the following:

- Board Policy 3281, Inappropriate Staff Conduct, stating, in pertinent part, that:
School staff's conduct in completing their professional responsibilities shall be appropriate at all times. School staff shall not make inappropriate comments to pupils or about pupils and shall not engage in inappropriate language or expression in the presence of pupils... A school staff member is always expected to maintain a professional relationship with pupils and to protect the health, safety and welfare of school pupils." (District Exhibit 12.)

- Employee Handbook:

Section 11.1: Personal Conduct

The Board expects that all of its employees will conduct themselves with the pride and respect associated with their positions, their fellow employees, students, parents and everyone else associated with the Board in one form or another. Employees should always use good judgment and discretion in carrying out the Board's business.

Employees of the Board should always use the highest standards of ethical conduct. (District Exhibit 3.)

Section 12.1 Class 1 Violations:

Conduct unbecoming a professional.

In conclusion, based on the testimony of the two student witnesses, and absent any testimony from Strassle disputing his participation in the conversation with these female

⁷ Respondent did not dispute that he was provided with copies of the applicable District policies.

students in the dark room, I find that the District has proven the allegations that Strassle engaged in an inappropriate conversation with the students during the 2014-2015 school year and that by such action, Strassle violated Board policies and engaged in conduct unbecoming a tenured teacher.

Penalty:

The District seeks Strassle's termination from employment. Whether termination is appropriate must be decided on the facts and circumstances of each case. Factors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, the teacher's prior record, the effect of such conduct on the maintenance of discipline among students and staff, and the likelihood of such behavior recurring. *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967). Having considered all of the evidence in this case, and all of the arguments presented and cases cited, dismissal is not warranted in this case.

It is significant that the more serious allegations of misconduct were not proven and were dismissed. All that remained in the case was the allegation that Strassle engaged in an inappropriate conversation with female students on one occasion. While it is true, as the District argued, that termination of a tenured teacher has been found to be appropriate based on a single incident if sufficiently egregious,⁸ the conduct proven in this case does not rise to the level of such egregious misconduct to warrant discharge. The penalty must be proportionate to the misconduct proven; removal from his tenured teaching position is an unduly harsh penalty for the misconduct proven in this case. Indeed, as Respondent argued, termination would be inconsistent with the penalties imposed in other tenure cases where more serious misconduct was proven. In each of the cases that Respondent relied upon, the Commissioner or Arbitrator, considering the proven misconduct as well as mitigating factors, as applicable, reduced the penalty from termination to suspensions of varying lengths.⁹

⁸ See, *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967).

⁹ See *e.g.*, *IMO Tenure Hearing of Richard Vincenti, State Operated School District of the City of Paterson*, DOE Dkt. No. 255-14 (2014) (Teacher engaged in "abusive, angry, demeaning behavior on a number of occasions; penalty was forfeiture of 120 days of pay withheld plus suspension of additional one-half school year without pay); *IMO Tenure Hearing of Edith Craft, School District of*

I am not persuaded that the actions proven in this case render Strassle unfit to continue to teach. The evidence does not demonstrate that returning Strassle to his position would cause any harm or otherwise have an “injurious effect” on the “maintenance of discipline and the proper administration of the school system.” *In re Fulcomer*, 93 N.J. Super. 404, 422 (App. Div. 1967). The proven charge involves an isolated instance of an inappropriate conversation with female students; there is no evidence of any pattern of inappropriate conduct. Based on the testimony of the two students who testified, his comments during the conversation did not make them uncomfortable being in his class or in his presence or otherwise adversely impact his ability to teach and to maintain discipline in his classroom. Nor is there evidence that Strassle, a 12-year employee in the District, had any prior disciplinary action taken against him. Taking into consideration all of these factors, Strassle shall be returned forthwith to his position as a tenured teacher in the District.

Nonetheless, the misconduct proven in this case demonstrated a serious lapse in judgment for which substantial discipline is warranted to assure that Respondent

the Twp. Of Franklin, Somerset County, Comm. Of Ed. Dec. No. 366-11 (2011) (Teacher slapped handicapped student across his face with an open hand; penalty was forfeiture of 120 days of pay withheld plus four additional months suspension without pay and loss of adjustment increase for one year); *IMO Tenure Hearing of Adam Mierzwa, School District of the Twp. Of Franklin, Somerset County*, Comm. Of Ed. Dec. No. 283-08 (2008) (Teacher failed to control his temper and displayed poor judgment, allowing feelings of frustration and anger to overwhelm professional judgment on two occasions; penalty was forfeiture of 120 days of pay withheld plus additional four months suspension without pay); *IMO Tenure Hearing of Adelpia Poston, School District of the City of Orange Twp. Essex County*, Comm. Of Ed. Dec. No. 362-06 (2006) (Board proved use of expletive words in classroom on one occasion; penalty was forfeiture of 120 days of salary withheld); *IMO Tenure Hearing of Barbara Emri, School District of the Twp. Of Evesham, Burlington County*, Comm. Of Ed. Dec. No. 371-02 (2002) (District proved a pattern of inappropriate conduct towards students, as well as racially inappropriate remarks; penalty was forfeiture of 120 days of pay withheld plus six additional months suspension without pay and a permanent reduction of one step on salary guide); *IMO Tenure Hearing of Joseph Prinzo, Passaic County Technical Institute, Passaic County*, Comm. Of Ed. Dec. No. 259-01 (2001) (Teacher failed to supervise students resulting in students viewing sexually explicit videotape; penalty was 30 days loss of pay); *IMO Tenure Hearing of George Mamunes, Pascack Valley Regional High School District, Bergen County*, Comm. Of Ed. Dec. No. 208-00 (2000) (Teacher uttered racist, sexist and/or derogatory comments to students on several occasions; penalty was forfeiture of 120 days of pay withheld plus additional two months salary and one year withholding of merit increment); *IMO Tenure Hearing of Henry Allegretti, School District of the City of Trenton, Mercer County*, Comm. of Ed. Dec. No. 96-00 (2000) (Teacher engaged in inappropriate discussions/comments/conduct of a sexual nature with students on several occasions; teacher reinstated subject to finding of fitness with loss of salary for six months plus withholding of salary increments for two school years).

understands the seriousness of his error in judgment and to impress upon him that such conduct must not be repeated. Considering the entire record before me, I find that a forfeiture of the 120 days of pay already withheld pursuant to TEACHNJ following certification of the tenure charges is the appropriate penalty for the misconduct proven in this case.

By reason of the foregoing, I issue the following:

AWARD

a) The allegations in Charge One, paragraphs (b) and (c) have been proven, with such conduct constituting conduct unbecoming and providing just cause for discipline.

b) All other charges in the tenure charges are dismissed with prejudice for the reasons set forth on the record on August 24, 2016 and in this Opinion and Award.

c) Thomas Strassle shall be reinstated to his position as a tenured teacher in the District. The penalty for the proven allegations as set forth in paragraph (a) above shall be reduced from termination to a forfeiture of the 120 days of pay already withheld following the certification of the tenure charges. Therefore, there shall be no back pay awarded in connection with this 120 days loss of pay.


Dated: October 5, 2016


Melissa H. Biren, Arbitrator

State of New Jersey)

County of Essex)

On this 5th day of October 2016 before me personally came and appeared MELISSA H. BIREN, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that she executed the same.


Robert D. Agree, Notary Public

ROBERT D AGREE
ID # 2429835
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires February 8, 2018