

IN THE MATTER OF TENURE BETWEEN

Laurie Olsen-DelGuercio

- And -

School District of the Township of Union, Union County New Jersey

Agency DKT. NO. 268-11/17

Arbitrator: Kinard Lang

Hearing Dates: January 22 and March 13, 2018

Hearing Locations: New Jersey Department of Labor, Fitch Plaza, Trenton, N.J. and Union County School District Office, respectively.

Issue: Does the School District of Union Township have sufficient cause to revoke the Tenure of secretary/ clerk Laurie Olsen-DelGuercio; if not, what shall the remedy be?

APPEARANCES:

Paul E. Griggs, Esq. - Petitioner

Nicholas Poberezhsky, Esq. - Respondent

Post Hearing Briefs Filed: April 16, 2018

BACKGROUND

What follows is my synopsis of facts stipulated to by the parties. The Respondent was employed by the District as a secretary/clerk at Union High School in September of 2008 and acquired tenure in September 2011; approximately one-year later the District began paying her an annual stipend of approximately \$1,016.00 for taking on the *extra-curricular* duties of School Treasurer.

In her capacity as School Treasurer she handled collection and processing of school activity funds: from receipt-to-reconciliation-to-deposit. In the pre-dawn hours of Thursday June 29, 2017 several former Union H.S. students gained access to that premises through an unlocked library window and burglarized the building. Upon receiving report of that event from Ms. DelGuercio, the Union Police Department responded and learned that approximately \$28,899.41 in cash (student activity funds) had been stolen from Respondent's locked file cabinet draw, and \$57,139.84 was in the school safe when the burglary occurred.

On or about July 6, 2017 Respondent received notice, that in effect, her service as school treasurer was terminated. The parties' Joint Exhibit 7. says in pertinent part:

*"...I informed Ms. Delguercio that there was **negligence** on her part and that consequences could follow. Ms. Bossard and I escorted Ms. Delguercio to the bank to deposit the rest of the money which was \$57,139.84 and I had her name removed from the account. I explained to Ms. DelGuercio that she would no longer be in charge of the Student Activity accounts..."* (Emphasis added)

On August 30, 2017 Respondent was placed on administrative leave with pay:

"...due to an on-going investigation regarding the theft of student activity funds at Union High School. While you are on this leave, you are not permitted on the school grounds of any Township of Union Public School without my prior approval. In addition, you should not have any contact with faculty, staff, or students of any Township of Union Public Schools."

School Superintendent Gregory Tatum filed tenure charges against the Respondent on or about October 11, 2017.

Those Charges were based on the conclusion that June 29th theft of student activity funds resulted from Respondent's "*Unbecoming Conduct, Inefficiency, Incompetency and Other Just Cause.*"

This Arbitrator was assigned to decide this matter in accordance with the provisions of *P.L. 2012, c. 26, as amended by P.L. 2015, c 109.*

POSITIONS OF THE PARTIES

PETITIONER

We are told the Respondent's Tenure must be revoked because the events of June 29, 2017 demonstrated her guilt of the following:

CHARGE I

Conduct Unbecoming a School Employee for leaving student activities funds in the form of cash in a cabinet drawer overnight and failing to promptly deposit approximately \$26,899.41 into the Union High Booster Association bank account.

CHARGE II

Conduct Unbecoming a School Employee for leaving student activities funds in the approximate amount of \$57,139.84 in the school safe and failing to promptly deposit \$57,139.84 into the Union High School Booster Association bank account.

CHARGE III

Inefficiency of a School Employee by failing to deposit student activity account receipts into the Union High School Booster Association bank account.

CHARGE IV

Incompetency Violation of Board Policy; by leaving \$26,899.41 in cash in a cabinet draw overnight, Respondent violated Board Policy 3450 saying, "*In no case shall money be left overnight in schools except in the safe provided for safekeeping of valuables.*"

CHARGE V

Incompetency Violation of Board Policy; on or about June 28, 2017 Respondent left approximately \$84,039.25 in cash in a cabinet drawer and in the school safe overnight, in violation of Board Policy 3453, requiring "*All receipts from student fund-raising projects, athletic events, and other events for which admission is charged will be deposited promptly...*"

CHARGE VI

Negligence, by leaving said moneys in the cabinet drawer and school safe Respondent was negligent in her management and oversight of activity funds.

RESPONDENT

Of course, the Respondent disavows all the cited Charges; she argues they are both substantively and legally flawed. In that all the allegations against her focus exclusively on her asserted failings as a *School Treasurer*, not in her tenured position as Secretary. The record shows she was removed from the Treasurer's job on July 6, 2017, hence her performance in the Treasurer's job was not then, or now, a valid legal basis for charges against her tenure as a Secretary.

The TEACHNJ Act requires **inefficiency** charges be predicated on two consecutive "ineffective" or "partially effective" summative evaluations; the record in this matter is devoid of evidence that the Respondent was **ever** formally evaluated.

Hence, consistent with the New Jersey Superior Court in Newton v. Newark Public Schools, Ms. DelGuercio's tenure may not be revoked based on asserted inefficient performance, that has never been evaluated.

With respect to the Respondent's claimed **conduct unbecoming** a school employee, allegations of that nature are generally reserved for the most egregious offenses. What we have here is her placing school funds in a locked file cabinet overnight, and keeping money in the school safe, rather than depositing it in the bank. Those are at worst errors of judgment, not the moral turpitude usually concerned in charges of this nature.

The preceding conduct may arguably be characterized as **negligence**, but the record shows there were at least two "*contributors*" to the burglary; the librarian's miscommunication with the janitor resulted in the burglars' access window being left open.

The Petitioner would have us find the Respondent **incompetent** because she is said to have violated School Board Policies 3450 and 3453, yet we have her un rebutted confession of actual and constructive ignorance of both those policies. In that regard, it is undisputed that the only Treasurer training she received was from her predecessor.

DISCUSSION AND ANALYSIS

The Respondent's *threshold* assertion, that the TEACHNJ Act does not contemplate Petitioner's loss of her secretarial tenure based on claimed failings in a separate, paid by stipend, non-tenured job, as school treasurer, is facially persuasive. That is so because pertinent provisions of the Act read:

N.J.S.A 18A:17-2 (Tenure of secretary, assistant secretary, school business administrator or Business manager of a board of education of any school district who has or shall have devoted his full time to the duties of his office... "

In that regard, Respondent argues:

“...the District lacks subject matter jurisdiction to bring tenure charges against her based on her sole role as School Treasurer, a non-tenured stipend (**part-time**) position she has already been removed from. Since the tenure charges have nothing to do with Ms. Olsen-DelGuercio’s tenured position as a **fulltime** secretary, there is nothing left to litigate.” (Emphasis supplied)

The District cites a plethora of Opinions, generally written before passage of the Act, with which it would support the legal and substantive rightness of the Respondent’s tenure revocation. While they are instructive, I find none of them are on point with respect the threshold question here: Where if at all, does the Act say a tenured employee may lose that tenure for proven misbehavior in an *extra-curricular* job, held at School District discretion. I have found nothing in the Act, or the cases relied upon by the Petitioner, that directly answers that question, under the instant circumstances.

However *common sense* reading of the parties’ evidence and arguments does not permit my summary dismissal of the Respondent from all culpability regarding the events of June 29, 2017; that is so because, as Petitioner argues, the money would not now *be in the wind*, had she not left it where she did. Yet, no one could reasonably conclude *the buck stops there*.

That is so because, while the evidence shows she is not blameless for what happened in the morning of June 29th, the blame must be equitably shared:

Board Policy 3453 says “...*The student activity funds for each school shall be kept in a separate account, **Supervised by the building principal**. Separate and complete records shall be maintained for each student organization. All receipts from student fund-raising Projects, athletic events, and other events for which admission is charged will be deposited **promptly**. Bank deposits shall agree with the receipts in the case receipt book.*” (Emphasis supplied.)

I find, consistent with the above cited Board Policy, the Union High School Principal had final responsibility for failing to make prompt bank deposits of the \$57,139.84 in the school safe during June 29, 2017 burglary. Additionally, we cannot ignore the finding of the Union Police; that the burglars gained access to the premises through a window left unlocked, because of the librarian and janitor’s *failure to communicate*.

Conduct Unbecoming a School Employee

Petitioner cites the New Jersey Supreme Court when it argues Respondent’s leaving \$26,899.41 in the file cabinet overnight, and failing to promptly deposit \$57,139.84 in the bank, are acts unbecoming; because, among other reasons, those acts:

“...adversely affect(ed) the morale or efficiency of the [department]” or “ha[d] a tendency to destroy public respect for [government] employees and confidence in the operation of [public]services.”, (citations omitted).

The record shows the Union High School burglary became an issue in Union Township School Board elections that were broadly covered by local media; the burglary did nothing to encourage confidence in Union H.S. management among the local taxpayers whose money was stolen. Clearly, that loss of public money was an *act unbecoming*. In that regard, Respondent tells us she cannot be held responsible for the unforeseen criminal acts of others; no Criminal charges were ever filed against her, and she was never suspected of being involved in the crime.

I find Respondent's behavior was not, per se, inherently "*unbecoming*".

Inefficiency of a School Employee

Petitioner cites N.J.S.A. 18A:6-10 where it provides, in part that, "*No person shall be dismissed or reduced in compensation, except for inefficiency, incapacity, unbecoming conduct, or other just cause...*". We are told Respondent's leaving \$26,899.41 in a file cabinet overnight fits The Random House College Dictionary 680 (Revised Edition 1982), definition of inefficiency: "*...not efficient; unable to effect or achieve the desired result with reasonable economy.*" Here, the *desired result* was safekeeping of the cited funds, and we have seen that on June 29th that did not occur.

But here's the rub; absent linkage of Respondent's asserted *inefficiency*, as a part-time Treasurer, to her performance in her full-time secretarial position, the former is no basis for loss of tenure in the latter, and Petitioner did not produce preponderant evidence of that linkage. The Inefficiency Charge is unproven.

Incompetency

The Petitioner would find Respondent incompetent because of her failure, as school treasurer, to follow Board Policy 3450. However, there is no evidence in the record establishing she was put on notice about that Policy, or the consequences for failing to follow it. Likewise, Petitioner has produced no evidence linking what it would have us find as the Respondent's incompetency on June 28th, as a treasurer, to her performance in the capacity of secretary. In a similar vein, it is stipulated that she has never been formally evaluated as to her competence as a secretary, the position from which her tenure would be revoked.

I find insufficient evidence that Respondent's tenure should be impaired on the basis of incompetence.

Negligence

Petitioner has the burden of proving all the Charges by the preponderance of evidence; that includes negligence when Respondent left money in a file cabinet and the school safe overnight, on June 28, 2017.

Citing Rappaport v. Nichols, 31 N.J. 188, 203 (1959), we are told: “[A] tortfeasor is generally held answerable for the injuries which result in the ordinary course of events from his negligence and it is generally sufficient if his negligent conduct was a substantial factor in bringing about the injuries...”

We have previously observed that if the money was not left in the cabinet, the burglars would not have gotten it, and we know the Respondent left it there. Notwithstanding those plain facts, the Respondent would deny being answerable for the School District’s financial injury, because negligence is not an appropriate basis for tenure charges.

Additionally, we are told there are mitigating circumstances: there is no history of burglaries at Union High School, and no evidence that the Respondent’s behavior on June 28th made her file cabinet a “target”. Contrarily, the Union Police report indicates the burglars initially went through classrooms and other offices before making their way into the main office and *stumbling* upon the cash in the cabinet.

I find no **specific** provision in the Act with respect to negligence, apparently the “...or other just cause...” language in the Act is relied upon when Petitioner argues tenure revocation based on negligence. And while the evidence shows that June 28, 2017 may have been the only time the Respondent left cash in the cabinet overnight, she did so without advising the Principal or seeking his permission in advance. That behavior was negligent.

Conclusions

I find the Union Township, County of Union has produced a preponderance of evidence that the Respondent was negligent in performance of her duties as **School treasurer** on June 28, 2017; that negligence is implicitly linked to her service as Secretary; that all Petitioner’s the other Charges have not been proven, and or linked to her tenured **Secretarial** position by a preponderance of evidence. Hence, the following Award.

AWARD

Laurie Olsen-DelGuercio shall retain her tenure with no loss of seniority, benefits and pension rights, if any accrued to her service before July 7, 2017. With the exception of earnings lost during Ms. DelGuercio’s one-hundred and twenty (120) day suspension, she shall be made whole for all lost wages and emoluments of employment.

With respect to Petitioner’s request for Restitution, it is Denied.

Kinard Lang, Arbitrator, May 10 2018

Kinard Lang 5/10/2018 -7-

Marisol I. Suarez
COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
MARISOL I. SUAREZ, Notary Public
City of Philadelphia, Phila. County
My Commission Expires March 31, 2019

5/10/2018