

**BEFORE THE COMMISSION OF EDUCATION  
OF NEW JERSEY DEPARTMENT  
OF EDUCATION**

**In the Matter of Tenure Charges**

**between**

**The Lawrence Township School  
Board of Education,**

**Petitioner,**

**and**

**Jill Maria,**

**Respondent.**

**Agency Docket No. 54-2/10**

**MOTION TO DISMISS**

**Dr. Andrée Y. McKissick  
Arbitrator**

**APPEARANCES:**

**For the Petitioner:**

Jeffrey R. Caccese, Esquire  
Comegno Law Group  
521 Pleasant Valley Avenue  
Moorestown, New Jersey 08057

**For the Respondent:**

Edward A. Cridge, Esquire  
Melk O’Neill  
51 East Broad Street  
Hopewell, New Jersey 08525

**STATEMENT OF FACTS**

Respondent Jill Maria was employed as a sixth (6<sup>th</sup>) grade, Special Education teacher by the Lawrence Township School District Board of Education for the last three (3) years. However, she was granted tenure on approximately September 1, 2005. The record reflects that on December 18, 2018, she was placed on administrative leave after the School District was told she had been arrested. The record further reflects that she had

been arrested on January 7, 2017 in Pennsylvania. In addition, she was stopped again on December 3, 2018 by police for a traffic violation. Subsequently, she was detained for a violation of her earlier plea agreement which required her to meet her probation officer as scheduled. The failure to comply with this agreement brought about a bench warrant for her arrest. In sum, the Respondent did not report either arrest, as required.

Based upon the foregoing, the Board of Education brought three (3) charges against Respondent Maria on February 22, 2019 upon the following grounds as set forth in NJSA 18A: 6-10:

- (1) Other Just Cause for tenure removal because Ms. Maria failed to report her arrest and conviction of the 2017 offense and, by the District's information and belief, also failed to report her 2018 detention as required by law;
- (2) Conduct Unbecoming by being insubordinate in refusing to answer Mr. Fry's questions on December 19, 2018; (b) having a prior disciplinary history that included insubordinate conduct with the District; and, (c) being untrustworthy in regard to her obligation to be truthful and her overall professional judgment.
- (3) Incapacity by virtue of the previously stated acts of nonfeasance and malfeasance.

The record further reflects that on March 13, 2019, the Board upheld these charges and suspended Respondent Maria without pay, pursuant to NJSA 18: 6-14. Subsequently, the Board delivered these charges accompanied by the Statement of Evidence, Certificate of Determination and Proof of Service upon Respondent Maria to the New Jersey Department of Education, Office of Controversies and Disputes. Thereafter, Arbitrator Colflesh, Esquire was appointed this case. A hearing was held on May 13, 2019 in Lawrence, New Jersey. An award was issued on July 22, 2019. Arbitrator Colflesh suspended Respondent Maria without pay or benefits "until the first day of the 2019-2020 school year" on July 22,

2019. In sum, the suspension was for one hundred and twenty (120) days without pay, as well as the withholding of adjustment salary increments. It is important to note that within Arbitrator Colflesh's award he also noted the following caveat:

Nothing herein should be construed as denying the District the right to bring charges based on unbecoming conduct grounded in the conduct that led to Ms. Maria's arrest in January 2017. That conduct was not the subject of the instant charges, most likely because Ms. Maria refused to disclose it when questioned in December 2018, and the District's desire to promptly act on that refusal and the other allegations presented in the above charges.

Based upon this language, the Board of Education brought Amended Charges upon Respondent Maria. On March 14, 2020, Director Killough-Herrera appointed this Arbitrator to hear this dispute. A conference call was held on March 17, 2020 pursuant to this Motion to Dismiss which was received on March 13, 2020. The Amended Charges consisted of: Charge One, Unbecoming Conduct, Charge Two, Incapacity, and Charge Three, Other Just Cause. Details of these charges will be discussed in the Positions of the Parties and in the Findings and Discussion.

#### ISSUES

- (1) Whether or not the Entire Controversy Doctrine (ECD) is applicable to these subsequent tenure Amended Charges?**
- (2) Should the Amended Charges, based upon identical fact situation in the prior arbitration hearing, should again be adjudicated?**

## **POSITIONS OF THE PARTIES**

It is the Board's position that the Amended Charges center upon the Respondent Maria's conduct which occurred well after the arbitration award issued on July 22, 2019. Most importantly, the Board asserts that the Entire Controversy Doctrine (ECD) is not implicated. Moreover, the Board vigorously argues that the Entire Controversy Doctrine does not bar the Board from pursuing the Tenure Charges related to any of the underlying conduct at issue.

Specifically, the Board points out the underlying conduct which resulted in the Respondent's arrests were not addressed in the Initial Charges. The Board further explains that the Respondent refused to provide the Board with details about the arrest. Thus, the Board maintains that it was not aware of the underlying facts that gave rise to the charges.

Most importantly, the Board strongly asserts that these Amended Charges were brought due to conduct that occurred well after the arbitrator's award on July 22, 2019. That is, Respondent Maria was interviewed several months later in September and October 2019. The Board further contends that it was during these interviews that Respondent Maria's history of drug possession, abuse and the usage of cocaine, methamphetamines and oxycodone, that this information was revealed. In addition, the Board further asserts that the Respondent's probation had been extended due to her failed drug test; in violation of the terms of her probation. It was also pointed out by the Board that the Respondent assured the Administration that she no longer used drugs or alcohol, but it was later learned that that was untrue.

In sum, the Board strongly argues that the Respondent's lack of professional judgment, deceptiveness and insubordination, in the Initial Charges, had not yet occurred. Moreover, the Board concludes that this delineated misconduct occurred approximately two (2) to three (3) months after the arbitrator's award on July 22, 2019.

Lastly, the District further contends that even if the Respondent's conduct had not occurred until after the award for the Initial Charges, the Entire Controversy Doctrine does not bar the Board from pursuing the Tenure Charges at issue in this proceeding. The Board cited several decisions, which it claims, supports these contentions that the Entire Controversy Doctrine cannot be utilized in a "wholesale" manner in its applicability to arbitration proceedings. Based upon the foregoing, the Board argues that the Respondent's motion to be dismissed must be denied.

On the other hand, the Respondent disagrees with the Board's assessment. In particular, the Respondent points out that the Initial Charges alleged that Respondent Maria engaged in unbecoming conduct by failing to report both arrests only. That is, the Respondent explains that the Board did not charge her with unbecoming conduct in her relationship with substantive behavior which was the underpinning events underlying those arrests. Specifically, the Respondent notes that Respondent Maria was not charged with unbecoming conduct for having committed an assault nor for being in possession of any controlled dangerous substance, as alleged in the criminal charges.

Contrary to the Board's position, the Respondent vigorously points out that the Board was well aware of precisely what Respondent Maria had been arrested for because it was in their possession through the docket report from Bucks County, Pennsylvania which detailed Respondent Maria's arrests, charges and disposition of the case. Moreover,

the Respondent asserts that the Board did have the right to charge her specifically for the assault and drug possession at that juncture, but failed to do so. However, this substantive unbecoming conduct was not included in the Initial Charges. Thus, the Respondent further asserts that the Board is now barred from doing so by the Entire Controversy Doctrine. Based on the foregoing, the Respondent reasons that this Motion to Dismiss is applicable to prevent relitigation and it must be granted.

### **FINDINGS AND DISCUSSION**

After a careful review of the briefs in support of the Board's and Respondent's positions regarding the Motion to Dismiss, this Arbitrator finds that this motion must be granted, but without prejudice pursuant to the Board's right to pursue charges not barred by the Entire Controversy Doctrine (ECD) for the following reasons.

First, the Entire Controversy Doctrine is premised upon the concept that only one (1) action involving all claims and all parties should be adjudicated in a sole consolidated action, involving the same common nucleus of operative facts. Should a second action be brought, then it must be precluded. (See Cogdell v. Hospital Center at Orange, 116 NJ 7, 15-16 (1989); Aetna Insurance Co. v. Gilchrist Brothers, Inc., 85 NJ 550, 556-557 (1981); Bennun v. Rutgers State Union, 941 F2d, 165 (3<sup>rd</sup>); 502 US 1066, 117 Ed 2d 124, 112 S. Ct. 956 (1992).

Second, contrary to the Board's argument, the Entire Controversy Doctrine is applicable to administrative proceedings. In our situation, this arbitration involves the same identical parties and the charges evolved from the same forum and statute, the Tenure

Employees Hearing Law, NJSA 18A: 6-10, etc. Thus, this doctrine is applicable under these circumstances (see J.T. v. Dover Ed of Ed, No: EDS 00491-17, Agency Docket No: 2017-25390; Thorton v. Potamkin Chevrolet, 94 NJ 1, 5 (1983).

Although the Board, on the other hand, points to Yarborough v. State Operated School District of the City of Newark, 455 NJ Super 136 (2018), as being dispositive of the Entire Controversy Doctrine as being inapplicable, this Arbitrator must disagree. The Superior Court of New Jersey, Appellate Division found it “unnecessary to address the merits of both the trial court and the arbitrator” that the Entire Controversy Doctrine was inapplicable because of prior tenure hearings were not fully arbitrated. That is, the matter was dismissed regarding Plaintiff Yarborough’s motion and argument for the Entire Controversy Doctrine. Specifically, that arbitrator dismissed the January 26, 2015 charges which invoked the Entire Controversy Doctrine determination. Moreover, that arbitrator found that “an [another] action regarding the identical facts [as in the October 9, 2014 matter] which would deny him [Yarborough] of his position a second time” should not be invoked. Thus, the premise of the Entire Controversy Doctrine argument was successfully utilized and analyzed by that arbitrator, not the New Jersey Superior Court who found it to be an unnecessary determination to address for the foregoing reasons.

Third, although the Board claims not to know of the underlying issues involving the arrests until September and October 2019, after Arbitrator Colflesh’s issuance of the award on July 22, 2019, but this is simply not true. Specifically, let’s examine Exhibit 4. This Exhibit comprises the “Bucks County Court of Common Pleas Court Summary.” Within this summary is the following information: the prior arrest, dated January 7, 2017, the Bench Warrant Hearing, December 4, 2018. Most importantly, this summary

delineates the specific description of charges and the disposition: “Simple Assault (nolo contendere; Probation: 24 months; Possession of Controlled Substance (nolle prossed); Use/Possession of Drug Paraphernalia (nolle prossed); Harassment, Subject to Physical Contact (nolle prossed).” All of these charges were known prior to the arbitration hearing of Arbitrator Colflesh on May 13, 2019. Moreover, this information contained in this Exhibit was known to the Board prior to the certification of the Initial Charges on March 18, 2019.

Fourth, although the Board argues that the underlying causes of the two (2) arrests were not known nor analyzed at the adjudication, this is again incorrect. In the transcript between the parties on May 13, 2019, the Respondent’s attorney at page 97 says the following in relationship to the underlying causes of the arrests:

You’ve known it [this information] before 2019 before the charges were filed because it was all on the docket sheet. They [the Board] could have written a tenure charge that said we charge you with unbecoming conduct because she committed an assault .... They could have put all of that in a set of charges. It wasn’t done. We are not here on that.

Thereafter, Arbitrator Colflesh responded as follows:

I think Counsel [Respondent’s attorney] is right. ...

On page 98 in the transcript on May 13, 2019, Arbitrator Colflesh followed with this remark, addressing the opposing counsel:

But you did know because you did an investigation, you determined that in fact she [Respondent Maria] had been arrested and you had the dockets, you had Exhibit 5 at the time you filed the charges. It’s attached to the charges.



Subsequent to this discussion in the transcript, this arbitrator ruled on the sole issue of: whether or not Respondent Maria engaged in conduct unbecoming by failing to report arrests and by her insubordinate behavior. Stated differently, he did not decide on the underlying substantive charges of: assault nor use or possession of drugs, the charges in the docket because those issues were not before him.

Fifth, the Respondent rightly notes that an arbitrator must respond solely to the issue requested. One cannot modify nor expand the issue (see Bound Brook Board of Education v. Ciripompa 228 NJ 4 (2017)). Thus, Arbitrator Colflesh correctly responded to this narrow issue, as delineated in the charges before him only.

Sixth, based on the foregoing, the Entire Controversy Doctrine is applicable under these circumstances. These underlying substantive issues based upon both arrests were known prior to the actual arbitration hearing, yet also analyzed and disallowed at the hearing, as noted. This doctrine precludes another hearing or an adjudication involving the same or related issues.

As to other issues that arose outside of these issues later discovered in the September and October 2019 interviews with Respondent Maria, not covered by this doctrine, that subsequent information could be the subject of future charges. Arbitrator Colflesh specifically addressed that option would be available to the Board in his caveat, mentioned in the Statement of Facts by this Arbitrator.

## **RULING FOR THE MOTION TO DISMISS**

This Motion to Dismiss is hereby granted for the reasons stated herein. Accordingly, the Entire Controversy Doctrine is applicable to these Amended Charges pursuant to NJSA 18A: 6-10 which must be dismissed. That is, the Board knew before the Initial Charges were brought against Respondent Maria by way of the investigation the underlying substantive conduct connected to her arrests, before there was the subsequent arbitration, as noted by the transcript, dated May 13, 2019, and docket summary (December 4, 2018) attached to the Initial Charges. All subsequent, new information acquired from the September-October 2019 interviews may be brought by the Board, subject to their discretion, not covered by the Entire Controversy Doctrine.

## **AFFIRMATION**

I, Dr. Andrée McKissick, do hereby affirm that I am the individual described in and who executed this instrument, which is my Opinion and Award.

**DATE OF AWARD: April 18, 2020**

  
\_\_\_\_\_  
**ARBITRATOR**