

PURSUANT TO REFERRAL BY THE COMMISSIONER OF EDUCATION
STATE OF NEW JERSEY
BEFORE: CAROL F. LASKIN, ESQUIRE
ARBITRATOR

IN THE MATTER OF:

THE TENURE HEARING OF DEARDRA THOMPSON :
: DEPARTMENT OF CORRECTIONS, AC :
WAGNER YOUTH CORRECTIONAL FACILITY : AGENCY DOCKET NO. 19-1/14
: :
: OPINION AND AWARD

Appearances:

**On behalf of Department of Correction
AC Wagner Youth Correctional Facility**

John J. Hoffman, Acting Attorney General of New Jersey
Andrew J. Sarrol, Deputy Attorney General

On behalf of Deardra Thompson

Alan M. Compagnon, Esquire
Weissman & Mintz, LLC

BACKGROUND INFORMATION AND TENURE CHARGES

Deardra Thompson ("Respondent" or "Thompson") was hired as an Art teacher by the Department of Corrections ("DOC" or "Department") in October 2006. Prior thereto she was a member of the teaching staff in Burlington City, New Jersey. The DOC assigned Ms. Thompson to work at Garden State Youth Correctional Facility ("Garden State"). Therein, Ms. Thompson developed a respected and successful Art program. In 2010, she was awarded Teacher of the Year by the New Jersey Correctional Education

Association. (D-42; R-10)¹

The State Facilities Education Act ("SFEA") requires inmates less than 21 years old to attend classes to assist in their obtainment of a high school diploma. To earn the diploma, inmates are required to complete five credits in Fine Arts.² Every 24 hours of classroom time is equivalent to one credit. At Garden State, Ms. Thompson taught art classes to adult inmates in the morning and the SFEA students in the afternoon.

In or about February 2013, the DOC instituted an art program at the AC Wagner Youth Correctional Facility ("Wagner"). Garden State and Wagner house males between the ages of 16 and 31 years old. These facilities are located in close proximity to each other.

In addition to her duties at Garden State, Ms. Thompson was directed to work Tuesday and Thursday afternoons at Wagner. Ms. Thompson's determination not to report for her afternoon classes at Wagner in September 2013 is the subject of the tenure charges referred to the undersigned on March 24, 2014 by M. Kathleen Duncan, Director of the Bureau of Controversies and Disputes, pursuant to *N.J.S.A. 18A:6-16* as amended by the *Teacher Effectiveness and Accountability for the Children of New Jersey Act ("TEACHNJ") P.L. 2112, c.26*.

¹Exhibits shall be referenced as follows: D-Department of Corrections and R-Respondent, Deandra Thompson.

²Music and Art fulfill this requirement.

REFERRED TENURE CHARGES

Charge 1: 30 day Charges

N.J.A.C. 4A:2-2.3(a)2. Insubordination, 6. Conduct unbecoming a public employee, 7. Neglect of duty, 12. Other sufficient cause.

HRB 84-17 AS AMENDED, (C-9) Insubordination: Intentional disobedience or refusal to accept order, assaulting or resisting authority, disrespect or use of insulting or abusive language to supervisor. (C-11) Conduct unbecoming an employee. (E-1) Violation of a rule, regulation, policy, procedure, order or administrative decision.

30. day Evidence

On 9-4-13 you entered your supervisors office, Ms. Troiani and stated to her that you refused to report to AC Wagner to teach a scheduled ART class that day. You were advised by your supervisor that you were being insubordinate to which she responded to proceed with any actions as needed. On 9-10-13 you were again asked to report to AC Wagner to teach a class which you responded that you would not be returning there. At this point your insubordination has led to you being neglectful of your duties at AC Wager. Further, this type of conduct can not be tolerable by the Department.

Charge 2: Removal Charges

N.J.A.C. 4A:2-2.3(a)2. Insubordination, 6. Conduct unbecoming a public employee, 7. Neglect of duty, 12. Other sufficient cause.

HRB 84-17 AS AMENDED, (C-9) Insubordination: Intentional disobedience or refusal to accept order, assaulting or resisting authority, disrespect or use of insulting or abusive language to supervisor. (C-11) Conduct unbecoming an employee. (E-1) Violation of a rule, regulation, policy, procedure, order or administrative decision.

Removal Evidence

On 9-12-13 and 9-17-13 you again refused to teach your scheduled classes AC Wagner Youth Correctional Facility. During a meeting with your supervisors on 9-16-13 you advised them that you would not be reporting to AC Wagner. You have received a previous insubordination charge for refusing to teach your classes at AC Wagner and yet your behavior has not changed. This type of conduct, insubordination and neglect of duty can not be tolerated by the Department.

PROCEDURAL HISTORY

The DOC's attempt in September 2013 to transmit tenure charges to the Department of Education ("DOE") was faulty. While Ms. Thompson was suspended without pay from her position as a Teacher 1-Art, on September 20, 2013, (D-50), the instant charges were not deemed "sufficient, if true to warrant dismissal or reduction in salary" until March 24, 2014. The following is the chronological history:

By Preliminary Notice of Disciplinary Action dated September 10, 2013, the DOC notified Respondent Deardra Thompson she would be suspended for 30 days. On September 11, 2013, the DOC transmitted these tenure charges to the Commissioner of the DOE. (R-1) The DOE sent a notice to both parties on September 17, 2013, notifying the charges would not move forward until proof of service on Ms. Thompson was filed with the DOE. Thereafter, Ms. Thompson had 15 days to file her response. (See D-44). The DOE assigned the matter Docket No. 226-9/13.

By Preliminary Notice of Disciplinary Action dated September 19, 2013, the DOC notified Ms. Thompson she would be suspended and removed. (D-43, p.2) By letter dated September 19, 2013, CWA Local 1040, Ms. Thompson's collective bargaining representative, notified the Office of Employee Relations ("OER") it was appealing the above disciplinary actions. (D-43, p.7) By undated notice, Ms. Thompson was informed a "pre-termination hearing" was scheduled for September 20, 2013. (D-43, p.6) Ms. Thompson

responded to both tenure charges, on September 24, 2013, stating "I felt unsafe in the area, as there were health and safety issues that I had made the administrator aware of.

Administration did not address said concerns." (D-45)

By letter dated September 24, 2013, Jecrois Jean-Baptiste, DOC Director of Educational Services, forwarded the tenure removal charges to the DOE. (D-43). By letter dated October 2, 2013, Director Duncan notified Ms. Thompson her September 26, 2013 answer to the charges had been received but was deficient for failure to perfect service on the DOC. (D-46)

By letter dated October 3, 2013, DOC Employee Relations Coordinator Jason Strapp notified Ms. Thompson that the DOC "is intending to file tenure charges for 30 working days and Removal with the Commissioner of Education against you for Insubordination as defined in Title 18A 6-10....Upon receipt by the Commissioner of Education, you will be suspended without pay for a period of 120 days or until the matter is resolved." (R-2)

By letter dated October 16, 2013, Respondent's attorney Jason Jones ("Jones") notified Director Duncan his belief the DOC failed to comply with statutory substantive and procedural requirements for filing tenure charges against an employee. Jones, on behalf of Ms. Thompson, requested the Commissioner find the charges insufficient. (R-3) By letter dated October 30, 2013, Director Jean-Baptiste notified Ms. Thompson the DOC intended to re-file the tenure charges seeking a 30-day suspension with the

Commissioner. (D-47).

By letter dated November 6, 2013, DAG Sarrol submitted DOC's response to Jones' October 16, 2013 letter. The DOC suggested Ms. Thompson's motion to dismiss the tenure charges be denied. (R-4). By letter dated November 12, 2013, Jones submitted a reply to Director Duncan on behalf of Ms. Thompson reiterating the deficiencies in the DOC's tenure charges and urging the Commissioner to dismiss the charges. (R-5)

By letter dated November 15, 2013, Jones notified Director Jean-Baptiste the "complete packet" of documents supporting the tenure charges referenced in his October 30, 2013 letter were not included in his correspondence to Ms. Thompson.

On December 4, 2013, Commissioner Christopher D. Cerf granted Respondent's Motion to Dismiss the tenure charges for failure to comply with numerous statutory provisions. (D-48) The Commissioner notified the DOC of its right to appeal.

However, the next day, by letter, Director Jean-Baptiste submitted new tenure charges to the DOC. (D-49) Unfortunately, the Director's Certificate of Determination was not included. The Agency Dkt. No. was changed from 226-9/13 to Dkt. No. 19-1/14.

Director Duncan notified the parties by letter dated February 24, 2014 that the new tenure charges were not opened until January 27, 2014; the date her office received the certificate of determination from the DOC. (R-9) Within the certificate, Director Jean-Baptiste declared, "the employee has

been suspended without pay since 9/20/13." (D-50) Duncan directed Respondent to answer the newly-filed tenure charges within 15 calendar days from receipt of her letter. Respondent filed a timely answer. Thereafter, On March 24, 2014, Duncan notified the parties the tenure charges were being referred to the undersigned pursuant to N.J.S.A. 18A:6-16. (D-52)

Hearing dates were scheduled for April 15 and 17, 2014. On the first day of hearing, the parties verbally agreed to settle the charges. This Arbitrator sought and received an extension to render the Award after receipt of the Settlement. After several weeks, the parties were unable to execute a Settlement Agreement. Thereafter, this Arbitrator scheduled new dates of hearings.

ISSUE PRESENTED

Has the Department of Corrections met its burden of establishing by the preponderance of the credible evidence the tenure charges against Respondent, Deardra Thompson?

If so, do the tenure charges warrant dismissal or a reduction of salary?

EVIDENTIARY FINDINGS

The hearing in this matter was conducted at the offices of CWA Local 1040 in Trenton, N.J. on May 21 and May 29, 2014. Therein, the parties were zealously represented. Each was given a full opportunity to present testimony, written evidence, cross-examine witnesses and submit post hearing briefs. The DOC proffered Cynthia Troiani, Supervisor of Education at Garden State; Deniece Gray, Assistant Supervisor of Education at Garden

State; Francine Stromberg, Assistant Supervisor of Education at Garden State; Celeste Thatcher, Assistant Supervisor of Education at Wagner; and Gene Maggioncalda, Supervisor of Education at Wagner. Deardra Thompson, present for the entire hearing, testified on her own behalf.

Based upon a thorough review of the record, including all relevant exhibits, arguments and my observations of the demeanor of each witness, I **find** the following as fact:³

At Garden State, Ms. Thompson created a commendable art program. At hearing, Supervisor Troiani expressed her amazement at the quality of work produced by Ms. Thompson's students. "She had a passion," Ms. Troiani exclaimed. In the January 2011 edition of the quarterly newsletter of the New Jersey Department of Corrections "Inside Corrections - Jailhouse Rock," Ms. Thompson was interviewed as the 2010 Teacher of the Year. The article "An Artist Through and Through" identifies Ms. Thompson's passion. Therein, she is quoted,

"A lot of these guys never really thought about art." noted Thompson. 'It wasn't a possibility out in the real world. For them, art is for kids and immature males. It's not macho.

'I get them to start thinking about what art is,' she continued. 'I let them know that art is everything - art is your hair, the clothes you wear, the chair you're sitting in and the table you're leaning on. Somebody designed it. Art has always been around. I try to get them to feel a little bit about art. I tell them, 'I'm not expecting you to fall in love with it, I just want you to understand that maybe someday when a Picasso goes by, you can say, 'I know that

³Controverted evidence will be identified and discussed in the *Position of the Parties* below.

one,' and maybe you'll remember something of what I tried to teach you.' I'm trying to change their stereotypical opinion about what art is and who does art.'

Thompson does not require her students to do projects or try techniques that either she hasn't done herself or is not willing to try. Outside of Garden State, acrylic painting classes, art conventions and museum openings are just a few activities that keep Thompson immersed in the field she so loves."

The first project Ms. Thompson completes with each SFEA student is their representation of their security picture - a self portrait. Thereafter, these pictures were often hung as art work within Garden State.

All the administrators who testified from Garden State and Wagner clearly articulated that in serving an inmate population, security - custody comes first. Anything used in the educational portion of the correction facility is considered contraband and can be utilized as a weapon. As such, inmate movement and materials are controlled by custody. Indeed, in both Garden State and Wagner inmates must go through a sally port controlled by correction officers to reach their respective classrooms. Prior to the release from the educational portion of the facility, the inmates are searched for contraband. Only correction officers can move prisoners.

In September 2012, Ms. Thompson was diagnosed with bladder cancer. Thereafter she began a regiment of treatment from November 2012 through January 2013 - for which she was granted intermittent Family Medical Leave Act ("FMLA"). Unfortunately, the FMLA leave was extended through the date of her eventual

removal from DOC's payroll in September 2013.

In about February 2013, Ms. Troiani informed Respondent the DOC determined to provide an art program at Wagner for SFEA students. Ms. Thompson was initially excited about this opportunity - hoping to set up the program for five afternoons a week to assist the inmates in obtaining their requisite five credits. In February 2013, Gene Maggioncalda was the Supervisor of Education at Wagner. The Assistant Supervisor was Celeste Thatcher. While these administrators had direct responsibility at Wagner, Ms. Thompson as a "shared employee" remained under the direct supervision of the Garden State administrators including her Supervisor, Cynthia Troiani.

At hearing, Supervisor Maggioncalda informed he delegated significant responsibility to Assistant Supervisor Thatcher. Ms. Thatcher commenced employment with the DOC as an Assistant Supervisor in January 2013. Prior thereto, Ms. Thatcher did not work in a correction facility. Rather, she had a long history of significant administrative educational positions including principalships. Indeed, immediately prior to her employment with the DOC as an Assistant Supervisor, Ms. Thatcher was a Director responsible for overseeing 42 preschools and kindergarten for the Newark Charter program.

Supervisor Troiani along with Ms. Thompson in February 2013 met with Ms. Thatcher and Mr. Maggioncalda to discuss instituting the program at Wagner. Therein, the original room selected, in

the normal educational wing, was found to be inappropriate for there was no source of water, necessary to teach art. The former cosmetology room in the vocational wing was selected because it had a sink(s). Nonetheless, it was determined the room needed substantial modifications before it could be utilized as an art class. At hearing, on cross, Ms. Thatcher recalled her immediate concern - a negative "first impression" of Ms. Thompson. Upon leaving the meeting, Ms. Thatcher believed Ms. Thompson turned her back to her while Ms. Thatcher was still speaking.⁴

While the cosmetology room was being prepared for art classes, on March 4, 2013 Ms. Thompson requested supplies, costing approximately \$4000.00. Supervisor Maggioncalda approved the purchase.

Ms. Thompson attempted to set up the program to mimic that which had been successful at Garden State. She found, when seeking assistance from Ms. Thatcher, her requests were denied. When making the same request to Supervisor Maggioncalda, he would acquiesce. For instance, Ms. Thatcher denied Ms. Thompson's request to bring in her own copier needed to complete art projects. Ms. Thompson had a copier at Garden State. Supervisor Maggioncalda approved this request. Ms. Thatcher denied her request for of an adult inmate teaching assistant; Maggioncalda

⁴Both Supervisors' Troiani and Maggioncalda recollections of this introduction meeting differed from that of Assistant Supervisor Thatcher. Both Supervisors testified Respondent was pleasant, seeking only to successfully set up the art program at Wagner.

approved. Consequently, Ms. Thompson viewed Supervisor Maggioncalda as supportive.

In late February, Ms. Thompson learned her cancer treatment was unsuccessful. In March, Ms. Thompson was informed new treatments were necessary to save her bladder. In April, she began treatments once a week, every Thursday, for six weeks at the Cancer Treatment Center in Philadelphia. Ms. Thompson worked around her medical appointments, utilizing intermittent FMLA.

On April 16, 2013 Ms. Thatcher submitted a Memorandum to the attention of two shared employees from Garden State, Deardra Thompson and the German teacher regarding lesson plans as follows:

To: Deardra Thompson, Art
Rita Tournegard, German

From: Celeste Thatcher, Assistant Supervisor of Education

Date: April 16, 2013

Re: Lesson Plan(ning)

As per our Director, all teachers are to submit lesson plans, and there should be "whole group instruction" 2x's per week. Since you teach 1-2 x's per week, you are required to submit:

Ms. Thompson: 2 whole group lesson plans per week
Ms. Tournegard: 1 whole group lesson plan per week

Lesson plans are due, to me, before class, for review and signature, and returned before class begins. Attached are:
Sample template(s)
Criteria suggestions

Should you have any questions or concerns, please feel free to see me. Thanking you in advance for all you do for our students. (Emphasis supplied)

c: E. Maggioncalda, Supervisor
C. Troiani, Supervisor (D-15)

On April 23, 2013 in the main education office, Ms. Thompson requested to speak with Ms. Thatcher regarding lesson plan concerns, D-15. Ms. Thompson indicated that without text books, supplies and the continuous roster changes of students, she was unable to complete the lesson plans as requested. Ms. Thatcher explained the DOC's position.

Ms. Thatcher considered the communication and Ms. Thompson's behavior on April 23, 2013 as warranting a "letter of counseling." The letter, was issued on May 9, 2013 in the presence of Ms. Thatcher, Mr. Maggioncalda and CWA President J. McConnell as follows:

To: Deardra Thompson, Education, Teacher
From: Celeste Thatcher, Asst. Supervisor, Education
Date: May 9, 2013
Subject: Letter of Counseling

Date of Counseling: Tuesday, May 7, 2013

Time: 12:20-12:55 PM

Others Present: E. Maggioncalda, Supr., Educ. & J. McConnell, Pres. CWA

Discussion:

I requested Ms. Thompson to come into my office. I explained that I was doing a "Letter of Counseling" **regarding her abusive, dismissive, disrespectful and rude behavior toward a supervisor.**

Unfortunately, during the entire "Letter of Counseling" procedures Ms. Thompson sidetracked to other issues, i.e. grading rubric, Art Room conditions, student add/ drops, supplies, cabinets etc. instead of dealing with her behavior. Mr. Maggioncalda addressed all Ms. Thompson's issues. During the entire meeting, Ms. Thompson did not provide a rationale, or take ownership of her behavior.

Impact of your behavior:

Letter of Counseling with details of our conversation for your

review before it goes into your Personnel file.

Schedule "Anger Management" training if/when available.

Should there be a repeat of this type of behavior, I will take the next step for discipline.

Please note:

You have the right to submit a written response to the Letter of Counseling (by 5/15/13) that will be attached only to the copy of the Letter of Counseling.

This Letter of Counseling should not be circulated among your peers and will not be circulated through the chain of command.

C: Personnel File" (D-22, emphasis supplied)

Upon conclusion of the counseling meeting, CWA President J. McConnell, based upon his perception of Ms. Thatcher's treatment of Ms. Thompson, directed her, "never to consent to meet with Ms. Thatcher without a representative or witness."

On May 14, 2013 while at the sign in area of the education office, Ms. Thompson was summoned by Ms. Thatcher.⁵ Ms. Thompson testified that when Ms. Thatcher called out to her from her office, there were correctional officers, staff and inmates in the area. Mindful of the advice of her Union representative, Ms. Thompson told Ms. Thatcher she had no problem meeting with her as long as there was a Union representative or witness present. Ms. Thatcher claimed that she never raised her voice at any time. Ms. Thompson testified Ms. Thatcher's voice was raised.

At hearing, Ms. Thatcher revealed she wrote many memoranda regarding Deardra Thompson - more than 100 - between February 2013

⁵ Ms. Thatcher testified her office desk was a mere 3 feet from the sign-in/mailbox area. Ms. Thompson indicated Ms. Thatcher's office was probably fifteen feet away.

and September 2013. On May 16, 2013, she authored a memorandum "To Whom It May Concern" which was not provided to anyone at DOC or to the Respondent before the instant hearing. Ms. Thatcher informed the document is her representation of Ms. Thompson's conduct:

To: To Whom It May Concern
From: Celeste Thatcher, Assistant Supervisor of Education
Date: May 16, 2013
Re: Ms. Deardra Thompson's Unacceptable Behavior

Day: Tuesday, May 15, 2013
Time: 12:30 pm **Left:** ACWYCF 12:35 pm
Issue: Needed to Speak w/Ms. Thompson
Subject: Custody Issue(s), Paint, Equipment, Pallets, etc.
Schedule: Tues. & Thurs. PM
Attached: Time Sheet

Ms. Thompson entered the main education office and went directly to the sign-in/mail-box area. I mentioned to Ms. Thompson from my office. I needed to speak with her. Ms. Thompson, with her back to me said, "I'm not speaking to you without a Union Rep". I left my office and stated, "I understand but, I still need to talk to you" She left the office and started walking to her Classroom. While standing at the Vocational Door entrance, I stood next to Ms. Thompson "Are you refusing to speak with me?" she stated I not speaking to you without my Union Rep, and I'm not taking this and I'm going home". I asked her very directly are you refusing to teach your class? No response. As Ms. Thompson started walking away, I told her that if she was not going to teach she had to return to Garden State. I informed Ms. Stromberg, what had transpired regarding Ms. Thompson's refusal to teach her class and that she was on her way back to Garden State.

Issues:

1. I can understand Ms. Thompson's reluctance, but at no time was her "Letter of Counseling" mentioned or was there any threat.
2. Vocational "Housekeeping" needed to be addressed:
 - a. Custody: issue with the paint brushes, paints etc.;
 - b. Purpose for the gray cart in her room;
 - c. Moving equipment 2-6 pallets were in the hall;

d. Paint, drilling, hammering for the new tool crib.

Personal:

1. Ms. Thompson has been a member of the Wagner educational staff for several months; unfortunately, her students received no credit(s) for this past semester; due to her poor attendance and other superfluous issues why she could not teach (classroom, supplies, etc.)

2. I find Ms. Thompson's behavior consistently abusive, dismissive, disrespectful and rude toward her Supervisor.

(D-25, emphasis supplied)

Supervisor Troiani of Garden State directed Ms. Thompson to provide a statement as to what occurred at Wagner between herself and Supervisor Thatcher. Ms. Thompson's representation distinctly differs from Ms. Thatcher's. Garden State received Ms. Thompson's response on May 17, 2013 as follows:

"May 14, 2013
Cynthia Troiani,
Supervisor of Education
G.S.C.F.
May 14, 2013

On May 14th about 12:30 pm I entered A C Wagner to perform my teaching duties, when assistant supervisor Thatcher called out to me "Miss Thompson I want to see you in my office now" She did this in front of inmates, officers, and staff members. I knew from our prior encounter on May 7th when she asked me into her office and she serviced me with a "Letter of counsel", that I would most likely need to have a third party in that meeting. So I stated that I had no problem meeting with her as long as I had a union rep present (as I was advised by Jim McConnell our branch president). Mrs. Thatcher said that no one was available and that I would meet with her right now without a third party. I continued into the education office to sign in and go to my class.

Assistant supervisor Thatcher followed me yelling out loud that I would not be allowed my rep and that I had to enter her office right now. I asked again to be provided with a rep or be allowed to go to my class. She followed me out of the office yelling for me to come back here, now, again she

did this in front of a hallway filled with inmates, officers, and staff.

I continued to the vocational area, the officer on duty opened the door to the "sally port". She followed me, telling the officer on duty not to open the next door, which lead to my classroom area. I feared that with us being in that area alone she might take the opportunity create another situation to write me up again, which would further her case for disciplinary action against me, so I asked the officer to let me out. Thatcher stated that if I was not going to meet with her she was cancelling my class. When the officer to open the door, I exited the area again with Mrs. Thatcher with yelling behind me, that I could not go home and, that I had to return to Garden State, and she was going to call Cindy.

I went to the educational office and signed out. I asked if Gene or Jim was in the building, I was told Gene was possibility, but Jim was not.

I exited the building and returned to Garden State. I entered just as inmate movement had started so I went to Rev. Atkins' office to seek spiritual guidance and to try to calm down. We talked about what had taken place and ways to handle "stress filled" situations. When inmate movement stopped I made my way to yard school looking for Mrs. Stromberg the only supervisor on duty. I was told that she was in supervisor's office upstairs. I went to yard school to call then I went to my classroom to wait.

Since I was hired to teach visual arts to our S.F.E.A. population at Garden State I feel it is your responsibility to see to it that I am not forced to endure what I feel is a "Hostile Working Environment". I am also asking that I will be provided the same work area, materials and time as my coworkers in order to perform that job.

As you are fully aware I have been currently working under FMLA status due to my health condition and this environment is very counterproductive to my healing process, as per my doctor's advice.

Please respond in written to this matter at your earliest convenience.

Deardra D. Thompson

C: J. McConnell CWA branch President
E. Maggioncalda Supervisor of Education A C Wagner"

(D-27, emphasis supplied)

As a result of this incident, Ms. Thompson received a three-

day suspension.⁶

At the conclusion of the second cancer treatments, Ms. Thompson's physician determined that in addition to her diagnosis, she now suffered with a peptic ulcer and significant weight loss. Ms. Thompson was placed on short term disability between June 17, 2013 and August 18, 2013, returning to work on August 19, 2013.

August - September 2013

In the Spring and Summer of 2013, Supervisor Maggioncalda increasingly granted Assistant Supervisor Thatcher additional responsibilities. Prior to Ms. Thompson's return to the facility on August 19, 2013, Ms. Thatcher requested her supervisor issue a memorandum to Ms. Thompson upon her return. Complying with this request, on August 20, 2013 upon returning to Wagner, Ms. Thompson was presented with this memorandum "As Noted":

"INTEROFFICE COMMUNICATION

TO: Deardra Thompson, Teacher 1
FROM: Gene Maggioncalda, Supervisor of Education
DATE: 8/20/2013
SUBJECT: As Noted

You are directed to submit one whole group lesson plan per week to Ms. Thatcher effective August 26, 2013. Please refer to the attached lesson plan format. Please see me if you have any questions.

Also, you are directed to submit a grading rubric to me no later than August 29, 2013.

Also, you are directed to take an accurate inventory of all art supplies in your assigned room and submit it to me no

⁶The suspension was not entered into evidence. The record did not reveal any further information other than the fact the suspension was not served.

later than September 6, 2013.

Please be reminded that your attendance record must be kept current and available in the institution at all times.

C: Cynthia Troiani, Supervisor of Education - GSYCF
Celeste Thatcher, Assistant Supervisor of Education - WYCF

(D-32)

On August 27, 2013 Ms. Thompson complied with Supervisor Maggioncalda's directions "as noted." Therein, she also requested receipt of students' work books, as "they were always locked" and the "credit evaluation and identification tag pictures" for certain students. (R-12) Ms. Thompson used the identification tag pictures for the self portraits. Credit evaluation of each student was in essence their transcript from which Ms. Thompson could ascertain the classes the inmates had taken including the number of credits needed to complete their fine art requirement.

On September 3, 2013 acknowledging receipt of his requested documents, Supervisor Maggioncalda articulated, "I decided not to provide credit evaluations nor pictures." (R-12) To Ms. Thompson this comment indicated her program was "shut down" at Garden State - without understanding her students nor having materials to produce her signature Garden State projects. Moreover, Ms. Thompson viewed Supervisor Maggioncalda's communication as his intent to no longer "have her back" - no longer protect her or overrule Assistant Supervisor Thatcher's denials and assistance.

On September 4, 2013 and September 10, 2013 Ms. Troiani informed management at Garden State she would not return to Wagner

to teach her afternoon class. On September 10, 2013 Supervisor Troiani seeking disciplinary recommendation advice from Jason Strapp and DAG Asher submitted the following:

"From: Cynthia Troiani
To: Asher, Kathleen; Green, Kenneth; Hoffman, Nancy; Strapp, Jason
Date: 9/10/2013 2:27 PM
Subject: Disciplinary Recommendation Advice Requests - GSCF - Ms. Thompson
Additional details include the following:

On 9/4/2013, at approximately 12:30 Ms. Deardra Thompson, Teacher 1, came to my office to inform me that she was refusing to report to ACWF to teach the ART class as assigned. At 12:45 on 9/4, during the meeting held with me, Ms. Schragler (union rep), she again stated she refused to report to Wagner. When I asked why, she stated there were several reasons. When asked if she addressed these to the staff at Wagner, she stated no. she was informed that she was insubordinate. Ms. Thompson informed me and the union representative that she understood and to proceed with any actions as needed.

When I asked the ACWF Education supervisory staff if Ms. Thompson ever brought her concerns to them, they stated she did not.

She is scheduled to teach classes at ACWF every Tuesday and Thursday afternoon. On Tuesday, 9/10, when asked again to report to Wagner, she stated she is not returning. At this time, she is also negligent in completing assigned duties for her assignment at ACWF."

(D-36)

On September 16, 2013 Supervisor Troiani conducted a meeting with Ms. Thompson and her Union representative at Garden State. The recollection of the meeting was forwarded to DOC employee relations follows:

"GARDEN STATE CORRECTIONAL FACILITY

To: Mr. Jason Strapp, Employee Relations Coordinator
From: Cynthia Troiani, Supervisor of Education
Re: Deardra Thompson, Teacher 1, GSCF
Date: 9/16/2013

The following was discussed between Ms. Thompson, Ms. Schragle, (union rep), and me on Monday, September 16, to address her refusal to report to ACWF per schedule, on Tuesday and Wednesday afternoons.

I opened the meeting with a review of her current situation: 1) One insubordination charge pending scheduling on 9/30 and 2) A thirty (30) day suspension charge received on 9/13 for insubordination on 9/12. I informed Ms. Thompson that she is scheduled to report on Tuesday, 9/17 to Albert C. Wagner.

When asked why she is refusing, she responded as follows:

- 1) Safety concerns are not met
- 2) Her classroom environment is not secured
- 3) She has not received support from the administrative staff to address her needs and she does get conflicting information from other staff.
- 4) She felt frightened upon observing a conversation recent between a student and officer

When asked if she has addressed these issues previously, she responded:

- 1) Supervisory staff have given her memos in writing of expectations and have provided a training on techniques for group lessons.
- 2) What was previously discussed is not longer allowable, ie., 5 day work schedule, credit evaluations, etc.
- 3) She has not addressed these concerns to ACWF staff since her return to Wagner in August.
- 4) I informed her that I did not have knowledge at this time if changes were made; however, cannot guarantee that they were completed at this time.

I then informed Ms. Thompson that despite her concerns, she is to still report to ACWF. I also emphasized that the thirty (30) day suspension charge is a tenure charge, and that a second incident will lead to possible termination.

At the conclusion of the meeting, when informed she is to report on Tuesday, 9/17, Ms. Thompson stated that she will not report to Wagner tomorrow since she does not know if anything has been changed to address her concerns.

I also instructed her to write the account of what occurred on 9/12 and also of today's meeting.

Please advise of further concerns."

(D-41)

Ms. Thompson was suspended without pay by the DOC on September 20, 2013.

Safety Concerns - Admitted Distinctions Between Teaching Facility for Respondent at Garden State and Wagner

At Garden State, Respondent's art room was well established - located in the educational wing. Much testimony was graciously provided by Supervisor Troiani and Assistant Supervisor Gray and Stromberg regarding the facility. Supervisor Maggioncalda, acknowledged during his testimony the stark differences in safety protections between Ms. Thompson's work environment at both correctional institutions. Supervisor Maggioncalda admitted that in the vocational wing at Wagner, Ms. Thompson was often the only female teacher and, on many occasions, the only teacher in the vocational wing. He confirmed the following distinctions between Wagner and Garden State: 1) there is no panic button in the former cosmetology room; 2) there are no cameras in the hallway outside the former cosmetology room; 3) there was no red phone in the hallway outside the cosmetology room; 4) insufficient windows in the cosmetology classroom - cannot see inside from the hallway; and 5) in order to use the bathroom, Ms. Thompson had to pass by the inmate bathroom.

Moreover, Supervisor Maggioncalda disclosed Ms. Thompson's continual requests for a lock on her desk drawers and her concern about the location/ distance from her room of Correction Officer Hollendon. While he acknowledged Ms. Thompson's concern about this correction officer's lack of attention, Supervisor

Maggioncalda determined it was best not to confront Custody and did not communicate with the administrator at Wagner. Likewise, he did nothing other than request maintenance to install a lock on Ms. Thompson's desk. He did not refer maintenance's lack of attention up to the Administrator.

Supervisor Maggioncalda determined to cease being a Supervisor; he transferred in late January 2014 to a women's facility, as a teacher. Comparing the facilities, Supervisor Maggioncalda expressed that unlike Wagner where "the men were aggressive and threatened him physically" the women inmates do not present such a threat. Prior to his transfer, Supervisor Maggioncalda terminated the art program at Wagner.⁷

POSITION OF THE PARTIES

At hearing and through post hearing submissions, the parties presented comprehensive arguments in support of their respective positions. The essence of each is as follows:

Department of Corrections

The Department maintains it has established by a preponderance of the credible evidence the truth of both the thirty - day charge and removal charge. In both instances, the DOC contends Ms. Thompson's behavior in refusing to teach, established pursuant to *N.J.A.C. 4A:2.2.3 General causes*, that Respondent was insubordinate, engaged in conduct unbecoming a

⁷Subsequent to Ms. Thompson's suspension, the DOC removed all SFEA inmates from Wagner; these prisoners along with the SFEA program are now housed at Garden State.

public employee, was neglectful of her duty and committed other sufficient cause to support the discipline imposed. Particularly citing Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998), DOC avers the conduct complained of offended publicly accepted standards of decency - and adversely affecting the moral and efficiency of a government agency. Here, the Department claims, "none of Thompson's supervisors were aware of her medical condition" and as evidenced by her ability to teach at Garden State, her diagnosis and treatment had no impact on her refusal to teach at Wagner in September, 2013.

DOC maintains Ms. Thompson was issued progressive discipline from a three-day suspension for the May 2013 incident with Assistant Supervisor Thatcher, a 30-day suspension for refusing to teach on September 4 and September 10, 2013 and finally removal for failing to teach on September 12 and 17, 2013. With respect to credibility, the DOC contends Ms. Thompson's responses to why she refused "made little sense." Counsel explained,

"The Department does not have any rule, regulation, policy or procedure that permits teachers to refuse to teach at particular facilities. Although Thompson received a Teacher of the Year award in 2010, it does not excuse her refusal to teach in September 2013. Teachers for the Department are assigned a facility and may later be transferred to other facilities. As a result of Thompson's failure to teach her assigned art class at Wagner, her students had greater difficulty obtaining credits necessary for graduation. The essential function and duty of her position was to teach art class at her assigned facilities, but she refused to do so. See Grossman, supra, 127 N.J. Super. at 28-29 (App. Div. 1974). It makes little sense for the Department to continue to employ an art teacher who

refuses to teach at a facility that requires one. For the foregoing reasons, the Department has substantiated the tenure charges against Thompson by a preponderance of the evidence." (Brief at pps 8to9)

While there is no dispute that Director Jean-Baptiste filed a Certificate of Determination with the Commissioner on January 17, 2014 confirming Ms. Thompson had been suspended without pay since September 20, 2013, the Department of Corrections suggests "equities in this matter should be considered." DOC requests this Arbitrator determine that neither back pay nor reimbursement for COBRA payments is appropriate. Counsel argues,

"Thompson's conduct in refusing to teach her assigned classes rose to an egregious level. At the time, Wagner was in need of an art teacher and Thompson's actions had an impact on students in need of art credits. The Department also spent in excess of four thousand dollars for Thompson's art supplies, which went unused. Thompson should be not awarded a windfall for refusing to perform the essential functions of her job." (Brief at p. 11)

Accordingly, the Department requests these charges be sustained and Ms. Thompson removed without the benefit of back pay, or any contractual and statutory entitlements.

Respondent Deardra Thompson

Respondent recognizes the DOC had authority to direct her to teach class at Wagner. Counsel argues, however,

"That general right must be tempered by all the circumstances present in the instant case. While normally an employee cannot resort to self-help in the face of an otherwise reasonable rule or directive, management has the corresponding duty to provide a reasonably safe and healthy work environment. Another way of stating this general rule is that an exception to the "work now, grieve later" doctrine exists where obedience to orders would expose employees to a health or safety hazard. See *Elkouri & Elkouri*, p. 263 (BNA, 6th Ed.). (Brief at 17)

Ms. Thompson maintains she had an objective reasonable belief that her work environment at Wagner was unsafe; her subjective fears for her safety were well founded,

"There is an adage in the law: you take your victim as they are. Here, Ms. Thompson was the victim of her own medical conditions and of an uncaring, belligerent and unreasonable supervisor (Thatcher). That in the end Ms. Thompson simply could not endure, despite her love of teaching and her enthusiasm, should not now be held against her."
(Brief at 18)

Accordingly, Respondent seeks an award dismissing the charges with a make whole remedy returning her to employment effective September 20, 2013 and reimbursement for COBRA. If this arbitrator finds cause for removal, Respondent suggests DOC still must be ordered to reinstate Ms. Thompson to the payroll effective January 19, 2014 and with a make whole remedy to the date of this Award.

ANALYSIS

Did the Department of Correction establish by a preponderance of the credible evidence the tenure charges of insubordination, conduct unbecoming a public employee, neglect of duty and/or other just cause against Respondent Deardra Thompson?

If so, do the tenure charges warrant dismissal or a reduction of salary?

Within this record review, one must analyze how Thompson, the 2010 Teacher of the Year, having worked at Garden State Correctional Facility for seven years, entered AC Wagner Youth Correctional Facility in February 2013, working only one or two days a week with a three-month disability absence, was issued

numerous discipline resulting in the DOC's request for her removal in September 2013. Each step, in the progressive discipline imposed, involved Wagner's Assistant Supervisor, Celeste Thatcher.

Garden State Supervisor Cynthia Troiani revealed the DOC strictly applies progressive discipline. Here, the Department determined that as Ms. Thompson was issued a Letter of Counseling on May 9, 2013, D-22, and a three-day suspension based upon an altercation between Ms. Thompson and Assistant Supervisor Thatcher on May 14, 2013, the next step was mandatory - referral of tenure charges for a 30-day suspension and removal.

Thus, while the early Spring 2013 discipline was not the subject of the tenure charges referred, the issuance of the discipline is the pillar upon which the DOC requests removal. Both were instigated by Assistant Supervisor Thatcher, whose testimony was distinctly contrary to Respondent's.

Based upon this record in its entirety, and particularly the demeanor and testimony of Assistant Supervisor Celeste Thatcher, I **find** her representations of Ms. Thompson's conduct not worthy of belief. From the first instance Assistant Supervisor Thatcher met Ms. Thompson, she perceived the Respondent as insubordinate and disrespectful of her supervisory status.⁸ Ms. Thompson did not approve of the original classroom chosen by Thatcher, because it

⁸Ms. Thatcher had not been employed in any Correctional Facility prior to January 2013. Therein, she is the Assistant Supervisor of only the teaching staff; at her prior employment, Ms. Thatcher was the Director of 42 schools, presumably hundreds of subordinates.

had no source of water.⁹ Contrary to the other supervisors present, Assistant Supervisor Thatcher claims Ms. Thompson "turned her back on her." During the letter of counseling meeting, Assistant Supervisor Thatcher determined Ms. Thompson's request for information/supplies to set up her art room as supporting her order for Thompson to schedule "anger management" training, D-22.

Ms. Thatcher's demeanor at hearing also persuaded the undersigned to discredit her representation of her May 14, 2013 encounter with Respondent, D-25. I credit the representations presented in Ms. Thompson's memorandum, D-27, supported by her testimony. Therein, she exclaimed Ms. Thatcher followed her in the hallway, yelling at her in front of inmates, officers, and teaching staff. Continuing to the vocational area, after Respondent entered the sally port, Ms. Thatcher ordered the correctional officer not to open the port into the vocational classroom area.

At hearing, Ms. Thatcher's conduct represented to this Arbitrator her disdain for the process. She reacted with indignation to every question counsel asked on cross. Indeed, Ms. Thatcher was so angry at counsel's introductory inquiries regarding documents she had reviewed in preparation for her testimony, that Ms. Thatcher left the hearing room to calm down.

⁹Had Wagner found a classroom in the educational wing with a sink, Ms. Thompson would not have been assigned to the vocational area -lacking in safety precautions.

This attitude was prevalent in every question counsel asked - she was argumentative and disrespectful. And, while asserting she never raises her voice and did not do so to Ms. Thompson, I noted her voice was raised!

During her months at Wagner, Ms. Thompson did ask for supplies, assistance, and permission, from Assistant Supervisor Thatcher. When assistance was not provided and requests were denied, Ms. Thompson consistently referred her requests to the Supervisor, Gene Maggioncalda. As Ms. Thatcher wrote in her "personal note" on the May 16, 2013 Memorandum to herself, D-25, she found Ms. Thompson's request for an appropriate classroom and supplies "superfluous" and Respondent's overall "behavior consistently abusive, dismissive, disrespectful and rude toward her supervisor." (D-25)

Safety Concerns

This record established Ms. Thompson's safety concerns in September 2013 at Wagner were reasonable and objectively based. Supervisor Maggioncalda confirmed that Ms. Thompson was often alone in the vocational wing with male inmates 18 to 21 years old, whom **he** found to be threatening. In September 2013, Supervisor Maggioncalda was a hefty man with apparent authority; Ms. Thompson was a fragile vulnerable cancer patient.¹⁰

¹⁰With this observation, I am not inferring that Ms. Thompson had perfect behavior toward supervision or was less than persistent in her quest to mimic the Garden State art program at Wagner. Her continuing requests for safety (i.e. desk lock, attention of Correction Officer) supplies and assistance may be viewed as seeking perfection- it should not have been interpreted as disrespectful or abusive. (D-25)

Unlike Garden State, in the vocational education wing at Wagner, Ms. Thompson was not provided with safety precautions such as a panic button, cameras in the hallway, a red phone in the hallway, any phone in her classroom, sufficient windows to her classroom, or an attentive Correction Officer. By September 2013, Supervisor Maggioncalda abrogated his responsibility to the DOC and for Ms. Thompson's safety by refusing to inform custody and administration of her valid concerns.

Referred Tenure Charges

30 Day Suspension and Stipulation of Evidence

Charge 1: 30 day Charges

N.J.A.C. 4A:2-2.3(a)2. Insubordination, 6. Conduct unbecoming a public employee, 7. Neglect of duty, 12. Other sufficient cause.

30 day Evidence

On 9-4-13 you entered your supervisors office, Ms. Troiani and stated to her that you refused to report to AC Wagner to teach a scheduled ART class that day. You were advised by your supervisor that you were being insubordinate to which she responded to proceed with any actions as needed. On 9-10-13 you were again asked to report to AC Wagner to teach a class which you responded that you would not be returning there. At this point your insubordination has led to you being neglectful of your duties at AC Wager. Further, this type of conduct can not be tolerable by the Department.

Upon consideration of this record in its entirety, I **find** the Department of Corrections has established by a preponderance of credible evidence the specifications of *Charge 1*. Ms. Thompson's failure to communicate to Supervisor Troiani her valid safety concerns was insubordinate and evidence of neglect of duty.

Finding Ms. Thompson had valid and reasonable objective

concerns for her safety in the vocational wing at Wagner, did not obviate her obligation to fully communicate these concerns to Ms. Troiani on September 4 or September 10, 2013. This record reveals Respondent, in essence, shut down after receiving Superintendent Maggioncalda's September 3, 2013 comments indicating, in her mind, he would no longer support her at Wagner.¹¹

I *find* Supervisor Troiani supported the art program and was perplexed by Ms. Thompson's failure to report to Wagner after being informed such a failure would be considered by the DOC as evidence of insubordination and neglect of duty.

Charge 2: Removal Charges

N.J.A.C. 4A:2-2.3(a)2. Insubordination, 6. Conduct unbecoming a public employee, 7. Neglect of duty, 12. Other sufficient cause.

Removal Evidence

On 9-12-13 and 9-17-13 you again refused to teach your scheduled classes AC Wagner Youth Correctional Facility. During a meeting with your supervisors on 9-16-13 you advised them that you would not be reporting to AC Wagner. You have received a previous insubordination charge for refusing to teach your classes at AC Wagner and yet your behavior has not changed. This type of conduct, insubordination and neglect of duty can not be tolerated by the Department.

On September 16, 2013, during the disciplinary meeting conducted by Supervisor Troiani and witnessed by Union representation, Ms. Thompson explicitly notified the DOC the basis of her refusal to report to Wagner. According to Ms. Troiani's

¹¹This record disclosed Ms. Thompson's intuition was accurate. At hearing, Supervisor Maggioncaldo revealed his memo to Respondent upon her August 2013 return from disability leave, D-32, was written upon the direction of Ms. Thaxter. And, due to personal health issues he determined to leave administration, delegating most of his responsibilities to Ms. Thaxter.

written communication with Employee Relations Coordinator Jason Strapp, Ms. Thompson identified her reasons,

- "1) Safety concerns are not met
- 2) Her classroom environment is not secured
- 3) She has not received support from the administrative staff to address her needs and she does get conflicting information from other staff.
- 4) She felt frightened upon observing a conversation recent between a student and officer"

Rather than assure Ms. Thompson's safety, Ms. Troiani responded, "I did not have knowledge at this time if changes were made; however I cannot guarantee that they were completed at this time." Ms. Troiani continued, "I then informed Ms. Thompson that despite her concerns, she is to still report to ACWF. I also emphasized that the thirty (30) day suspension charge is a tenure charge, and that a second incident will lead to possible termination." (D-40)

Thus, Ms. Thompson was directed to return to an environment at Wagner where her safety concerns were not met, her classroom environment not secured - an environment Supervisor Maggioncalda found threatening. Accordingly, I **find** the DOC has not met its burden to establish *Charge 2*.

Does Tenure Charge 1 Warrant Dismissal or Reduction of Salary?

Respondent has established by a preponderance of the credible evidence the specifications, as noted, in Charge 1. On September 4 and September 10, 2013, Ms. Thompson's failure to report to AC Wagner to teach her scheduled art class was insubordinate and neglectful of her duty.

In consideration of this record, in its entirety, I **find** the appropriate discipline to be major discipline - a suspension for ten-working days. The Department of Correction's argument seeking discipline outside the scope of *TEACHNJ* is rejected. Suggesting that "equities in this matter should be considered" the DOC contends neither back pay nor reimbursement for Ms. Thompson's COBRA payment is appropriate. The DOC's arguments are not persuasive.

Moreover, counsel's contention the department was not aware of Ms. Thompson's illness is disingenuous. Ms. Thompson was on FMLA leave, at first intermittently. Ms. Thompson was on short term disability leave from June 17 to August 19, 2013. Documents entered by the DOC establish the department and Supervisors Troiani, Maggioncalda and Thatcher were aware of her illness and treatment schedules.

Having failed to file the tenure charges in accordance with statute, the undersigned learned on the first day of hearing, on April 15, 2014, that the DOC had failed to return Respondent Deadra Thompson to pay status since her September 20, 2013 suspension. In this matter, Ms. Thompson having served longer than a ten-working day suspension must be granted a make whole award including reimbursement for COBRA, pension contributions, and in any and all respects, all contractual and statutory entitlements.

It is the undersigned's suggestion the parties meet, as soon as practical, to discuss monies due and potential reinstatement

opportunities. The DOC announced the SFEA program is no longer offered at Wagner; the parties should confer on available appropriate placement.

AWARD

1. The Department of Corrections, AC Wagner Youth Correction Facility met its burden of proving insubordination and neglect of duty identified in the specifications of Charge 1.

2. The Department of Corrections, AC Wagner Youth Correction Facility has not met its burden of proving Charge 2.

3. Respondent Deardra Thompson has been insubordinate and engaged in neglect of duty constituting cause for the imposition of a ten-working day suspension commencing on September 23, 2013.

4. Respondent Deardra Thompson is entitled to a make whole remedy including reinstatement, back pay, reimbursement for COBRA payments, and all other contractual and statutory entitlements.

DATED: 6/30/14

Carol F. Laskin
CAROL F. LASKIN, ESQUIRE

STATE OF NEW JERSEY :

COUNTY OF CAMDEN :

I CERTIFY that on

I, CAROL F. LASKIN, 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: 6/30/14

Kristin M. Flanagan-Kelly
NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

