

In the Matter of the Tenure Hearing of Charles Coleman

Agency Dkt. No. 169-7/14

For the State-Operated School District of the City of Newark, Essex County:

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Arbitrator David L. Gregory

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Arbitrator's Decision, Award, and Order: November 9, 2014

On August 11, 2014, the Department of Education of the State of New Jersey referred this matter to me as Arbitrator. On October 15, 2014, Tenured Teacher Mr. Charles Coleman filed this Motion to Dismiss with Prejudice this entire matter, and the Employer Responds. The Employer seeks Mr. Coleman's dismissal. Meanwhile, blog articles began appearing in mid-October, asserting Teacher Coleman had been targeted for loss of license, via secretive Star Chamber proceedings in contemptuous defiance of, e.g., the TEACHNJ ACT. Teacher Coleman asserts that this sinister endeavor is but the

most recent in a series of unlawful initiatives brought against him by the Employer. Consequently, it is all the more compelling that the Employer timely provide Teacher Coleman with the documents necessary to his defense. When the Employer does not timely--- indeed, does not ever---produce these documents, dismissal with prejudice of this entire matter is, consequently, the only just result.

Teacher Coleman's Motion to Dismiss is a particularly erudite synopsis of the classic legal and equitable principles governing the Motion dynamic, and with which I am in substantial accord.

To her credit, counsel for the Employer candidly acknowledges that several of the documents requested by Teacher Coleman cannot be found by the Employer. Although she asserts that the requested documents are not germane, such unilateral assertions are not the exclusive province of either of the parties; when missing documents are not produced, the authority vested in the Arbitrator is controlling. The Motion and the response thereto are extraordinarily well-presented, especially since several of the core documents being contested may not exist. I have carefully read and studied the Motion and the Reply. I render my Decision, Award, and Order pursuant to law. Felix Frankfurter, Associate Justice of the United States Supreme Court, was the eminent proponent of the pithy axiom that the law is largely the history of procedure. It is indubitable----procedure matters.

Teacher Coleman argues that the Employer was, at the very least, grossly negligent in its functions as custodian of the records. The Employer thus deprives Teacher Coleman of his fundamental due process right and opportunity to defend himself effectively against the charges. Past often is prologue, and the Employer's indifference to Teacher Coleman's due process rights may have very negative ramifications well into the future.

New Jersey has dramatically redesigned and rejuvenated the pertinent law. The process is significantly more transparent and expeditious, making timely and complete discovery all the more imperative. The requested, but unavailable, documents may not only enable Teacher Coleman to prepare his defense----they may be stunningly exculpatory.

In one of the first reported decisions under the structural statutory changes, blatantly exculpatory material was prominently within documents provided during discovery. Neither party in that earlier case seemed to be aware of such materials, which I discovered sua sponte while reading the file.

I summarized the stark contrast internally created solely by the agents of the Employer In the Matter of the Tenure Hearing of Thomas Williams Agency Dkt No. 264-9/12 (December 8, 2012, David L. Gregory, Arbitrator), Dismissing the charges in their entirety, I said in Williams:

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

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

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

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

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

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

With reference to the TEACHNJ “four factors,” I find that “the employee’s evaluation failed to adhere substantially to the evaluation process.” As set forth above, much of the Board’s purported best evidence is internally and irreparably contradictory when it comes to the heart of the work of a teacher---actual classroom instruction. The

most recent annual performance evaluation of June 20, 2012 reflects a supervisory evaluation that is internally and egregiously irreconcilable. The evaluation is much more blatantly internally contradictory than a "mistake of fact." It is, obviously, at least that. I am not reviewing the evaluator's determination as to the "quality of the employee's classroom performance." Rather, I simply note the stunning facial contradiction on the annual performance review, with its blatant contradictory results shattering any norms of process. Charging the Respondent with inefficiency within days of this narrative is the quintessence of arbitrary and capricious action. The facial contradiction of the wondrous narrative regarding Respondent's actual classroom Instruction makes this matter ripe for resolution by motion. In light of the Principal's narrative, there is no dispute on the salient facts---namely, the Respondent is much more than a four out five zeroed unsatisfactory classroom teacher. The Principal's narrative supervisory comments materially affect the outcome of the evaluation; they make it impossible for the Board to fulfill the Board's ultimate burden of demonstrating that the statutory criteria for the tenure charges have been met."Much more, or less, may be at issue in the present matter than was the situation in Williams

Decision, Award, and Order

The present matter is dismissed and Teacher Coleman shall be made whole for all lost compensation and benefits whatsoever. The dismissal shall otherwise be without prejudice

If the Employer subsequently wishes to refile the present charges in whole or in part, the Employer must produce, at a minimum, the following documents---files of prior cases brought against Teacher Coleman; all documents set forth in Mr. Ball's September 26, 2014 email to Ms. Barone and in Mr. Ball's October 23, 2014 inventory letter , but excluding work product and/or attorney client privileged documents.

/* **So Ordered,**



David L. Gregory, Arbitrator

I, David L. Gregory, affirm that I have executed this document as my Decision, Award, and Order on this 9th Day of November, 2014.