



In his Award, the arbitrator concluded that Coughlin's dismissal was inconsistent with M.G.L. c. 71, § 42, and ordered that he be reinstated with full back pay, benefits and interest. However, the arbitrator did not make any findings or draw any conclusions regarding Coughlin's conduct. Rather, the arbitrator seized upon an APS policy which provided that anonymous public complaints were to be disregarded. According to the arbitrator, because the APS was first notified of Coughlin's misconduct by way of an anonymous complaint, it was precluded from using any of Coughlin's improper emails obtained from the APS's own email system as grounds for his discharge. The arbitrator made this ruling despite the fact that APS's emails are public records, APS employees have no right to privacy in their emails and APS has reserved the right to monitor employee emails.

The Award must be vacated under the grounds listed in M.G.L. c. 150C, § 11. M.G.L. c. 71, § 42 allows schools to dismiss teachers for misconduct and requires arbitrators to determine whether that misconduct occurred. In relying on a facially inapplicable policy and creating an exclusionary rule requiring the APS to disregard teacher misconduct contained in emails, which are public records, found on its own public computer system, the arbitrator avoided any assessment of Coughlin's behavior, thereby neglecting his statutory duty and violating § 42.

Moreover, the arbitrator's ruling that the APS's anonymous public complaint policy trumps the well-established legal obligation of an employer to investigate potential sexual harassment by its employees violates clear statutory and regulatory provisions, as well as strong public policy considerations. Indeed, the arbitrator's overarching conclusion that the APS must *ignore* any and all teacher misconduct – no matter how injurious, egregious or unlawful – that it discovers after receipt of an anonymous complaint, is plainly violative of law, public policy and common sense. For these reasons, the Award should be vacated.

## **II. Parties and Venue**

1. The Arlington Public Schools (“APS”) has a business address at 869 Massachusetts Avenue, Arlington, Massachusetts and provides pre-kindergarten through twelfth (12th) grade education to approximately 4,500 students.

2. The Defendant, Charles E. Coughlin, Jr. (“Coughlin”), is a former APS teacher, whose last known address is 38 Mohawk Drive, Tewksbury, Massachusetts.

3. Venue is appropriate in this Court pursuant to M.G.L. c. 150C, § 15.

## **III. General Allegations in Support of Application**

4. Coughlin was an APS teacher with professional teacher status under M.G.L. c. 71, § 42. Coughlin was the APS’s lead technology teacher responsible for teaching his students, among other things, computer ethics.

5. In May 2007, an Arlington computer technician received an anonymous note stating that Coughlin and his supervisor, Principal Stavroula Bouris, were having an inappropriate relationship and that information to validate that relationship could be found in their emails. The computer technician threw the note away and took no action based thereon. See Exhibit A at 25.

6. Shortly after receipt of the note, the computer technician spoke with a co-worker, who confirmed the information stated in the anonymous note, stating that based upon a report from school custodians, there was “something going on” between Coughlin and Bouris. See Exhibit A at 26.

7. In the same time frame, the computer technician overheard three other school employees discussing Coughlin’s and Bouris’s inappropriate conduct at a bowling alley. See Exhibit A at 26.

8. Believing that if she failed to look further into the matter she might be derelict in her job duties, which included investigating emails on the APS's computer system, the computer technician accessed Coughlin's and Bouris's email accounts on that system. See Exhibit A at 26. In this regard, since 1998, Arlington has had a Staff Acceptable Use Policy, which currently provides, inter alia, that:

Users should not expect privacy in the contents of personal files on the district system ... All e-mail is considered public record. The Superintendent of Schools, Assistant Superintendent of Curriculum, Telecommunications Technology Specialist or designee shall have the right to access e-mail....

9. On June 6, 2007, the computer technician delivered to APS's then-Superintendent of Schools Nate Levenson emails between Coughlin and Bouris that she obtained from the APS's email system. See Exhibit A at 26-27.

10. There existed dozens of emails on the APS's email system, dated between October 2006 and June 2007, in which Coughlin (and Bouris) wrote things such as:

- a. October 31, 2006 - "My privates are killing me. Should I be concerned?"
- b. February 12, 2007 - "I can always make space for you my love."
- c. April 16 - "Who doesn't like exotic fruits and seductive orchids? A journey without limits???? Count me in."
- d. April 23 - "Can I still tell you I love you?"
- e. April 26 - "You missed that we would have to time it and see how long it lasts. I try and be discreet once every 100 days. ;-)"
- f. April 26 - "...a vacation day on May 29th. Or a personal day or a mental health day. I...lined up a fun day of not eating dirt. Can I have you from about 8 to ...7:00? Were [sic] jeans and a t and a sweatshirt. Sneakers would be recommended. I may give you hints as we go it you would like."
- g. April 26 - Bouris responds: "The 29th seems fine, but not until 7 p.m...."
- h. April 26 - "...29th could be a meeting night for you and yuo [sic] could slide home a bit later than normal. It would be a pre-BDAY thing. Let me know so I can plan. ...will not be leaving the state."
- i. April 26 - Bouris responds: "Only you would pick it - and honestly I LOVE IT!"
- j. April 26 - "...I left the sweatshirt on her floor after a night of vodka and who knows what ....."
- k. April 27 - "...You make me feel like a high-schooler again..."

- l. April 30 - "...I am sorry for asking questions that bother [you]. I really would like to know everything.....You are still perfect in my eyes."
- m. May 4 - Bouris remarks that she had to stand "on the chair, to get to the table, to get ...counter to move a [ceiling] tile and stick my head in and search....especially with a skirt and heels!" To which Coughlin responds "...I would have held the table for you. I would have loooooooked to see what I could find."
- n. May 4 - Bouris writes: "[Ni]ght to remember"?" Coughlin responds "...was not what I was thinking....But I like where your mind is."
- o. May 4 - "I just want to let you know that I disagree with the woman who was trying to help you at VS [Victoria Secret]. We match today. I think the color or choice is light red. Is it a matching set?" Bouris responds: "I do have a matching set but not today - it would show through, no?"
- p. May 4 - Coughlin: "What does a guy have to do to get a look?" Bouris responds: "mmmm...." Coughlin: "...am not afraid to walk on coals....." Bouris: "...need to walk on coals - 'just ask' as Anna states." Coughlin: "...as as as as as asking. Just the thought has made me stutter....good way before I get in trouble."
- q. May 7 - "Thinking of you."
- r. May 9 - "Hey Babe...To play off that song when I lay next to her I see you. I shut my eyes I see you. I go to bed and I see you. I smile and I see you."
- s. May 10 - "thans [sic] for making my year today...."
- t. May 10 - "thanks for the best arrival to school I have ever had!"
- u. May 14 - "...I have been wanting to leave Mary for longer than I can remember wanting to be with her....If he ever took the kids from you I promise he will wish that his illness takes him before I find him. I told you before there is nothing I wouldn't do for you and your kids....You can not die before George. That would definitely [sic] put a wrinkle in my plans. I do not deal well with disappointment...."
- v. May 17 - "Kookla, I am so glad you are well. I will call you tonight...."
- w. May 18 - "That will leave you more time to let me absorb the fragrance of your being."
- x. May 18 - "Why don't you wait and we can read it together."
- y. May 18 - "I am waiting for kookla ala greek with a splash of chuck."
- z. May 18 - "learned 3 things about you today. did not even have to ask to find out. I really want to shop with you. You are non-meat on Wednesday and Friday, but you will cheat for pizza. Honey on the back is good and less cleanup involved....[T]he iceberg has officially melted and I still want to learn more. I want to learn everything about you, your [fa]mily, and your culture."
- aa. May 18 - "...as smooth as the small of your back???????"
- bb. May 21 - "You had the best smile when you were doing voicemail....Question time: I told you what I wanted, what are 10 things you would want?" Bouris: "I'm thinking...."

- cc. May 22 - "...have now figured out the email. You are softer than you want anyone to know."
- dd. May 23 - "miss you already and you haven't left the lot."
- ee. May 24 - "...I think you look awesome and you make my day. I am working on the letter. Are you up for some 5 speed after Nate?"
- ff. May 24 - Bouris: "After Nate leaves, I'm available until 6:30 - would love to shift some gears or go for a walk." Coughlin: How about both? Bouris: "great idea."
- gg. May 24 - "Is lexington far enough away?" "I want to walk wherever you are comfortable. I was thinking a bit past Minuteman is a historic trail off the beat and path...."
- hh. May 25 - "thanks for the catch. You are quite a catch."
- ii. May 25 - "You always have my undivided attention. To be honest I get jealous when it has to be divided. I spent all last night planning trips in my head...."
- jj. May 28 - "My favorite part."
- kk. May 29 - "Your eyes only"
- ll. May 29 - "Thanks for letting me take pictures of you. I have had fun playing with them."
- mm. May 29 - "we can't go on a boat how about a hike after school gets out...."
- nn. May 30 - "I am thinking of top 3 places for frosting...."
- oo. June 3 - "...could look at this all day."
- pp. June 4 - "...love you too."
- qq. June 5 - "You can have me."
- rr. June 8 - "I hope Monday comes as fast as you do."
- ss. June 10 - "I am thinking me you chair with no arms bliss."
- tt. June 12 - "Hey beautiful want to get naked? Chuck."

11. After reviewing the emails, Superintendent Levenson contacted APS's attorneys, who advised, among other things, that the emails involving romantic/sexual content between a teacher and principal at the same school raised the possibility of sexual harassment and required that the APS conduct an investigation into Coughlin's (and Bouris's) conduct.

12. On June 13, 2007, the APS wrote to Coughlin, attaching copies of the emails, and informed him of the impending investigation into his conduct.

13. In phone calls placed by Coughlin to the APS's investigator on June 13 and 19, 2007, and again in an investigatory meeting on June 26, 2007, Coughlin admitted that he authored the emails at issue. The investigator thus concluded and advised the APS that Coughlin

wrote the romantic/sexual emails and that they provided ample grounds for termination of Coughlin's employment.

14. Furthermore, upon closer examination of the emails at issue, in July 2007, Superintendent Levenson discovered that Coughlin had altered and/or forged an email he had written to Bouris. Exhibit A at 2. In this regard, Superintendent Levenson noticed that one of the emails contained language discouraging Bouris from taking a three week vacation to accompany her husband, who had cancer, to Greece when in fact Superintendent Levenson had already approved Bouris's vacation. Coughlin altered the email in order to make it appear that Bouris had requested and Superintendent Levenson denied her vacation time to go to Greece with her family, which she had complained to Coughlin in other emails that she did not want to do. See Exhibit A at 8-10. More specifically:

a. On-going email communications between Principal Bouris and Coughlin made clear the fact that Bouris did not want to go on a vacation to Greece.

i. In an April 30, 2007 email, the exchange was, inter alia:

Bouris: "...I'm trying desperately to convince him not to go!!!! Not winning this battle today. Bummer!!!!!!!!!!!!!!!!!!!!!!".

Coughlin's response: "...If I got him to Greece can we sneak in some quality time? I bet if you tell him with scheduling and NELMS set-up it would not work...."

ii. In a May 14, 2007 email, the exchange was, inter alia:

Bouris: "I've lost the battle on Greece.....I don't get it, why is he being so stubborn?...I am beyond angry!!!!!! He is not willing to change anything - leave later, come home earlier - he is set on those dates. This is his vacation and forget about anyone else. Forget that he promised that I could go away without him or the kids once he started to feel better...."

Coughlin: "...I have been wanting to leave Mary for longer than I can remember wanting to be with her...If he ever took the kids from you I promise he will wish that his illness takes him before I

find him. I told you before there is nothing I wouldn't do for you and your kids....You can not die before George. That would definitely [sic] put a wrinkle in my plans. I do not deal well with disappointment..."

- b. On May 22, 2007 Superintendent Levenson and Principal Bouris exchanged a three part email (hereinafter referred to as the "email chain") containing: 1) an email from Levenson to Bouris asking a question about a job coach and about computers for Individual Education Plans; 2) a response from Bouris to Levenson to each question, and 3) a response from Levenson to Bouris on each of the two topics.
- c. On May 30 at 9:03 a.m., Principal Bouris forwarded the May 22 email chain between herself and Superintendent Levenson to Coughlin. Coughlin responded by saying "I will work on your letter."
- d. Approximately an hour later at 10:09 a.m., Coughlin sent (without any message) a revised email chain back to Principal Bouris with the following language (ostensibly from Superintendent Levenson) added to part 3 of the email chain: "We will need to speak regarding your vacation. I have never approved a vacation of more than 2 weeks. We need to spend a good deal of time preparing the Ottoson [Middle School] for its 5 year plan. With NELMS and the Walker Group on the horizon it is not a wise decision."
- e. Approximately 11 minutes later at 10:20 a.m., a revised email chain was sent from Bouris's email to Bouris's email which contains not only the language above discouraging the vacations, but adds a request for vacation into Bouris's response to Superintendent Levenson (part 2 of the email chain) as follows: "Nate, on another topic, I am planning to use vacation days during this summer to cover a trip to Greece. I will be out of the country from July 12th - August 8th. I will be leaving on July 11th and will need to leave early from the administrative retreat. I plan to be back at the Ottoson on August 9th."
- f. On June 4, 2007, Principal Bouris requested permission to take a three week vacation from Superintendent Levenson and that request was approved within a couple of hours.

15. Superintendent Levenson concluded that Coughlin's forgery/alteration of an email was an effort to impersonate him for the ultimate purpose of deceiving Bouris's husband into believing that the Superintendent had denied her the ability to go to Greece on vacation. This act undermined Superintendent Levenson's authority, created a misconception about his decision-

making, disseminated false information about the manner in which he was carrying out his responsibilities as superintendent, and created a false public record.

16. At the investigatory meeting regarding the forgery, held on July 23, 2007, Coughlin implied, and his attorney subsequently admitted, that Coughlin altered and/or forged the email. The investigator thus concluded and advised the APS that Coughlin had forged/alterd the Superintendent's email and that the APS had the right to terminate Coughlin on that basis.

17. Based on Coughlin's acknowledged authoring of the sexual/romantic emails and altering/forging the Superintendent's email, on July 26, 2007, Superintendent Levenson issued to Coughlin a notice of intent to dismiss, as required by M.G.L. c. 71, § 42. In the notice, the Superintendent outlined Coughlin's email misconduct and its belief that it constituted conduct unbecoming a teacher and/or other just cause for dismissal. See Exhibit A at 7-12.

18. On August 6, 2009, Superintendent Levenson conducted a pre-termination hearing at which Coughlin (once again) did not dispute any of the charges against him. See Exhibit A at 12.

19. As such, on August 9, 2007, the APS terminated Coughlin under M.G.L. c. 71, § 42 for conduct unbecoming a teacher and for other just cause.

20. Coughlin sought statutory arbitration pursuant to § 42. The case was thereafter arbitrated at hearings conducted on 26 days between January 15, 2008 and July 7, 2009. Coughlin did not testify at the hearing.

21. On or about October 27, 2009, the arbitrator issued his Award, Exhibit A, in which he concluded that Coughlin's dismissal was not consistent with § 42.

22. The arbitrator, however, failed to determine, as required by § 42, whether Coughlin's conduct constituted conduct unbecoming a teacher or other just cause for dismissal. Rather, the arbitrator focused solely on an APS policy providing that anonymous public complaints should be disregarded. Exhibit A. According to the arbitrator, because Coughlin's inappropriate and altered emails were uncovered due to an anonymous complaint, the APS was forbidden from investigating the matter and precluded from considering any content of the emails it retrieved from its public computer system to dismiss Coughlin from his teaching position. Id.

#### **IV. Grounds For Vacating The Award**

23. The APS hereby repeats, realleges, and incorporates herein the allegations contained in paragraphs 1 through 22 of the Complaint.

24. The Award must be vacated because it violates M.G.L. c. 71, § 42 and c. 150C, § 11. Section 42 allows school districts to dismiss tenured teachers for specifically enumerated misconduct and requires an arbitrator to determine whether the teacher in fact engaged in that misconduct. In failing to assess Coughlin's conduct in this case, the arbitrator violated §42.

25. The Award must be vacated under M.G.L. c. 71, § 42 and c. 150C, § 11 because it creates an illegal exclusionary rule under which the APS, a public school district, is required to disregard and ignore direct evidence of teacher misconduct found in emails existing on its own computer system, which constitute public records under M.G.L. c. 66, §§ 10 *et seq.* and is otherwise a violation of public policy.

26. The Award must be vacated because it violates statutes and regulations relating to sex discrimination in employment, specifically an employer's legal obligation to investigate possible sexual harassment by its employees.

27. The Award must be vacated because it violates established public policy considerations.

28. The Award must be vacated pursuant to M.G.L. c. 150C, § 11(a)(3) because the arbitrator exceeded his power.

29. The Award must be vacated pursuant to M.G.L. c. 150C, § 11(a)(3) because the arbitrator has required conduct prohibited by state or federal law.

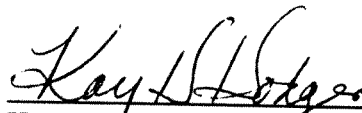
30. The Award must be vacated pursuant to M.G.L. c. 150C, § 11(a)(4) because the hearing was conducted contrary to M.G.L. c. 150C, § 5, which requires, among other things, that the arbitrator hear and determine the controversy presented upon the evidence produced.

**WHEREFORE**, the Plaintiff Arlington Public Schools respectfully requests that this Court:

1. Grant it leave to file a memorandum of fact and law in support of the instant application;
2. Grant it leave to present oral argument in support of the instant application;
3. Vacate the arbitrator's Award; and
4. Grant it such other and additional relief as is just and equitable.

ARLINGTON PUBLIC SCHOOLS,

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