

## Arbitration Award Reinstating Teacher Charged With “Grooming” of Student Reversed by Court

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*Cornwall – Lebanon School District v. Cornwall – Lebanon Education Association*, Court of Common Pleas of Lebanon County, Pennsylvania No. 2015-01556 (April 21, 2016). Common Pleas Court vacates Arbitrator’s award reinstating teacher who had been terminated by school district for sexual encounter with a student on the evening of her graduation from high school.

### SUMMARY AND FACTUAL BACKGROUND

Todd Scipioni (“Scipioni”) was a teacher at Cornwall-Lebanon High School and coached the school’s girl’s basketball team during the 2003-2004 school year. Late in the season, a senior member of the team, A.H., related to the coaching staff, including Scipioni, that she was experiencing problems at home. Scipioni had significant communications and interactions with A.H., which included a sexual encounter with A.H. on the night of her high school graduation. The two continued their affair throughout the summer until A.H. left for college. Rumors of an inappropriate relationship between A.H. and Scipioni began circulating around the District and Scipioni ceased coaching basketball, citing “family pressures”.

In May 2010, Scipioni met with the high school principal to complain that the school board had declined his application to be the boy’s basketball coach. The principal told Scipioni that the board was concerned about rumors of his sexual relationship with a former player from several years earlier when he was the coach of the girls basketball team. The principal asked Scipioni if he was sure that he had never done anything inappropriate with A.H. Scipioni insisted that he had not done anything inappropriate with A.H. but admitted that he had been “too close” with A.H. due to her family problems and that the situation had caused him marital strife.

During the summer of 2014, the Superintendent received an anonymous call from a female who offered to provide information about the relationship between A.H. and Scipioni. The Superintendent conducted an investigation of the rumors surrounding Scipioni’s conduct, which investigation, included interviews of A.H., Scipioni, A.H.’s stepfather and Scipioni’s estranged wife, Jennifer Hartman (“Hartman”). Hartman informed the Superintendent that she suspected that A.H. and Scipioni were having an affair during the last half of the 2003-2004 school year and that she found messages on Scipioni’s computer during the summer of 2004 discussing their sexual liaisons. She further informed the Superintendent that when she confronted Scipioni, he admitted to the sexual affair with A.H., including the sexual encounter on the night of her graduation. The Superintendent interviewed A.H. who told him that she had a sexual affair with Scipioni some time in 2004, after her 18<sup>th</sup> birthday in May of that year. When the Superintendent interviewed Scipioni, he answered that he had been “friends” with A.H. and refused to answer whether he had a sexual relationship with A.H.

Scipioni was suspended without pay based on his refusal to cooperate with the District’s investigation. A search of Scipioni’s District owned computer revealed numerous inappropriate emails and sixty-one downloaded songs with no evidence of licensure. The District determined that the evidence of a sexual relationship with A.H., Scipioni’s deceit and refusal to cooperate during the investigation, together with the information found on his computer constituted immorality and justified termination.

The Association filed a grievance asserting that the suspension and subsequent termination were without just cause. At the arbitration hearing, Scipioni continued to deny the relationship and A.H. recanted her prior admissions regarding the affair. The arbitrator, however, accepted as true testimony of several witnesses that a sexual relationship between Scipioni and A.H. did in fact occur, including the testimony from Hartman who recounted Scipioni’s admission that he first

became intimate with A.H. on the evening of her graduation and A.H.'s sister who testified that A.H. told her that she and Scipioni were planning to have a sexual encounter on the evening of her graduation, and that they in fact had such an encounter.

The arbitrator found that, although there is a well defined public policy that a school district must ensure the safety of its students against inappropriate sexual or romantic behavior by its teachers, he opined that a post-graduation relationship was beyond the reach of the District's authority to regulate the conduct of its teachers and that, although Scipioni failed to fulfill his duty to respond to the District's questions with honesty and candor, his "falsehoods" were "somewhat excusable and understandable". The arbitrator mitigated Scipioni's termination to a one year suspension without pay and ordered that he be reinstated. The District filed a petition to vacate the arbitrator's award with the Lebanon County Court of Common Pleas which granted the District's petition.

## **DISCUSSION**

The standard of review for a Common Pleas Court reviewing an arbitrator's award is the familiar "essence test" which provides that an arbitrator's award must be upheld if (i) the issue as properly defined is within the terms of the collective bargaining agreement, and (ii) the arbitration award can be rationally derived from the terms of the collective bargaining agreement. However, even if the arbitrator's award meets the essence test, an award may be vacated if it contravenes a well-defined, dominant public policy, as ascertained by reference to laws and legal precedents, and the award poses an unreasonable risk that the public policy will be undermined if it is implemented. While a Common Pleas Court is bound by an arbitrator's findings of fact, the application of the public policy exception to the essence test is purely a question of law where the standard of review is *de novo* and the scope of review is plenary. Thus, although the court must accept the findings of fact determined by the arbitrator, the court conducts a *de novo* review of the application of those findings of fact to the public policies advanced by the District.

The arbitrator found as credible testimony that A.H. and Scipioni planned, prior to A.H.'s graduation, to have a sexual encounter immediately after her graduation and that "this sexual/romantic relationship had its roots firmly planted during the time that A.H. was a District student". The court further stated "we do not believe that public policy condones such conduct" which conduct conflicted with the District's interest and obligation to protect its students from being "groomed" and prepared for future sexual conduct with District personnel. The court also noted that Scipioni's conduct constituted "sexual misconduct" within the meaning of the Professional Educator Discipline Act as the agreement to engage in sexual conduct immediately after graduation was a "sexual or romantic invitation" which occurred while A.H. was a student at the District.

The Common Pleas Court also noted that the arbitrator found that Scipioni had "outright lied" on numerous occasions, both during the investigation and during the arbitration hearing, and that such conduct violates and undermines the clear public policy that an employee owes an undivided duty of loyalty to his employer, including the duties of honesty, frankness and candor. The Court found that the arbitrator could not simply dismiss and disregard Scipioni's violations of his duties of honesty and candor by characterizing his failure to be truthful during the District's investigation of his conduct as "human nature".

## **PRACTICAL ADVICE**

The association has appealed the decision of the Lebanon County Common Pleas Court to the Commonwealth Court where it is currently pending. However, as the Common Pleas Court noted, where an employee engages in a romantic or sexual relationship with a recent graduate, the school district should investigate whether there is any indication that there were any inappropriate interactions or communication between the student and the employee prior to graduation as such conduct potentially violates public policy and the Professional Educator Discipline Act. Further, an employee's failure to be honest during an investigation of alleged misconduct by the employee constitutes a violation of public policy and is an independent grounds for discipline.

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