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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1806-21**

ANTHONY PUCA,

Plaintiff-Appellant,

v.

**BOARD OF TRUSTEES,
TEACHERS' PENSION
AND ANNUITY FUND,**

Defendant-Respondent.

Argued May 31, 2023 – Decided August 25, 2023

Before Judges Sumners and Susswein.

On appeal from the Board of Trustees of the Teachers' Pension and Annuity Fund, Department of the Treasury, Agency Docket No. TPAF No. 364345.

Michael J. Ward, IV, argued the cause for appellant (Law Offices of Michael J. Ward, LLC, attorneys; Michael J. Ward, IV, on the briefs).

Jeffrey Padgett, Deputy Attorney General, argued the cause for respondent (Matthew J. Platkin, Attorney General, attorney; Sookie Bae-Park, Assistant Attorney General, of counsel; Jeffrey Padgett, on the brief).

PER CURIAM

In July 1997, a jury found Anthony Puca guilty of second-degree endangering the welfare of a child, but not guilty of second-degree sexual assault. He was sentenced to an eight-year prison term.¹

When the criminal charges were filed, Puca was employed as a school teacher by the Winslow Township Board of Education (WTBOE) for approximately sixteen years. The WTBOE subsequently suspended Puca and filed tenure charges of unbecoming conduct and other just cause to terminate his employment.

On December 4, 1997, the Commissioner of Education dismissed the tenure charges as moot because Puca forfeited his teaching position due to his conviction pursuant to N.J.S.A. 2C:51-2.

In February 2000, the State Board of Examiners revoked Puca's Teacher of Elementary School certificate because his "conviction for endangering the welfare of a child constitute[d] conduct unbecoming a certificate holder" under N.J.A.C. 6:11-3.4. The Commissioner rejected Puca's appeal of the revocation on May 17, 2000, determining:

¹ Puca's conviction was upheld on appeal. State v. A.J.P., No. A-0523-97 (App. Div. Apr. 26, 1999).

[R]espondent's argument that, because the occurrence happened in the evening away from school premises, both the Board and the Commissioner have no authority to act, is without merit. Individuals who must comport themselves as models for young minds to emulate choose the teaching profession. This heavy responsibility does not begin at 8:00 a.m. and conclude at 4:00 p.m., Monday through Friday, only when school is in session. Being a teacher requires, inter alia, a consistently intense dedication to civility and respect for people as human beings. The Commissioner has, on past occasions, determined tenure charges arising from incidents which happened in the evening both on and off school property. [See] [] In the Matter of the Tenure Hearing of Thomas Appleby, School District of Vineland, Cumberland County, 1965 [S.L.D.] 159, [aff'd] State Board of Education 1970 [S.L.D.] 448; [I]n the Matter of the Tenure Hearing of John H. Stokes, School District of the City of Rahway, Union County[,] 1971 [S.L.D.] 623[;] [and] In the Matter of the Tenure Hearing of Robert H. Beam, 1973 S.L.D. 157, 163.

Almost twenty-one years later, in November 2020, Puca applied for deferred retirement benefits based on his sixteen years and five months of service credit. The Board of Trustees, Teachers' Pension and Annuity Fund (TPAF) denied his request—without a hearing—because he was removed from his teaching position for conduct unbecoming a teacher which made him "[in]eligible for a Deferred Retirement . . . under the provisions of N.J.S.A. 18A:66-36."

Puca appealed, contending the WTBOE's solicitor informed him in a 1996 letter that he "would not be forfeiting his TPAF pension due to the fact that the criminal charge for which he convicted was not related to his employment as a Winslow Township School teacher." Puca cited Corvelli v. Bd. of Trs., Police & Firemen's Ret. Sys., 130 N.J. 539 (1992), Uricoli v. Bd. of Trs., Police & Firemen's Ret. Sys., 91 N.J. 62 (1982), and Masse v. Bd. of Trs. Pub. Emps. Ret. Sys., 87 N.J. 252 (1981), but did not explain how the decisions support his application for deferred retirement benefits. He further asserted "it is manifestly unfair and inequitable for the . . . Board to decide to revoke [his] [d]eferred [p]ension [b]enefit some twenty-four . . . years after he was charged of criminal conduct, and some sixteen . . . years after [his] sentence of incarceration expired."

On January 7, 2022, the Board issued a final agency decision stating there were no genuine issues of material fact in dispute necessitating a hearing and reaffirming its rejection of Puca's deferred retirement benefits application. The Board noted "N.J.S.A. 18A:66-36 plainly condition[s] a TPAF member's eligibility for deferred retirement benefits upon the absence of any for-cause

removal from employment."² The Board found Puca was terminated for-cause based on his conviction as set forth in the Commissioner's rulings of: December 4, 1997, that Puca forfeited his public teaching position to N.J.S.A. 2C:51-2; and May 17, 2000, upholding the State Board of Examiners' revocation of Puca's teacher's certificate. The Board found the Winslow solicitor's letter "legally irrelevant," because "TPAF's deferred retirement [benefits] statute requires automatic forfeiture" based on his unbecoming conduct. The Board concluded its decision advising "Puca is eligible to withdraw his accumulated pension contributions remitted during active membership."

Before us, Puca argues his conviction does not automatically constitute "conduct unbecoming a teacher," N.J.S.A. 18A:66-36, even if it may have justified revocation of his teaching certificate. He maintains the Board failed to

² N.J.S.A. 18A:66-36 states in pertinent part:

Should a member of the Teachers' Pension and Annuity Fund, after having completed 10 years of service, be separated voluntarily or involuntarily from the service, before reaching service retirement age, and not by removal for conduct unbecoming a teacher or other just cause under the provisions of N.J.S.A. 18A:28-4 to 18A:28-5 and 18A:28-9 to 18A:28-13 inclusive, such person may elect to receive . . . b. A deferred retirement allowance . . .

consider that his conviction of endangering the welfare of a child is not among those crimes enumerated in N.J.S.A. 43:1-3.1, which would automatically forfeit a State employee's pension and retirement benefits. Puca reasons the statute's omission of his conviction suggests the Legislature did not intend to automatically deny him benefits for his offense. He also argues that, since the Commissioner of Education did not make a "final determination" his crime constituted "conduct unbecoming a teacher," the Board's rejection of his application was arbitrary, capricious, and unjust. It follows, according to Puca, that he is entitled to a fact-finding hearing because the Board failed to address the issue.³


There is no merit to Puca's arguments. We conclude the Board's decision is supported by substantial credible evidence in the record and is not arbitrary, capricious, or unreasonable. See Ramirez v. Dep't of Corr., 382 N.J. Super. 18, 23 (App. Div. 2005). The decision is supported by the Board's correct interpretation of N.J.S.A. 18A:66-36. See Mazza v. Bd. of Trs., Police &

³ In his merit briefs, Puca does not cite Corvelli, Uricoli, or Masse as he did before the Board. Therefore, we do not consider those decisions as his reliance upon them is considered waived. See N.J. Dep't of Env't Prot. v. Alloway Twp., 438 N.J. Super. 501, 505 n.2 (App. Div. 2015) ("An issue that is not briefed is deemed waived upon appeal."). Moreover, he merely cited the decisions before the Board without explaining how they support his position that the Board erred in denying his deferred retirement benefits application.

Firemen's Ret. Sys., 143 N.J. 22, 25 (1995) (reviewing courts assess "whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law"). The statute's plain language prohibits TPAF members who were removed for conduct unbecoming a teacher from receiving deferred retirement benefits. Underlying N.J.S.A. 18A:66-36 is an implied intention that teachers who are terminated for "substantial breach of public employee duties" relinquish their rights to the privileges of long-term TPAF membership. Uricoli, 91 N.J. at 67. There is nothing erroneous regarding the Board's determination that Puca's endangering the welfare of a child conviction resulted in his removal for conduct unbecoming based upon the Commissioner's decisions forfeiting his teaching position and revoking his teaching certification. Indeed, the record before us unequivocally establishes Puca's conduct was unbecoming of a teacher, thereby disqualifying him from deferred retirement benefits.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION