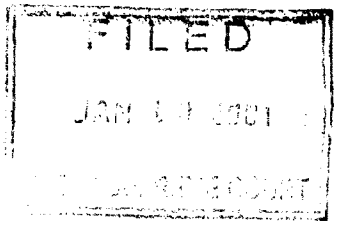
IN THE COURT OF APPEALS OF IOWA

No. 0-755 / 00-687
Filed January 10, 2001



JACK L. WIELENGA,
Petitioner-Appellant,

vs.

IOWA STATE BOARD OF REGENTS and THE UNIVERSITY OF NORTH IOWA,
Respondents-Appellees.

Appeal from the Iowa District Court for Black Hawk County, K.D. Briner, Judge.

Wielenga appeals a district court order denying his petition for judicial review of a Board of Regents ruling that he was not entitled to various retirement benefits under the University of Northern Iowa's early retirement plan. **AFFIRMED.**

John T. McCoy of Yagla, McCoy & Riley, P.L.C., Waterloo, for appellant.

Thomas J. Miller, Attorney General, and George A. Carroll, Assistant Attorney General, for appellees.

Heard by Sackett, C.J., Mahan, J., and Habhab, S.J.,* but decided by Sackett, C.J., Vaitheswaran, J., and Habhab, S.J. Mahan, J., takes no part.

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206 (1999).

HABHAB, S.J.

I. Background Facts and Proceedings.

The question presented to this court is whether a Regents University can offer a smaller retirement benefit package to its employees than that approved by the Board of Regents. Specifically, in the case before us, the Board of Regents provided the state universities with the option of providing an enhanced early retirement package to employees of their choosing in order to facilitate turnover in departments adjudged to be in need of revitalization. The University of Northern Iowa (UNI) sought approval from the Board to be allowed to offer this package with one specific professor in mind. Following the Board's approval, UNI decided to offer a scaled-down version of the early retirement package to its other employees, believing it would be too expensive for the university to offer the full package.

After UNI advised its employees of the possibility of participating in the new scaled-down version of the program, Wielenga provided notice of his intent to retire and sought approval to participate in the early retirement program as originally approved by the Board. UNI approved Wielenga to participate in the program, but insisted only the scaled-down version was available to him. Wielenga filed a formal grievance, participated in an arbitration process, and eventually appealed to the district court. At each stage, Wielenga's claim was denied.

On appeal Wielenga maintains that UNI did not have authority to alter the retirement plan approved by the Board of Regents and that he has a contractual right to the full retirement package.

II. Standard of Review.

Under Iowa Code section 17A.19(8), our review of agency action is to determine whether our conclusions are the same as those of the district court. *Stephenson v. Furnas Elec. Co.,* 522 N.W.2d 828, 831 (Iowa 1994). We may reverse, modify, affirm or remand to the agency for further proceedings if the agency's action is affected by errors of law or is not supported by substantial evidence, when the record is viewed as a whole. *Second Injury Fund of Iowa v. Nelson,* 544 N.W.2d 258, 264 (Iowa 1996). Evidence is substantial if reasonable minds would accept it as adequate to reach the same finding. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 316 (Iowa 1998). The question is not whether evidence might support a different finding, but whether the evidence supports the findings actually made. *Id.* The burden is on the petitioner to show that the agency's actions were unreasonable. *Busing v. Iowa Dep't of Transp.*, 455 N.W.2d 921, 922 (Iowa 1990).

III. The Merits.

Wielenga argues that the district court erred in failing to find that UNI wrongfully deprived him of the full early retirement package. He contends that he has a contractual right to the full package because the Board of Regents' action in authorizing UNI's participation in the early retirement program was a contract offer, which he accepted through his notice of resignation. He contends that the

legislature vested the power to direct the expenditures of the state universities in the Board of Regents and that the universities have no power to alter the plans approved by the Board unless such power was expressly delegated to them in the minutes of the Board's meeting. Thus, Wielenga contends that UNI would only have the power to alter the retirement plan if the Board had delegated such power, which it did not.

The district court responded to Wielenga's arguments as follows:

> Wielenga offers no authority for his assertion that board authorization of a program and of certain benefits translates to a Board command that a university under its jurisdiction must offer all the Board has authorized and may not exercise any discretion in fashioning a specific program within the authority delegated by the Board, nor does the court know of any. . . .
>
> The Board minutes which reflect approval of [the early retirement plan] for UNI show that the Board's intention was never to create a vested right for the benefit of employees. To the contrary, as noted above, the Board's intention was to give UNI a means to encourage relatively less valuable employees to retire early, especially if they were in programs which were also deemed unproductive. It is undisputed that Wielenga was a highly valuable employee and that UNI would need to hire a comparably qualified employee to carry out his functions when he resigned. Since the benefits authorized were not established to create an entitlement for Wielenga and others similarly situated, Wielenga's claim that he is entitled to those benefits must rise or fall with his theory that he acquired a contract entitlement by accepting the offer to resign. The fatal flaw in his argument is that he resigned pursuant to the offer he got, not to the offer he thinks he should have gotten.

We agree with the conclusions of the district court. The Board of Regents' intent in creating the early retirement program was to provide the universities a vehicle for creating turnover when necessary to revitalize its programs. Vital to this program's success is the discretion of the universities to choose which employees to offer this benefit package to. Thus, the Board's actions did not

constitute an offer of the program to the university's employees, but vested in UNI the power to offer the program to the employees of its choosing. The offer made by UNI to Wielenga was that of the more limited early retirement program. Thus, Wielenga has no contractual claim to the full plan originally approved by the Board.

Wielenga has not met his burden of showing grounds for disturbing the agency's action. We accordingly affirm the district court decision in full.

AFFIRMED.