FILED
DEC 23 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

RUTH R. JOHNSTON,

Appellant,

vs.

MARION INDEPENDENT SCHOOL DISTRICT,

Appellee.

Filed December 23, 1980

0-371
64812

Appeal from Linn District Court - William R. Eads, Judge.

Plaintiff-teacher appeals from trial court determination in declaratory judgment action that her contract of employment was validly terminated by defendant school district. AFFIRMED.

James L. Sayre of Dreher, Wilson, Adams, Jensen, Sayre & Gribble, Des Moines, for appellant.

Ernest F. Pence of Hines, Pence, Day & Powers, Cedar Rapids, for appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

CARTER, J.

This is the second appeal in this declaratory judgment action. It evolves from the proceedings in the district court following an order of remand in the first appeal. In Johnston v. Marion Independent School District, 275 N.W.2d 215 (Iowa 1979), the court determined that the action taken by the defendant school district in an attempt to terminate plaintiff's teaching contract prior to the 1974-75 school year was legally ineffectual. The court ordered the remand of the case for the entry of a declaratory judgment so providing.

Following the entry of this declaratory judgment in the district court, plaintiff petitioned for supplemental relief pursuant to Iowa R. Civ. P. 266. It is established that a teacher discharged for a reason not prescribed by statute may recover lost salary. Courtright v. Consolidated Independent School District, 203 Iowa 26, 212 N.W. 368 (1927). In the proceedings which followed to determine the supplemental relief to which plaintiff is entitled as a result of the declaratory judgment the parties stipulated that she is entitled to her salary plus interest for the 1974-75 school year. This entitlement flows from the fact that pursuant to section 279.13, The Code, her contract must be deemed to have automatically continued for that school year as a result of defendant's failure to legally terminate it.[1] The dispute between the parties involves plaintiff's contention that she is also entitled to compensation for years subsequent to the 1974-75 school year because her contract was automatically continued for those years also.[2] While defendant does not dispute that plaintiff's contract must be deemed to continue until legally terminated, it asserts that legal termination was accomplished prior to the close of the 1974-75 school year.

Our task in reviewing this issue is simplified by the fact that the parties agree that plaintiff's entitlement to compensation beyond the 1974-75 school year depends upon the legal effect to be given notices of nonrenewal and termination given plaintiff by the defendant in February and March of 1975. In regard to these notices the parties

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[1] While the language of this statute may have appeared in somewhat different form at various stages of this litigation, it has, at all times material, contained the provision that "the contract shall remain in force and effect for equivalent periods, except as modified or terminated [in accordance with law]." The period of plaintiff's contract was one year.

[2] For decisions involving automatic continuation of teaching contracts for extended periods, see Sanchez v. Board of Education, 80 N.M. 286, 290, 454 P.2d 768, 771 (1969) (approving automatic continuation for contract for seven years while litigation pending); Roller v. Patrick, 145 Ohio St. 572, 576, 62 N.E.2d 367, 370 (Ohio App. 1945).

have stipulated that while the litigation involving the purported 1974 termination was still pending the defendant school district notified the plaintiff, pursuant to section 279.13, The Code, that irrespective of the outcome of that litigation, the defendant considered the contract terminated and was considering the nonrenewal of the contract of employment between the plaintiff and the defendant for the 1975-76 school year. It was further stipulated by the parties as follows:

> That subsequent to receiving the Notice from the Defendant, on or about February 21, 1975, the Plaintiff did not request a private conference with the board nor a statement of reasons for the board's consideration of the nonrenewal of the contract of employment for the 1975-76 school year.
>
> That on or about March 24, 1975, the Defendant sent to the Plaintiff a Notice of Termination of her contract of employment to be effective at the conclusion of the 1974-75 school year. The notification given the Plaintiff by the Defendant on or about March 24, 1975, was pursuant to Section 279.13, Code of Iowa . . .
>
> That following the receipt by the Plaintiff of the Notice of Termination, the Plaintiff did not notify the Defendant that she was protesting the action of the Defendant in the termination, nor did she request a public hearing thereon within twenty days of the receipt by the Plaintiff of said notice of termination.
>
> That the Plaintiff received both the said notice of the Board's intent to nonrenew the contract of employment at the conclusion of the 1974-75 school year, said notice having been dated February 21, 1975, and all requirements of Section 279.13 were satisfied with respect to said notices provided, however, Plaintiff reserves the right to dispute the legal effect thereof.

Based on these stipulated facts the trial court ruled that:

> The issue in the declaratory judgment action was the legality of the termination proceedings in 1974. The defendant did not have to wait for final adjudication on that issue before correcting any error and legally terminating the plaintiff's contract the following year . . . .
>
> The court concludes that plaintiff's contract was continuing until terminated pursuant to section 279.13 and the defendant had authority to and did legally terminate it at the end of the 1974-75 school year.

As a result of this determination the trial court denied plaintiff's claim to compensation beyond the 1974-75 school year.

In challenging this ruling on appeal plaintiff concedes that the statutory procedure for termination of a teaching contract was followed by the defendant school district in regard to the notices of nonrenewal and termination which were given her in February and March of 1975. She asserts, however, that defendant was without power to invoke that statutory procedure while the litigation concerning its prior termination of her employment was still pending. The material portions of her argument in support of this claim are as follows:

> The Plaintiff's position, very simply put, is that at the point in time, in the spring of 1975, when the Defendant initiated the nonrenewal proceedings to effect the 1975-76 school year, the Defendant was without jurisdiction over the contract of employment and the contractual relationship between the parties because the question of the existence of the contractual relationship was before the Court, pursuant to the Petition for Declaratory Judgment filed by the Plaintiff on August 2, 1974. The Defendant, the Marion Independent Community School District, is an administrative agency and as such has limited jurisdiction, their jurisdiction being dependent entirely upon the validity of the terms and statutes vested in them. They cannot confer jurisdiction on themselves.... Normally, when administrative agencies have made a final determination from which an appeal is subsequently taken to a District Court, the administrative agency no longer has jurisdiction over the person or the subject matter involved in their final determination.

We find no merit in this argument. The defendant's action in giving the statutory notices in February and March of 1975 was clearly taken in its capacity as plaintiff's employer. As such it was not acting as an administrative agency or tribunal. It was acting as one of the parties to a contract seeking to enforce its rights under that contract in accordance with established legal procedures. As such defendant was entitled to hedge against an adverse ruling in the pending declaratory judgment action. At the time of defendant's actions in February and March of 1975, plaintiff was asserting that her contract was still in force. Under this circumstance defendant's actions constituted one of the legal options available to it in dealing with this assertion on plaintiff's part. We find no basis for holding that defendant was not entitled to so act or that the action so taken should not be given the legal effect to which it is otherwise entitled. A school district should not be precluded from following up an improper termination procedure with a proper one. See Hunter v. Board of Directors, 13 Wash. App. 2d 682, 684, 536 P.2d 1209, 1210 (1975).

Based on the action taken in February and March of 1975, plaintiff's contract was validly terminated at that time, under the applicable statutes, notwithstanding the invalidity of the previous efforts to terminate it. The trial court's determination was correct and is therefore affirmed.

AFFIRMED.