

IN THE COURT OF APPEALS OF IOWA

No. 2-447 / 92-52

FILED

NOV 30 1992

CLERK SUPREME COURT

MARY ELLEN JONES,

Appellant,

vs.

SIOUX RAPIDS-REMBRANDT COMMUNITY SCHOOL DISTRICT, and the
BOARD OF DIRECTORS OF THE SIOUX RAPIDS-REMBRANDT COMMUNITY
SCHOOL DISTRICT,

Appellees.

Appeal from the Iowa District Court for Buena Vista
County, James L. McDonald, Judge.

Mary Ellen Jones appeals from the district court's
affirmance of the school board's decision to terminate her
teaching contract. **REVERSED AND REMANDED.**

James L. Sayre of Sayre & Gribble, P.C., Des Moines,
for appellant.

Stephen F. Avery of Cornwall, Avery, Bjornstad & Scott,
Spencer, for appellees.

Heard by Donielson, P.J., and Sackett, J., and Keefe,
S.J.*

*Senior Judge from the 1st Judicial District serving on
this court by order of the Iowa Supreme Court.

KEEFE, S.J.

Plaintiff Mary Ellen Jones, a teacher, has brought this appeal pursuant to Iowa Code section 279.18 (1991). She challenges the decision of the adjudicator which affirmed the action of the Board of Directors of the Sioux Rapids-Rembrandt Community School District to terminate her teaching contract. Hereinafter we will refer to the Board of Directors as the school board.

The facts in this case are not in dispute. Jones is a tenured home economics teacher for the school district. Sioux Rapids-Rembrandt had a sharing arrangement with Sioux Valley Community School District. At a joint school board meeting held on November 19, 1990, the two school boards asked school administrators to make a recommendation for staff reduction in shared programs. On February 1, 1991, the school board agreed to accept the administration's recommendation to reduce staff by 2.5 or 3 positions in several areas, including home economics.

Jones received notice on February 25, 1991, that the superintendent, Robert Raymer, was recommending that her teaching contract be terminated. Jones sought a private hearing pursuant to section 279.16.

The school board held a special meeting for about ten minutes on March 5, 1991, to review the superintendent's recommendations for staff reduction. The board moved to terminate the continuing contract of one other teacher who

had not requested a hearing. The board then addressed Jones' request for a hearing. The relevant portion of the minutes is set forth here:

Recommendation was received to terminate the contract of Mary Ellen Jones effective at the end of the 1990-91 school year. She has pursuant to Chapter 279, requested a hearing with the board of directors. The attorney recommended to go ahead with the scheduling of a date for the hearing even though a request for a continuation of hearing was received. Motion was made by Larson and second by Meyer to terminate the contract of Mary Ellen Jones at the end of the 1990-91 school year. A roll call vote was taken: Rich Madsen - Aye, Jim Larson - Aye, Rolf Mosbo - Aye, Al Meyer - Aye. Carried 4-0.

Motion was made by Mosbo and second by Meyer to go ahead with the hearing date for March 19, 1991, at 7:00 P.M. A roll call vote was taken: Rich Madsen - Aye, Jim Larson - Aye, Rolf Mosbo - Aye, Al Meyer - Aye. Carried 4-0.

Jones received notice the next day, March 6, that her private hearing had been scheduled.

At its regular meeting on March 13, 1991, the minutes of the previous meeting were approved as written.

The private hearing was held on March 20, 1991, by the agreement of the parties. Jones appeared personally and by a representative from the Iowa State Education Association. The board and the superintendent were each represented by an attorney. Jones moved to dismiss the proceeding. She claimed the board officially terminated her contract at the March 5 meeting and that she did not personally receive notice of that meeting. She contended her statutory and due process procedural rights were violated by the board's action. Immediately after

presented her motion, Jones and her representative left the hearing. She did not present any evidence or cross-examine any witnesses.

The school board overruled Jones' motion to dismiss. The superintendent testified that he was in attendance at the March 5 meeting and that no decision had been made to terminate Jones' contract. Further, the board members each stated on the record that no action had been taken on March 5 to terminate Jones' contract.

The board then proceeded to consider the merits. There were two home economics teachers, Mary Ellen Jones and Gretchen Rasmussen. Rasmussen was also certified to teach English and social studies. The superintendent chose to recommend terminating Jones due to her lesser teaching certifications. After hearing the evidence, the school board decided to terminate Jones' teaching contract.

Jones asked to have the case considered by an adjudicator, pursuant to section 279.17. The parties agreed to appoint Habbo Fokkena as the adjudicator. The adjudicator affirmed the board. He found the board did not discuss the specific underlying facts of the termination before the private hearing on March 20, 1991. The adjudicator concluded the board's action was not sufficiently prejudicial to impair Jones' due process rights or her statutory rights under chapter 279.

Jones then sought judicial review. The court found the record clearly shows that no action was taken by the school board on Jones' teaching contract at the meeting on March 5, 1991, other than to set the date for a later hearing. The court stated it was unwilling to find that the board's impartiality was affected by an obvious clerical mistake in connection with the reporting of the proceedings at the March 5 meeting. The court affirmed the decisions of the board and the adjudicator. Jones has appealed.

Our review of the district court is at law for the correction of errors under the standards set forth in Iowa Code section 279.18. Board of Directors v. Davies, 489 N.W.2d 19, 23 (Iowa 1992). Our task is to make anew the determinations of the district court specified in section 279.18. Id. In our review, we give weight to the findings of fact by the board of directors of the school district, but are not bound by them. Id. We examine the evidence to determine if the decision of the board has support in a preponderance of the evidence in the record as a whole. Id.

Generally, we give deference to the board on issues of credibility because the board had the ability to examine the witnesses firsthand. See Board of Directors v. Justmann, 476 N.W.2d 335, 338 (Iowa 1991). However, this standard does not apply here because the teacher did not participate in a hearing on the merits.

The administrator in his ruling of July 15, 1991, clearly stated the issue:

The fighting issue in this case is not whether this teacher should be laid off or not. It is whether the Board committed an impermissible act at their March 5, 1991 hearing. Did the actual termination take place on that date or at the later hearing?

Jones maintains her procedural rights under chapter 279 were violated when her contract was terminated at the March 5, 1991, meeting of the board. The fact that the minutes from that meeting also set a hearing, she states, is of no consequence. This is alleged as a procedural defect and a due process defect because she did not get a hearing and an opportunity to present evidence. See Cleveland Board of Education v. Loudermill, 478 U.S. 532, 452-453, 105 S. Ct. 1487, 1493, 84 L. Ed. 2d 494, 504 (1985) (Due process requires some kind of hearing prior to the discharge of an employee who has a constitutionally protected property interest in his employment); Agarwal v. Regents of University of Minnesota, 788 F.2d 504, 508 (8th Cir. 1986) (Procedural due process requires that a teacher be given an opportunity to present evidence in a hearing before an impartial board or tribunal).

The board's position is that the termination statement in the minutes of March 5, 1991, was a typographical error, even though it was approved at the March 13, 1991, meeting. They further argue that the hearing of March 20,

1991, in which Jones did not take part, was conducted in full compliance with the statute.

This court must assume that the board was aware of its own meetings. They voted to terminate Jones at the March 5, 1991, meeting. They confirmed that vote at the March 13 meeting. When it was called to their attention at the March 20 hearing, it was too late to renew a notice and comply with the statute but they went ahead, had their hearing, and terminated Jones again.

A barrage of cases have been cited by each party. Jones principally relies upon Ramey v. Des Moines Community College, 216 N.W.2d 345 (Iowa 1974); Flanders v. Waterloo Community School District, 217 N.W.2d 579 (Iowa 1974); Barrett v. Eastern Iowa Community College, 221 N.W.2d 781 (Iowa 1974); Kruse v. Board of Directors, 231 N.W.2d 626 (Iowa 1975); Wollenzien v. Board of Education, 297 N.W.2d 215 (Iowa 1980); and In re Bishop, 346 N.W.2d 500 (Iowa 1984).

In these cases the Iowa Supreme Court has stated clearly and in no uncertain terms that substantial compliance with the termination provisions is not sufficient, nor is it a defense that the termination caused no harm or prejudice. Ramey, 216 N.W.2d at 348; Flanders, 217 N.W.2d at 581; Barrett, 221 N.W.2d at 783; Kruse, 231 N.W.2d at 632; Wollenzien, 297 N.W.2d at 218; Bishop, 346 N.W.2d at 504. In the Wollenzien decision, Justice Harris

stated, "We hold the statute means what it says and says what it means." 297 N.W.2d at 218.

The school board argues these cases are all distinguishable because they only apply to the notice requirements of the statute. We hold they are not. The Iowa law is clearly stated in these cases and should apply to all requirements of the statute. Is not the hearing requirement of section 279.16 as important as the notice requirement of section 279.15? We hold that it is. Section 279.16 provides, "[I]t shall hold the hearing in such manner as is best suited to ascertain and conserve the substantial rights of the parties."

In Bishop, Justice Schultz states the reasons why the time periods involved are important to not only the board, but to the teacher, as follows:

This advance notice places a premium on time that is unique to and consistent with the legislative attempt to fit the termination procedure within the three-month hiatus between school terms. If advance notice is not given, then the adjudicator's decision becomes final earlier than the normal period allowed for appeals. Given the timing of the school term and the need to expedite and complete the process as soon as possible so either the teacher or board can assess their hiring of employment needs for the coming term, we conclude the ten-day rejection requirement was not arbitrary and was rationally related to a legitimate governmental purpose.

346 N.W.2d at 506.

A review of the transcript of the hearing of March 20, 1991, discloses that the motion to dismiss filed by Jones was considered first. The superintendent was represented

by his attorney and the board was represented by its attorney. In no way was this an adversary proceeding. The board was advised by their attorney about the alleged error in the minutes. The board was further advised that this was not a breach of the statute. The board members then proceeded to testify that they did not intend to do anything improper at the March 5 meeting and that they could go ahead and fairly hear the issue at the March 20 hearing. It is interesting to note that one board member, who did not attend the March 5 meeting, had misgivings and voted against the denial of Jones' motion to dismiss and also voted against her termination. Most of the testimony from the board members was in answer to leading questions by their attorney.

In fact, the board's attorney stated:

I think we can do it right on the record. I think that as the board's legal representative in this matter I'd like to explain to the board what has taken place, although I have a feeling the board may well understand. The teacher and the teacher's representative have made an objection to the hearing tonight saying that they do not feel that they can get a fair and impartial hearing before the board because essentially they feel that the board has already sat as the judge and as the arbitrator of the facts in this matter and has reached a decision.

If that were the case there may well be some serious problems with proceeding in the case. However, if it's simply an error, honest mistake in minutes and the board has not heard any substantive evidence, then I do not believe as your legal representative and advisor in this matter that there has been a violation of the appropriate statute.

This was the very essence of the motion filed by Jones. The statement of the board's attorney would clearly be subject to attack by Jones at an appropriate hearing. In effect, the board was told, "You did not do anything wrong," and then was asked "Did you feel you did anything wrong?"

The hearing held on March 20, 1991, was clearly not a hearing as contemplated by section 279.16. The board did not act as an impartial tribunal in Jones' requested private hearing before the board.

This court, therefore, holds that the trial court's decision should be reversed, that the actions of the board in this matter violated section 279.16 and, as a result a proper termination did not take place. We remand to the district court for further action appropriate to this decision.

REVERSED AND REMANDED.