IN THE COURT OF APPEALS OF IOWA

No. 2-476 / 91-1448

FILED
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CLERK SUPREME COURT

DON N. WEST,

Appellant,

vs.

BUFFALO CENTER-RAKE SCHOOL DISTRICT, By Its BOARD OF DIRECTORS,

Appellees.

Appeal from the Iowa District Court for Winnebago County, John S. Mackey, Judge.

The petitioner, Don West, appeals from a decision of the district court affirming the decision of the Buffalo Center-Rake School Board which terminated his contract as superintendent of schools. **AFFIRMED.**

Mark S. Soldat, Algona, and Mary Jane White, Decorah, for appellant.

Thomas W. Lipps of Peterson & Lipps, Algona, for appellees.

Heard by Oxberger, C.J., and Donielson and Sackett, JJ.

DONIELSON, J.

Don West appeals from a decision of the district court affirming the decision of the Buffalo Center-Rake School Board which terminated his contract as superintendent of schools.

Don West had been superintendent of the Buffalo Center-Rake Community School District since 1981. In 1989, West and the school board began to have numerous disagreements over West's management style. The school board believed West had exercised considerable control over every facet of the school's operations. For example, West had refused to provide the athletic director with keys to athletic facilities or rest rooms. West also had directed the school board's secretary and two school principles to not attend board meetings.

The board also discovered West had falsified reports to the High School Athletic Association, representing that the school district had a certified head wrestling coach, when it did not have such a coach. The board discovered West had attempted to secure an unauthorized double payment on part of his compensation package, and he had cashed a refund check payable to the school district by personally cashing it at an out-of-town bank. West also borrowed money from school funds by writing checks for cash and asking the school secretary to hold the checks until he was paid.

On November 20, 1989, the school board met in a closed session and discussed the deteriorating relationship with West. West was not present. On November 28, 1989, the school board met again in a closed session with West present. At the meeting, the school board president suggested West resign. West refused, and a special meeting to evaluate West was held on January 3, 1990. Following the meeting, the board's evaluation found West had been performing less than satisfactorily in numerous areas, including delegation of duties, leadership, professionalism, honesty and trustworthiness.

On January 10, 1990, following another meeting in which West was evaluated, the school board voted five to one to consider termination of West's contract as superintendent. The board listed ten separate grounds in support of his termination. On January 29, 1990, West was served with a notice of consideration of termination pursuant to Iowa Code section 279.24 (1989).

West then requested a formal administrative hearing pursuant to section 279.24. The hearing consisted of six days of testimony, and concluded on March 30, 1990. The administrative law judge issued a proposed decision which found reasonable grounds existed to terminate West's contract with the school board. West then requested the school board review the administrative law judge's decision. On April 30, 1990, the board met and voted for the termination of West's contract.

West then filed a notice of appeal to the district court on May 23, 1990. West argued his substantial rights had been prejudiced because the board's action was unlawful under section 279.24. The district court affirmed the decision of the school board. West now appeals.

West argues the district court erred in: (1) failing to require the school board to submit the "entire record," and failing to permit the submission of additional evidence; (2) failing to address and resolve the issue of whether the vote to terminate should be invalidated because members of the school board were biased; (3) failing to address and resolve the issue of whether the school board complied with section 279.24; (4) failing to address and resolve the issue of whether West had been denied due process; (5) failing to define the standard for termination; (6) failing to mandate compliance with statutory law and board policies; and (7) affirming the greater weight of the evidence supported the board's actions. In his reply brief, West also contends the administrative law judge lacked subject matter jurisdiction and therefore the action taken must be declared void.

On our review, we affirm the district court.

Appellate review of the school board's decision to terminate West is governed by Iowa Code section 279.24 (1989), which in pertinent part provides that a district court should affirm a board's decision unless:

> [S]ubstantial rights of the administrator have been prejudiced because the board action is:

> 1. In violation of constitutional or statutory provisions.
> 2. In excess of the statutory authority of the board.
> 3. In violation of board policy or rule.
> 4. Made upon unlawful procedure.
> 5. Affected by other error of law.
> 6. Unsupported by a preponderance of the evidence in the record made before the board when that record is reviewed as a whole.
> 7. Unreasonable, arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

Iowa Code § 279.24 (1989).

Our scope of review is to correct errors of law made by the district court. Board of Educ. v. Youel, 282 N.W.2d 677, 680 (Iowa 1979). The supreme court first applied this standard to Iowa Code section 279.24 by comparing to the language contained in Iowa Code chapter 17A, the Iowa Administrative Procedures Act. Briggs v. Board of Directors, 282 N.W.2d 740, 743 (Iowa 1979). Therefore, we also may look to administrative agency cases for assistance in determining the scope of review. Id. (citing Youel, 282 N.W.2d at 679).

> Because in these situations the district court is itself acting in an appellate capacity to correct the errors of law specified in section 17A.19(8) (here section 279.24) "the sole question is whether the district court correctly applied the law. In order to make that determination applies the standard of section 17A.19(8) [here section 279.24] to the agency [board] action to determine whether this court's conclusions are the same as those of the district court. If the conclusions are the same, affirmance is in order. If they are not, reversal may be required."

Id. (quoting Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1976)).

I. West's Compliance with the Iowa Rules of Appellate Procedure. We first address West's failure to comply with the Iowa Rules of Appellate Procedure.

West's brief and argument is fifty-four pages long. In the brief, West's attorney explains he was unable to reduce the factual summary so that it and the other mandatory brief parts were within the fifty-page limit. Therefore, West "incorporates by reference" a 186-page "substituted appellant's brief and appendix" which is located in the appendix. In the 186-page summary, West then cites directly to portions of the trial court record and not to the appendix. As a result, West has attempted to submit to this court a 240-page brief, and to require this court to search through the entire trial court record in order to find support for any of the factual assertions made by West in the summary.

Except by permission of the supreme court, required briefs shall not exceed fifty pages. Iowa R. App. P. 14(h). Because West's attorney has not received such permission, this court will only consider the first fifty pages which have been submitted. Therefore, pages fifty-one through fifty-four of the brief are stricken, and we will not consider the arguments or issues presented therein.

Also, summaries, abstracts or narratives shall not be used in the appendix unless the parties have prepared an agreed statement of the case pursuant to Iowa Rule of

Appellate Procedure 15(f). Iowa R. App. P. 15(a). We find no such agreement in the record. Therefore, we will consider absolutely no portion of West's "substituted appellant's brief and appendix." Pages 24 through 209 of the appendix are stricken, and we will not consider any references to those pages of the appendix which are cited in the first fifty pages of West's brief.

Also, prior to the submission of this appeal, West had moved for an order requiring the school board advance him the costs of producing those parts of the appendix the school board had designated. West contended the parts designated by the school board were unnecessary for the determination of the issues presented in West's appeal. Denying West's motion, Justice Neuman of the supreme court ordered "the appropriate appellate court shall determine whether either party has caused unnecessary matters to be included in the appendix."

Iowa Rule of Appellate Procedure 15(b) states, in part: "if either party shall cause matters to be unnecessarily included in the appendix, the appropriate appellate court may impose the cost of producing such parts on that party." We find West's attempt to include the 186-page "substituted brief" clearly establishes that West has caused matters to be unnecessarily included in the appendix. Furthermore, because West had incorporated parts of the record in his "substituted brief," the school board had no choice but to designate any parts cited to in its

brief to be included separately in the appendix. The school board could not be expected to cite to West's own factual summary as authority. We assess the costs of producing the appendix in this matter, a total of $2,440, to West.

West's counsel is strongly admonished to more closely adhere to the Iowa Rules of Appellate Procedure. We find his flagrant disregard of the appellate rules to be absolutely unacceptable and to be a violation of the letter and spirit of those rules.

II. **Failure to Require the School Board to Submit the "Entire Record."** West contends the district court erred in failing to require the school board to submit the "entire record." Specifically, he argues the district court should have required the school board to include the records of several meetings which were held prior to January 29, 1990, the date on which formal notice of consideration of termination was given to West. West also argues the district court should have permitted additional evidence to be introduced in his appeal to that court.

We remind West that the district court was acting in an appellate capacity to correct errors of law. Briggs v. Board of Directors, 282 N.W.2d 740, 743 (Iowa 1979). Again, reference to the Iowa Administrative Procedure Act will be helpful in determining the district court's role in the appeal of board's decision to terminate West. See id. Iowa Code section 17A.19(7) (1991) provides in pertinent

part that: "In proceedings for judicial review of agency action a court may hear and consider such evidence as it deems appropriate." The discretion granted to the court under this provision:

> is for the limited purpose of highlighting what actually occurred in the agency in order to facilitate the court's search for errors of law or unreasonable, arbitrary or capricious action. . . . The additional evidence permitted to be offered under such circumstances is not to be utilized as a springboard for trying issues of fact de novo in the district court.

Krause v. State ex. rel. Dep't of Human Servs., 426 N.W.2d 161, 165 (Iowa 1988) (citations omitted).

In its ruling denying West's motion to require the school board to submit the entire record, the district court found:

> [T]he logical starting point for purposes of compilation of the record for review begins with the formal written notice given by the Board to the Administrator [West] that it is considering termination of the administrator's contract. Closed meetings conducted by the Board occurring before that date, in this case January 29, 1990, would appear to be irrelevant and immaterial to the determination of the propriety of the Board's action under the seven grounds enumerated in [s]ection 279.24.

We agree with the reasoning of the district court. Under Iowa Code section 279.24 (1989), the procedure to terminate an administrator's contract begins with the issuance of notice that the school board has voted to consider termination of the contract. Obviously, the problems between West and the school board began long before the vote to consider termination was taken. However, it would

be difficult, if not impossible, to pinpoint the exact time and event in which termination was first considered by the board.

We find the issuance of the notice began the official procedure to terminate West. Therefore, it was well within the discretion of the district court both to find this event to be the logical starting point, and to find the evidence submitted to the district court constituted the "entire record." We find the district court did not err in finding the school board had submitted the entire record and in denying West's request to submit additional evidence.

West also contends the district court erred in requiring the excision of references to this excluded evidence from his 330-page trial court brief. The evidence had referred to events occurring prior to January 29, 1990. The district court's decision in this regard is affirmed.

III. Impartiality of the Board. West next contends the district court erred in failing to address and resolve the issue of whether the vote to terminate should be invalidated because members of the school board were biased. Specifically, West contends the vote to terminate should have been invalidated because (1) two board members posed an unacceptable bias risk because of "personal aspersions"; (2) two board members posed an unacceptable bias risk because of their prior statements on the merits

of West's case; (3) four to five board members had prejudged the merits of the case; and (4) four to five board members acted as prosecutors, witnesses, and judges.

The interest of a superintendent in his or her contract, protected by state law, is a property interest under the due process clause. Wedergren v. Board of Directors, 307 N.W.2d 12, 16 (Iowa 1981) (citations omitted). A basic tenet of procedural due process is that a person is entitled to a fair hearing before an impartial tribunal. Id. (citations omitted).

West first contends the vote to terminate his contract should be invalidated because of "personal aspersions" he had made against two board members, prior statements two board members had made on the merits of the case, and the proven prejudgment of several board members. Although relations between the school board and West were certainly strained, we agree with the conclusions of the district court:

> [T]he record merely shows that the board members held legitimate concerns about West's performance which prompted their suggestion that he resign. When West failed to communicate with the board about those concerns, the board had no other alternative but to initiate termination proceedings under [s]ection 279.24. . . .
>
> . . . Rather than being actually prejudiced against West which would preclude a fair decision on the issue of termination, the court determines that the board members had knowledge of incidents which seriously called into question West's performance as superintendent and attempted to address those concerns with West to allow him to respond.

We do not find there was such substantial prejudice so as to preclude a fair decision by the board. Wedergren, 307 N.W.2d at 18.

West also contends several of the board members acted as prosecutors, witnesses, and judges and therefore the vote to terminate his contract should be invalidated. The supreme court in Wedergren carefully examined the role of school board members in a section 279.24 proceeding:

> In the performance of its duties, and in making the initial decision required by sections 279.24 and .25 to consider termination, a board must necessarily be exposed to facts of allegations about a superintendent's conduct. In the absence of evidence that a board has prejudged the facts of the case, we will not find a denial of due process by the combination of investigative and adjudicative functions.

Id. at 17.

The fact that the school board had previously been exposed to the allegations surrounding West is the reality of the relationship between a school board and its superintendent, especially in a smaller community such as the Buffalo Center-Rake School District. We do not find the school board had prejudged the facts of West's case. This exposure neither substantially prejudiced West, nor precluded him from receiving a fair hearing.

The district court did not err by failing to find the vote to terminate West should be invalidated.

IV. Compliance with Section 279.24. West next contends the district court erred by failing to address and resolve the issue of whether the school board strictly

complied with Iowa Code section 279.24 (1989). West specifically contends the Board had already determined to terminate West's contract prior to invoking the procedures provided in section 279.24.

We find the district court clearly addressed and resolved the issue of whether the school board complied with section 279.24. We note the language in the district court's findings:

> The record demonstrates that the board followed the mandates of [s]ection 279.24 and properly hired outside legal counsel, Mr. Thomas Lipps, to prosecute the case before the administrative law judge. . . . Following West's failure to respond, the board properly proceeding with the requirements of [section] 279.24. The court, therefore, concludes that the board was fair and impartial in adopting the proposed decision rendered by Administrative Law Judge Gaylen V. Hassman in this matter.

We will not review de novo how the school board complied with the provisions of section 279.24. Our scope of review is for the correction of errors of law. Board of Educ. v. Youel, 282 N.W.2d 677, 680 (Iowa 1979). We find the district court correctly determined the school board had complied with the procedures as set forth in section 279.24.

V. **Constitutional Due Process**. West next argues the district court erred by failing to address and resolve the issue of whether he had been denied due process. Specifically, West contends section 279.24, the school board, and the district court all denied him due process

because they terminated his contract without identifying any specific standard for termination.

West's interest in his contract is a property interest protected under the due process clause. Wedergren v. Board of Directors, 307 N.W.2d 12, 16 (Iowa 1981) (citations omitted). Again, we take notice of the language of the district court's findings:

> The court determines that the procedures followed by the board and as set forth under [s]ection 279.24 provided West with procedural due process. West was provided with ample notice and opportunity to be heard at the six-day hearing before Administrative Law Judge Hassman and the parties conducted extensive discovery prior to the hearing. The court determines that the two interests which are balanced in [s]ection 279.24 are the protection of the superintendent's interests in his employment contract and the board's ultimate authority to terminate or retain a superintendent under [s]ection 279.20 of the Iowa Code. On its face and as applied in this case, the court determines West was accorded constitutional due process during his termination proceeding under [s]ection 279.24 and [s]ection 272A.8 of the Iowa Code.

We find the district court more than adequately addressed and resolved this issue.

VI. Standard for Termination. West also contends the district court erred by failing to define the standard for termination. We do not agree.

Iowa Code section 279.24 (1989) provides, in relevant part: "The notice [for consideration of termination] shall state the specific reasons to be used by the board for considering termination which for all administrators except superintendents shall be for just cause." (Emphasis added.) West argued to the district court that the above

language created an undefined standard for the termination of a superintendent.

The district court, rather than failing to designate the appropriate standard for terminating West, held his termination was proper under two applicable tests, "just cause" and "reasonable foundation." In Wedergren, the supreme court applied the "just cause" test to the discharge of a superintendent during the first year of his three-year contract. 307 N.W.2d at 20. "Just cause" means conduct

> which directly or indirectly significantly and adversely affects what must be the ultimate goal of every school system: high quality education for the district's students. It relates to job performance including leadership and role model effectiveness. . . . On the other hand, "just cause" cannot include reasons which are arbitrary, unfair or generated out of some petty vendetta.

Briggs v. Board of Directors, 282 N.W.2d 740, 743 (Iowa 1979). See also Wedergren, 307 N.W.2d at 20.

The district court also recognized that termination after the contract year of a superintendent need not be for just cause, and recognized the standard used by the administrative law judge. Relying upon language in section 279.24, the Wedergren case and the I.S.A.B. Certified Employee Contract Termination Procedure, the administrative law judge found "[a] decision to not renew a Superintendent's contract only requires the existence of a reasonable foundation to terminate which must be established by a preponderance of the evidence." (Emphasis added.)

We find West's termination was proper under either standard. Again, we note the language of the district court:

> Under either a just cause or reasonable foundation standard, this court concludes that the record overwhelmingly establishes that the vital components of any successful relationship, communication and trust, had disappeared between the board and Mr. West. West, by his actions and management style, alienated staff, faculty, administration and, as a consequence, the entire school system suffered.

We find the district court correctly identified a standard for termination, and affirm the district court in this regard.

VII. Compliance with Statutory Law and Board Policies. West next contends the district court erred by failing to mandate compliance with both statutory law and policies of the board.

One of the grounds for relief from the school board's action is "if substantial rights of the administrator have been prejudiced because the board action is . . . in violation of board policy or rule." Iowa Code § 279.24(3) (1989). West contends the school board failed to comply with Iowa Code chapter 21, which dealt with the Iowa open meetings laws.

Even if violations of Iowa Code chapter 21 occurred, those violations do not preclude the initiation of section 279.24 proceedings. The supreme court in Wedergren addressed the identical issue, and held a violation of the open meetings law was not relevant to section 279.24

proceedings. 307 N.W.2d at 19. In Wedergren, the court explained:

> The March 8 meeting where the board vote was taken to consider termination was open to the public and should not be voided simply because on a prior occasion there was a possible violation of the open meetings law. . . . .It is enough for us to decide that, even if violations occurred, they would not void any action taken by the board in discharging Wedergren.

Id. (emphasis added). We find even if violations had occurred, West has not shown substantial prejudice from those violations. The district court is affirmed in this regard.

VIII. **Substantiality of the Evidence.** West also contends the district court erred by affirming that a greater weight of the evidence in the whole record supported the board's decision.

The court shall grant relief "if substantial rights of the administrator have been prejudiced because the board action is . . . unsupported by a preponderance of the evidence in the record made before the board when that record is reviewed as a whole." Iowa Code § 279.24(3) (1989). Upon our review of the evidence presented at the hearing before the administrative law judge, we find the district court did not err in holding that a preponderance of the evidence in the record supported the termination of West.

IX. Subject Matter Jurisdiction. Finally, in his reply brief West raises the matter of subject matter

jurisdiction. He contends the administrative law judge lacked subject matter jurisdiction, and therefore any action taken by the administrative law judge must be declared void.

Specifically, West contends a statutory change in Iowa law between 1989 and 1991 left the Board of Educational Examiners without the authority to create a list of qualified persons to serve as administrative law judges. Therefore, he argues administrative law judge Hassman had no authority to act as such, and his proposed decision is void.

Under Iowa Code section 279.24 (1989), upon request of a formal administrative hearing, the Professional Teaching Practices Commission shall submit a list of five qualified administrative law judges to the parties. The presiding administrative law judge was to be selected from that list. Iowa Code § 279.24 (1989). Iowa Code section 272A.8 (1989) gave the Professional Teaching Practices Commission the specific statutory duty to maintain such a list. As of July 1, 1989, Iowa Code chapter 272A was repealed. 1989 Iowa Acts ch. 265, § 43. Iowa Code section 279.24 (1989) was not amended at that time.

Iowa Code section 279.24 (1991) now provides that the Board of Educational Examiners shall submit the list of qualified persons to serve as administrative law judges. Iowa Code section 260.14 (1991) gives the Board of Educational Examiners the statutory duty of maintaining

this list. These changes took effect on July 1, 1990. 1990 Iowa Acts ch. 1249, §§ 9, 13.

On February 2, 1990, West requested that the notice of termination of his contract be forwarded to the Professional Teaching Practices Commission and that the commission submit of list of five qualified administrative judges to the parties. On February 8, 1990, the school board submitted the request to the "Board of Educational Examiners f/k/a Professional Teaching Practices Commission." However, West contends between July 1, 1989 and July 1, 1990, there was no commission in effect from which to request an administrative law judge and no authority for any commission to issue such a list.

While we acknowledge there was a definite ambiguity between the repeal of chapter 272A and the language of Iowa Code section 279.24 (1989), we do not find a lack of subject matter jurisdiction. To resolve any ambiguity remaining in Iowa Code section 297.24 (1989), we resort to statutory construction. Metier v. Cooper Transport Co., 378 N.W.2d 907, 912 (Iowa 1985). We may consider the language used in the statute, the objects sought to be accomplished, the evils and mischief sought to be remedied, and place a reasonable construction on the statute which will best effectuate its purpose rather than defeat it. Id. We must examine both the language used and the purpose for which the legislation was enacted and consider all parts together without giving undue importance to one single or isolated portion. Id.

In enacting Chapter 265 of the Iowa Acts (the 1989 act which repealed Iowa Code chapter 272A), the legislature specified that Chapter 265 was to be "an act establishing an autonomous board to perform the duties of the present board of educational examiners and professional practices commission." 1989 Iowa Acts ch. 265 (emphasis added). In Iowa Administrative Code chapter 287, the regulations governing the Professional Teaching Practices Commission were transferred to Iowa Administrative Code chapter 282 (which governed the Board of Educational Examiners).

It is clear the legislature intended the duties of the Professional Teaching Practices Commission to be transferred to the Board of Educational Examiners. Therefore, although the language of Iowa Code section 297.24 (1989) was not modified until July 1, 1990, and between July 1, 1989 and July 1, 1990 there was no specific statute which gave the Board of Educational Examiners the authority to create this list, we find the legislature intended to give the Board of Educational Examiners this authority during the period between July 1, 1989 and July 1, 1990. We find the language of Iowa Code section 279.24 (1989) is sufficient to give the Board of Educational Examiners the authority to create a list of potential administrative law judges. We do not find a lack of subject matter jurisdiction.

West also argues he should not be required to pay half the hearing costs because Iowa Code section 272A.8 (1989)

was repealed as of July 1, 1989, and Iowa Code section 260.14 (1991) was not effective until July 1, 1990. Therefore, he contends there was a one-year period during which the Iowa Code did not provide for an assessment of costs. Absent any provision on assessing the costs of the hearing, we find it was within the discretion of the administrative law judge to assess the costs equally between the parties.

The costs of this appeal are taxed to West.

For the reasons stated, we affirm the judgment of the district court.

AFFIRMED.