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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN RE: VICTOR LELAND BJORK,

Appellant,

NOTICE AND RECOMMENDATION TO TERMINATE CONTRACT WITH THE BENNETT COMMUNITY SCHOOL DISTRICT.

Filed May 25, 1982

296

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Appeal from Cedar District Court, Max R. Werling, Judge.

Nonprobationary public school teacher appeals district court's reversal of adjudicator's ruling that the school board lacked just cause to terminate the teacher's contract. On appeal teacher asserts: (1) the teacher's failure to obtain sufficient educational credits in chemistry to qualify as a "teacher of science" was not just cause for dismissal; (2) the termination violated the staff reduction and seniority provisions of the master contract between the teachers' association and the board; (3) the staff realignment policy implemented by the board did not constitute a legal basis to terminate a tenured teacher; (4) the district court erroneously concluded the case was mooted because the teacher allegedly would not accept proffered employment; (5) the teacher was not given a fair hearing before the school board because most board members had previously voted for the policy under which the teacher was being terminated and (6) the district court erred by allegedly failing to give consideration to the adjudicator's decision. AFFIRMED.

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

Carol A. H. Freeman of Lane & Waterman, Davenport, for petitioner-appellee.

Heard en banc.

SNELL, J.

Nonprobationary public school teacher appeals district court's reversal of adjudicator's ruling that the school board lacked just cause to terminate the teacher's contract. On appeal teacher asserts: (1) the teacher's failure to obtain sufficient educational credits in chemistry to qualify as a "teacher of science" was not just cause for dismissal; (2) the termination violated the staff reduction and seniority provisions of the master contract between the teachers' association and the board; (3) the staff realignment policy implemented by the board did not constitute a legal basis to terminate a tenured teacher; (4) the district court erroneously concluded the case was mooted because the teacher allegedly would not accept proffered employment; (5) the teacher was not given a fair hearing before the school board because most board members had previously voted for the policy under which the teacher was being terminated and (6) the district court erred by allegedly failing to give consideration to the adjudicator's decision. We affirm the trial court's decision, which reinstated the board's decision to terminate the teacher's contract.

After being employed by appellee, for twelve years as a high school general science teacher, appellant, Victor Leland Bjork, was served in March 1980 with a superintendent's notice and recommendation of termination. The notice specified the following reasons for the recommendation to terminate:

> 1. . . . failure to procure the necessary educational credits, certifications and endorsements to qualify you for the position of a teacher of science, as established by District policy adopted May 14, 1979, for the 1980-81 contract year commencing July 1, 1980.
>
> 2. . . . failure to qualify for any other available teaching position in the District for the 1980-81 contract year under the terms of Article XV of the Master Agreement between the District and the Bennett Education Association.

The district's new policy, adopted May 14, 1979, was promulgated by the school board after the district's chemistry teacher resigned in 1977 and a physical education teacher resigned in 1978. The school board adopted the staff realignment policy after their efforts to obtain a teacher with the required combination of major and minor degrees to fill the vacancies proved to be fruitless. The new policy created a "teacher of science" position. The new position required a teacher to be certified in the chemistry area, as well as the general science and biology areas.

Bjork was present at the school board meeting when the policy was adopted. On May 16, 1979, Bjork was formally notified of the adoption of the new policy. Since Bjork was not certified in chemistry, he was encouraged to complete the necessary coursework to become certified by March 1, 1980. Bjork needed only four hours of coursework to become certified. Bjork failed to obtain certification by March of 1980 and the superintendent recommended he be terminated.

Bjork contested the termination. The matter proceeded to a hearing before the school board, which concluded Bjork had failed to obtain sufficient additional college credits to enable him to teach chemistry. Four out of the five school board members hearing Bjork's case had previously voted for adoption of the staff reorganization policy. Essentially, Bjork claimed the policy was formulated in order to allow the board to replace him after twelve years of tenure with a nontenured, less experienced and lower-salaried teacher.

Following the board's decision to terminate, Bjork appealed to an adjudicator who reversed the board's decision on the ground of lack of just cause to terminate. The adjudicator ruled that Bjork's failure to obtain chemistry credits did not alone constitute just cause; that the need to terminate Bjork under the staff reorganization policy was not supported by sufficient evidence; and that Bjork was afforded a fair hearing.

The school board then appealed to the district court which reversed the adjudicator and reinstated the board's termination. The court ruled: (a) Bjork was afforded a fair hearing before the board (b) there was sufficient evidence to support the staff reorganization policy and (c) the termination did not violate the staff reduction provisions of the master contract. The court cited as "additional considerations," the case was moot because Bjork would not say he would accept a position even if one was offered. The court referred to the adjudicator's decision in rendering its decision.

I. Scope of Review.

Appeal to this court of a case involving termination of a teacher's contract is authorized by section 279.18, The Code 1979. The appeal is at law. Board of Education of Fort Madison Community v. Youel, 282 N.W.2d 677, 679 (Iowa 1979). Section 279.18, The Code 1979, makes it our duty to determine whether the findings of the Board are supported by a preponderance of competent evidence. Youel, 282 N.W.2d at 679. This is not, however, a de novo review. Id. at 680. We are bound by the factual findings of the Board if they are supported by a preponderance of the competent evidence when the record is viewed as a whole. Id. at 682. We make anew the determinations of the district court specified in Section 279.18. Smith v. Board of Education of Fort Madison Community, 293 N.W.2d 221, 223 (Iowa 1980).

II. Procedural Fairness

Bjork contends the hearing before the board was inherently unfair since four out of the five members of the board had originally voted for implementation of the policy under which Bjork's contract was terminated. Both the adjudicator and the district court held Bjork was given a fair and unbiased hearing before the board. In Hortonville Joint School District No. 1 v. Hortonville Education

Association, 426 U.S. 482, 495-96, 49 L. Ed. 2d 1, 11, 96 S. Ct. 2308 (1976), the Supreme Court held a school board is not disqualified from hearing disciplinary proceedings merely because it was responsible for the policy under which the disciplinary proceedings are authorized. The Court stated, "[p]ermitting the Board to make the decision at issue here preserves its control over school district affairs. . . and assures that the decision whether to dismiss the teachers will be made by the body responsible for that decision under state law." (footnote omitted) Id. The parties in Hortonville, "fail[ing] to demonstrate that the decision by the Board to terminate their employment was infected by the sort of bias that [has been] held to disqualify other decision makers," did not establish they were not provided procedural due process. Id.

In the case at bar, the adjudicator indicated each member of the board testified that he or she would keep an open mind during the hearing. There was no evidence of personal animus toward Bjork by any of the board members. We think a fair preponderance of competent evidence supports both the adjudicator's and the district court's conclusion Bjork was given a fair and impartial hearing.

III. Just Cause

Bjork contends his failure to obtain certification to teach chemistry did not constitute "just cause" for termination of his contract under section 279.15(2), The Code 1979. "Just cause" does not encompass only personal faults of the teacher or administrator. In this case, Bjork's competency is not questioned. Just cause also encompasses "legitimate reasons relating to the district's personnel and budgetary requirements." Briggs v. Board of Directors of Hinton Community School District, 282 N.W.2d 740, 742 (Iowa 1979). There is a preponderance of evidence that Bjork's contract was terminated due to the district's personnel and budgetary requirements.

The policy was originally discussed because the district lost its only chemistry teacher. The board, citing declining enrollment, concluded the district could only afford to have one full-time science teacher. Due to the State requirement that chemistry be taught at least every other year, the teacher filling the position must be certified to teach chemistry. There was evidence that the district considered various alternatives to hiring a chemistry teacher, including busing its students to another school district, hiring a part-time chemistry teacher and other staff realignment combinations.

The board determined the only feasible alternative was to hire a single full-time teacher with chemistry certification. Bjork was given the opportunity to obtain the additional four college hours of chemistry, but he failed to complete the coursework. We conclude the district court's findings are supported by a preponderance of the evidence and its legal conclusions regarding just cause are correct. The school board's policy was motivated by financial constraints and considerations of personnel availability, and was promulgated only after fair consideration of available alternatives. Those are legitimate reasons for the school board's policy. Compare Von Krog v. Board of Education of Beamon-Conrad-Liscomb School District, 298 N.W. 339, 341-42 (Iowa App. 1980). Bjork voluntarily decided not to obtain the additional four hours of credit to qualify him for chemistry certification. Bjork's voluntary decision not to qualify himself for the newly-created position is just cause for termination of his contract.

III. Contract Compliance

Bjork claims his termination was not in compliance with the applicable master contract. The relevant part of the contract provides:

ARTICLE XV: REDUCTION OR REALIGNMENT OF STAFF

The number of employees may be reduced, or realigned, due to a change in program, a change in the size or nature of the student population, or budgetary considerations. Such reduction of employees shall be accomplished through normal staff attrition unless the best interests of the school district shall otherwise dictate. When reductions beyond normal staff attrition are to be made, notices of termination shall be given professional staff as detailed in Section 279.13, Code of Iowa.

Reduction of professional staff will be by the inverse order of employment, unless the best interests of the school district shall otherwise dictate. If the superintendent of Schools shall recommend termination other than by inverse order of employment, he shall indicate to the Board of Education his reasons therefore. Such reasons may include, but shall not necessarily be limited to the following factors:

1. The educational subjects in which cutbacks are being made.

2. The grade levels in which cutbacks are being made.

3. Qualifications for other existing programs as determined by certification, training, or experience.

4. Recent training, either formal or practical.

5. Professional experience in other school system.

6. Successful experience in the Bennett Community School.

7. Physical or emotional fitness based on the nature of the position.

8. Performance evaluation as determined by employee's immediate supervisor, as documented by written records.

Bjork claims the school board should have terminated the contract of a less senior teacher. The master contract requires termination of teachers in the inverse order of hiring, unless the best interests of the district mandate implementation of a different procedure. The adjudicator did not address that issue, as he

reversed the termination by finding there was no just cause for the termination. The district court concluded the board had complied with the contract and that Bjork was the least senior teacher in his areas of certification, although another teacher, Dan Yanda, had been hired after Bjork was hired. Yanda was certified in and taught three sections of science, two sections of elementary physical education and coached. Following a strict inverse order of hiring, Yanda would have been terminated before Bjork. The evidence established, however, if Yanda was terminated and Bjork assumed Yanda's science sections, the district would have had to have found a teacher certified in chemistry and able to coach. That possibility had been explored in depth and rejected after the district failed to locate a teacher with that combination of certifications. We find that these circumstances justified the board's action of not following a strict "inverse order of hiring" procedure in the termination procedure under the master contract.

V. Conclusion

We have considered the other issues asserted by Bjork. We conclude the board followed proper procedure in terminating Bjork's contract, Bjork was given a fair and impartial hearing, the board and the trial court took proper cognizance of Bjork's tenured status and the district court gave appropriate emphasis to the adjudicator's findings of fact and conclusions of law. We find no errors warranting reversal of the district court's decision, which reinstated the school board's decision. Accordingly, we affirm the district court.

AFFIRMED.

All judges concur except Oxberger, C.J., who concurs specially.

OXBERGER, C.J., (concurring specially.)

The adjudicator's decision states that at the time the school district adopted Policy Code No. 401.4, the district had a teacher already certified to teach chemistry. The only explanation given for not assigning that teacher to teach chemistry was that it was not a viable alternative. The adjudicator stated that "this hardly seems an adequate explanation." The adjudicator found that the District did not have just cause to terminate Mr. Bjork because it did not exhaust other alternatives prior to terminating Mr. Bjork.

When Mr. Bjork's attorney was questioning the principal at the proceeding before the school borad, the following conversation occurred:

> ". . . [Mr. Hall, principal] I have a volume of paperwork on [the teacher already certified to teach chemistry], and quite frankly, I have serious professional doubts about the management of his classroom.
> [Mr. Sayre] That is not the issue here this evening.
> [Mr. Hall] Okay, but again, I point that out, Mr. Sayre, to point out to you when you look at Mr. Klement as a viable alternative, I- -
> [Mr. Sayre] If it is a problem, it is a different problem than the one we are here tonight about, is it not?"

I would hold that by these statements, the teacher's attorney waived any requirement that the school administration show that using the already certified teacher to teach chemistry was not a viable alternative.