

IN THE COURT OF APPEALS OF IOWA

FILED

OCT 25 1983

CLERK SUPREME COURT

VERNON KENT,

Plaintiff-Appellant,

vs.

**BOARD OF EDUCATION OF THE CLARKE
COMMUNITY SCHOOL DISTRICT and the
CLARKE COMMUNITY SCHOOL DISTRICT,**

Defendant-Appellee.

) Filed October 25, 1983

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Appeal from Clarke District Court, M. C. Herrick, Judge.

Plaintiff-teacher appeals trial court's judicial review decision affirming
defendant-school board's termination of plaintiff's contract. **AFFIRMED.**

James L. Sayre and Becky S. Knutson of Dreher, Wilson, Adams, Jensen,
Sayre & Gribble, Des Moines, for plaintiff-appellant.

John D. Lloyd of Reynoldson, Van Werden, Kimes, Reynoldson & Lloyd, for
defendants-appellees.

Heard by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and
Sackett, JJ.

OXBERGER, C.J.

Plaintiff-teacher appeals trial court's judicial review decision affirming defendant-school board's termination of plaintiff's contract. We affirm.

The plaintiff, Vernon Kent, had been employed by the defendant, Clarke Community School District, for six years. In March of 1981, pursuant to Iowa Code section 279.15(1), the superintendent served Kent with a notice and recommendation to terminate his employment contract. The stated reasons for the recommendation were declining enrollment, the financial condition of the school district, and decreased funding.

The matter proceeded to a hearing before the school board. There was disputed testimony regarding the financial condition of the school district, anticipated decreases in state and federal funding, and the district's projected enrollment. There was also considerable testimony about teaching assignments, the relative qualifications and experience of certain teachers, and teacher attrition, all in regard to the attrition, seniority, educational qualifications, experience, and program needs factors of the staff reduction provisions of the master contract between the school district and the teachers' association. The school board subsequently voted to terminate plaintiff's contract. An adjudicator affirmed this termination, as did the district court on judicial review.

Prior to the filing of the adjudicator's decision, plaintiff filed with the adjudicator a motion to reopen the record to allow presentation of new evidence, pursuant to Iowa Code section 279.17. After the adjudicator initially overruled the motion, plaintiff filed a motion to reconsider and attached an "offer of proof," indicating that the new evidence pertained to the school district's financial condition, administrative staffing and salaries for the 1981-82 school year, attrition and additions to teaching staff, class scheduling, and additional expenses. The adjudicator subsequently denied the motion to reconsider.

On appeal Kent asserts that: (1) there is insufficient evidence of just cause

to terminate Kent's contract on grounds of declining enrollment and decreased funding; (2) in terminating Kent's contract, the school board violated the staff reduction provisions of the master contract between the board and the teachers' association; (3) the school board violated Iowa Code chapter 279 by terminating the contract of Kent, a nonprobationary teacher, while retaining certain probationary teachers; and (4) the adjudicator abused his discretion by refusing to reopen the record to allow Kent to present new evidence pursuant to Iowa Code section 279.17.

I. Scope of Review

Our task on appeal is to make anew the determination of the district court based on seven grounds for review listed in Iowa Code section 279.17. Smith v. Board of Education, 293 N.W.2d 221, 223 (Iowa 1980); Board of Education v. Youel, 282 N.W.2d 677, 679 (Iowa 1979). Our review, as was the evidence presented to the school board, is "limited to the specific reasons stated in the superintendent's notice of recommendation of termination." Iowa Code § 279.16; Smith, 293 N.W.2d at 225. We therefore must consider these allegations in determining whether affirmance, reversal, or some other disposition is appropriate. In doing so, although we give weight to the fact findings of the board, we are not bound by them. Iowa Code § 279.18.

Iowa Code section 279.15 provides that the notification by the superintendent of a recommendation to terminate a teacher's contract "shall contain a short and plain statement of the reasons, which shall be for just cause" why the recommendation is being made. The evidence at the board meeting is limited to the reasons stated in the notice. Iowa Code § 279.16. "Just cause" for nonrenewal of a contract under section 279.15 may be based upon a district's personnel and budgetary requirements and does not require evidence of a

teacher's faults. Smith v. Board of Education of the Mediapolis School District, 334 N.W.2d 150, 152 (Iowa 1983). The superintendent has the burden of proving the existence of just cause to justify terminating a teacher's contract. Munger v. Jesup Community School District, 325 N.W.2d 377, 379 (Iowa 1982). We determine whether the board's action is supported by a preponderance of the evidence in the record when that record is viewed as a whole. Olds v. Board of Education of Nashua Community School District, 334 N.W.2d 765, 768 (Iowa Ct. App. 1983); Iowa Code § 279.18(6).

II. Sufficiency of the Evidence

We first address the issue of sufficiency of the evidence. The board, after considering all of the evidence presented, concluded that the financial condition of the Clarke Community School District warranted additional staff reduction. There is no question that the stated reasons for terminating Kent's contract are legitimate. The question is whether the board sustained its burden of proving by a preponderance of the competent evidence that the financial condition of the school district warranted the recommended staff reduction. We conclude that it did.

The evidence presented by the school district in support of its recommendation to terminate Kent's teaching contract was mainly related to the district's financial condition. The evidence revealed that the school district's actual expenditures exceeded its actual receipts, and there was evidence of an anticipated cutback in state aid. The board examined the district's existing financial condition along with revenue projections and enrollment projections. The board also heard testimony regarding the number of teaching positions to be cut and the areas in which those cuts should occur. The district presented evidence in support of its proposal to cut a position in the social studies area

because of declining enrollment in that area and because of the large number of other staff members certified to teach in that area. The board was presented with substantial evidence of the deteriorating financial condition of the district, the costs faced during the coming school year, and the efforts made in the past to improve the district's financial condition. There was evidence that, without further staff cuts, the district was faced with a deterioration of its physical plant.

In the joint hearing the Association, on behalf of Mr. Kent, presented expert testimony regarding the financial condition of the school district. One witness, Clewis Walden, reviewed the district's exhibits and presented his interpretation of those documents. Based upon the evidence presented by the district, Walden questioned the spending priorities of the district as well as the district's revenue projections. He testified that, in his opinion, the financial condition of the school district, as compared to other school districts in the state, was "clearly above average." At Mr. Kent's individual hearing the Association presented extensive evidence regarding class scheduling. Some evidence was presented with respect to anticipated teacher attrition.

After a careful review of all of the evidence presented, we agree that the board's finding that the financial condition of the school district warranted staff reductions is supported by a preponderance of competent evidence on the record considered as a whole. The board in its decision rationally concluded, in the face of declining enrollment and increasing costs, that it was necessary to eliminate one teaching position in the social studies area. While this was not the only determination which could have been reached, it was a permissible determination, entirely within the board's discretionary authority. Since the board's determination was neither arbitrary or capricious, nor in violation of constitutional, statutory, or contractual requirements, it will not be disturbed by this court.

III. Master Contract

Kent argues further that the school board, in terminating his contract, violated the staff reduction provisions of the master contract between the board and the teachers' association. We conclude that the board's action did not violate the master contract.

The relevant portions of the contract are contained in Article IX entitled Procedure for Staff Reduction:

- A. Coverage—All unit personnel.
 - B. The employer will determine if and when it is necessary to have a reduction in staff.
 - 1. First, the reduction will be attempted to be accomplished by attrition.
 - 2. If a further reduction is to occur, in determining which employees are to be reduced, the Employer's decision will be based on the following factors:
 - A. Seniority as defined in Article 4, Paragraph A.
 - B. Educational qualifications, including certification, college hours, degrees and areas of study.
 - C. Experience and abilities in teaching in the subject areas needed, as determined by years of service in that subject area and by formal evaluations.
 - D. The Employer's needs to maintain school programs.
- If the latter three (3) factors (B, C and D) are substantially comparable in the Employer's judgment, the employee with the greater amount of seniority in the system shall be retained.

Kent argues: that the board violated the master contract by failing to first attempt staff reduction by attrition; and that the factors listed in the contract were not properly applied. We find both arguments unpersuasive. By the time of Kent's hearing before the board, the administration was aware of the attrition level and presented evidence to show that it was insufficient to meet the economic needs of the district. The school board properly concluded that the contract provision with respect to attrition was not violated.

Kent argues further that the factors listed in the contract were not properly applied, and that by virtue of his seniority and the probationary status of other teachers, he should not have been terminated. The record reveals that the board made detailed findings of fact with respect to Kent's qualifications as compared to the other teachers before reaching its decision to terminate Kent. Mr. Kent relies heavily upon the testimony of Mr. Marvin McCann, President of the Clarke Community Education Association. Mr. McCann testified that when the master contract was negotiated, "we talked about seniority as the length of service in the district, and we always put seniority first." It was his understanding that, under the master contract, "if you pick an area that you need to reduce and there are two people that are qualified to teach within that area and their seniority remains the same, then you go to B [educational qualifications] and to C [experience and abilities in teaching in the subject areas needed]." A reading of the last sentence of Article IX, however, indicates otherwise. Under the language of the contract the employer considers seniority only in the event that the latter three factors (educational qualifications, experience and abilities in subject area needed, and employer's needs) are "substantially comparable in the Employer's judgment. . . ." The board, after hearing substantial evidence concerning the proper interpretation of the contract provisions, found that "the factors listed in subparagraph B, C and D . . . are to be evaluated first, and only if those factors are determined to be substantially comparable, will the factor of seniority control." We agree with the school board, the adjudicator and the district court that this is the proper reading of the contract. It must next be determined whether, under this interpretation, the factors listed in the contract were correctly applied in Mr. Kent's situation.

The board heard extensive evidence regarding the relative qualifications and experience of the teachers in the social studies area, which was the area chosen

for staff reduction. Both Mr. Kent and Mr. Brandt were selected for possible reduction. Pursuant to the master contract, the board compared Mr. Kent to the three remaining social studies teachers. The remaining teachers in that area were found to have superior educational qualifications, teaching experience and seniority as compared to Kent. A comparison was then made in each of the other areas in which Mr. Kent was certified to teach. These include science, English (at the seventh and eighth grade levels) and mathematics (at the seventh and eighth grade levels). In none of these areas was seniority a controlling factor because of the relative educational qualifications and teaching experience of the teachers in those particular areas. Based upon all of this evidence, the board determined that staff reduction was required and that, under the contract, Mr. Kent should be one of the teachers terminated. We cannot say, on the basis of the record, that its determination was not a rational one. We note that the contract specifically provides that seniority will control only if, in the employer's judgment, the other factors listed are substantially equal. It is clear in this instance that Kent's employer, in evaluating the evidence, did not consider these factors equal. Because that determination is supported by a preponderance of the evidence, Kent is not entitled to a reversal.

IV. Tenure

Kent next argues that, in terminating the contract of a nonprobationary teacher while retaining certain probationary teachers, the school board violated Iowa Code chapter 279. We find this argument to be without merit.

The concept of teacher tenure arises from sections 279.15 and 279.16. These sections provide certain appeal provisions for nonprobationary teachers which are not afforded probationary teachers. Nothing in chapter 279, however, provides a

basis for Kent's argument that he is statutorily entitled to a continuing contract as long as his employer also retains any probationary teachers. Likewise, there is no contractual support for such an argument. We agree with the district that tenure and seniority concepts provide no basis for a reversal of the board's decision not to renew Kent's teaching contract.

V. Abuse of Discretion

Kent's final argument is that the adjudicator abused his discretion in refusing to reopen the record. Section 279.17 provides in part:

Before the date set for hearing a petition for review of board action..., application may be made to the adjudicator for leave to present evidence in addition to that found in the record of the case. If it is shown to the adjudicator that the additional evidence is material and that there were good reasons for failure to present it in the private hearing before the board, the adjudicator may order that the additional evidence be taken before the board upon conditions determined by the adjudicator.

On September 28, 1981, Kent filed with the adjudicator a motion to reopen the record pursuant to section 279.17. The adjudicator overruled the motion for lack of showing of specific facts sought to be included in the record. Kent subsequently submitted an offer of proof and motion to reconsider on October 29. The offer of proof contained the specific material sought to be introduced and the reasons why the information was believed to be material. This material included: a schedule of assets of the school district which were unknown at the time of the hearing; the hiring of an elementary principal after the date of the hearing; the resignation of a vocal music teacher followed by the hiring of two vocal music instructors; a board decision to pay six secretaries an expense stipend of \$225 each; a copy of the teaching assignments for the district; and a recommendation by the superintendent that the board hire four additional teachers' aides.

The adjudicator did not rule upon the motion, but in his opinion on the merits stated:

In its findings of fact the Board first considered the financial situation of the District. In so doing it had to consider all facts of record presented to it at the hearing on May 23, 1981. This necessarily compelled the Board to make a decision based upon a record not yet closed for the school fiscal year 1980-81 and not even yet opened for the school fiscal year 1981-82. So long as the projections by the Superintendent and their acceptance by the Directors were rational when made and based upon the best evidence then available to them, the mere fact that thereafter, as the result of the passage of time, that their predictions may be shown to have been erroneous in part is not sufficient either to set them aside or to re-open the hearing for further evidence based upon subsequent facts which by definition simply were not available to the Board at the time it was required, both by collective bargaining contract and Iowa statutes, to make the determination in the first instance to give the notice of termination of his teacher contract to Vernon Kent and, in the second instance, after an evidential hearing thereon, to sustain the termination of the teacher.

We agree with the adjudicator that reopening the record to consider the evidence presented by Kent in his offer of proof was not within the contemplation of the legislature when enacting section 279.17. Under Iowa law the determination to give a notice of termination must necessarily be based upon budget and enrollment projections. The board, after a careful review of such projected budgetary figures, rationally concluded that it was necessary to eliminate a teaching position in the social studies area. The adjudicator's refusal to reopen the record was a sound exercise of the discretion afforded him under section 279.17. We affirm the decisions of the board, the adjudicator, and the district court terminating the contract of Vernon Kent.

AFFIRMED.