

FILED

IN THE COURT OF APPEALS OF IOWA DEC 30 1981

CLERK SUPREME COURT

HELEN COURTER,)

Plaintiff-Appellant,)

Filed December 30, 1981

vs.)

WINFIELD-MT. UNION COMMUNITY)
 SCHOOL DISTRICT; ROBERT CONNOP,)
 ELSA GRIMNER, PAULINE PAYNE, Mem-)
 bers of the Board of Education of the)
 Winfield-Mt. Union Community School Dis-)
 trict, and their Successors in Title, if any,)
 and RICHARD DRAKE and MICHAEL)
 KLOPFENSTEIN,)

)
 Defendants-Appellees,
 Cross-Appellants.)

1-287
 2-65536

Appeal from Henry District Court - Thomas E. Tucker and Harlan W. Bainter,
 Judges.

Plaintiff appeals and defendants cross-appeal from judgment for defendants in an
 action seeking damages and reinstatement following termination of plaintiff's
 employment as a teacher. REVERSED AND REMANDED.

Emmit J. George, Jr., Iowa City, Iowa, for plaintiff-appellant.

Robert A. Engberg of Pryor, Riley, Jones & Aspelmeier, Burlington, Iowa; and
 Steven S. Hoth of Hirsch, Link, Adams, Hoth & Krekel, Burlington, Iowa, for
 defendants-appellees.

Heard by Oxberger, C.J., and Donielson, Carter, and Johnson, JJ. Snell, J., takes
 no part.

Plaintiff appeals and defendants cross-appeal from judgment for defendants in an action seeking damages and reinstatement following termination of plaintiff's employment as a teacher. Plaintiff asserts that the termination procedure denied her due process and that the evidence was insufficient to support termination. Defendants assert the evidence does not support the trial court's finding that plaintiff was denied the right to cross-examine witnesses at the public hearing held prior to her termination. We affirm.

Our review of this law action, tried to the court, is only on errors assigned. The matter is not triable de novo. Keith v. Community Sch. Dist. of Wilton, 262 N.W.2d 249, 255 (Iowa 1978). The trial court's findings of fact have the effect of a special verdict and are equivalent to a jury verdict. Id. The trial court's judgment will not be disturbed on appeal if supported by substantial evidence and justified as a matter of law. Id.

I.

From August, 1967, until May, 1973, plaintiff was employed as a first grade teacher at Mt. Union Elementary School. On March 20, 1973, the board of directors of the school district notified plaintiff in writing that the board was considering termination of her teaching contract and that plaintiff had a right to request a private conference with the board. Plaintiff made a timely request for a private conference and a written statement for specific reasons for considering termination. The board mailed plaintiff written notice of the time and place of the private conference and a statement of specific reasons for considering termination. The private conference between the board, plaintiff, and plaintiff's attorney was held on April 5, 1973. A majority of the board voted to terminate plaintiff's contract after the private conference. Plaintiff gave the board written notice of her protest and requested a public hearing.

On May 3, 1973, a public hearing was held before the board of directors of the school district. At the outset of the hearing, counsel for the school board stated that no cross-examination of witnesses would be allowed. Plaintiff's attorney objected to this procedure without success. Upon conclusion of the hearing, the board decided to terminate plaintiff's teaching contract.

In 1974, plaintiff filed a petition at law seeking damages and reinstatement. Plaintiff's petition was dismissed for failure to exhaust administrative remedies. However, that judgment was reversed by the Iowa Court of Appeals in 1977 and the matter was remanded for further proceedings. Plaintiff's petition was amended to

allege, inter alia, that the procedure followed in her termination of employment denied her a right to due process arising under the federal constitution.¹

Trial in the Iowa district court was held before Judge Tucker, but due to his subsequent illness the parties agreed to submit the matter to Judge Bainter upon the trial record. In its findings of fact and conclusions of law, the trial court noted extensive evidence of a personality clash between plaintiff (a first grade teacher), and a kindergarten teacher whose contract was also terminated by the board. The court then found, as had the school board, that the relationship between these two teachers adversely affected harmony and morale within the school and interfered with the children's transition to first grade. The court concluded that "the reasons given for termination are amply supported by the facts," and that the plaintiff had not established that the action of the school board was arbitrary and capricious.

The trial court also stated that the federal case was dispositive of the federal due process issues. The court further concluded, however, that no evidence had been presented to show that the board was not impartial, and that no due process violation resulted from the failure to allow cross-examination at the public hearing. The court noted that section 279.13, The Code 1973, did not provide any particular format for the hearing it required. Plaintiff filed notice of appeal on July 14, 1980. Defendants filed notice of cross-appeal on August 1, 1980.

II.

Plaintiff contends that the trial court erred in material findings of fact contrary to the weight of the evidence. While the findings are consistent with the record, because the record lacks the benefit of cross-examination, plaintiff was denied due process and we must remand for a new hearing.

III.

Plaintiff next contends that the procedure followed in terminating her teaching contract denied her minimal due process of the law because she was denied the opportunity to cross-examine witnesses. We agree. Assuming plaintiff was entitled to procedural due process when dismissed pursuant to section 279.13, The Code 1973, we

¹ A similar complaint filed in federal district court was dismissed for lack of jurisdiction on the ground that the facts alleged did not constitute a denial of due process because plaintiff had no property interest. Courter v. Winfield-Mt. Union Com. Sch. Dist., 378 F.Supp. 1191 (S.D. Iowa 1974).

find no Iowa cases which go so far as to require that when a public hearing is held under section 279.13, the teacher must be given the equivalent of a formal trial with all the trappings of an adversarial proceeding.

In Goldberg v. Kelly, 397 U.S. 254 (1970), the United States Supreme Court held that a procedure was constitutionally inadequate because it denied the plaintiff the opportunity to cross-examine adverse witnesses. Defendant-commissioner of social services denied plaintiff ADC benefits. At page 269, the Court said, "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." The Court quoted Greene v. McElroy, 360 U.S. 474, 496-97 (1959): "'... it is even more important where the evidence consists of the testimony of individuals... who... might be... motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment.... This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, ... but also in all types of cases where administrative... actions were under scrutiny."

While no relevant case law requires the equivalent of a formal trial, we believe fundamental fairness requires an opportunity to cross-examine the administrative personnel who have asked the school board to terminate a teacher's contract. See § 279.16, The Code 1981. Although the teacher's employment is not recognized as a property right, in some respects it is a more important right. Once a teacher is fired, it difficult for him or her to obtain new employment in his or her life's career.

The purpose of the administrative hearing is to determine the substance and merits of the reasons for termination asserted by the administrative personnel. Obviously, these witnesses have made up their minds, and are thus biased. Cross-examination is necessary to determine the basis for their judgment. Statements by a supervisor such as, "Teacher X is uncooperative," are not effectively countered by a statement by the teacher that he or she is cooperative. Cross-examination will reveal the factual situations the supervisor believes show lack of cooperation.

The dissent assumes that cross-examination requires a formal setting. We believe permitting a person the right to question adverse witnesses may be done in an informal proceeding.

The dissent rejects the trial court's finding that the plaintiff was denied the right of cross-examination. We do not find the statement made at the close of the hearing, "Are there any questions?" to be a retrenchment from the announcement made at the start of the hearing, "Mrs. Courter will not be permitted to cross-examine the witnesses." The inference we conclude from the statement is, are there any questions regarding the proceedings. If the board was going to permit cross-examination of the witnesses, they would announce it after a witness has testified.

IV.

Plaintiff also contends that she was denied due process of law because the defendant board was not impartial. Due process requires that the persons who decide the case be impartial and unbiased. Keith v. Community School District of Wilton, 262 N.W.2d 249, 258-59 (Iowa 1978). Unlike Keith, the board in this case was not acting as prosecutor, judge, and jury. Plaintiff was not, therefore, denied a hearing before an impartial board.

Since we have concluded that minimal due process was not afforded plaintiff, we reverse and remand for a new hearing before the defendant school board.

REVERSED AND REMANDED.

DONIELSON, J. (dissenting)

I dissent.

No Iowa cases go so far as to require that when a public hearing is held under section 279.13, the teacher must be given the equivalent of a formal trial with all the trappings of an adversarial proceeding, including cross-examination. Keith v. Community Sch. Dist. of Wilton, 262 N.W.2d 249, 258-59 (Iowa 1978), quotes with approval the following language from Brouillette v. Board of Dir. of Merged Area IX, Etc., 519 F.2d 126, 128-29 (8th Cir. 1975):

Section 279.13 does not set forth any form for the required hearing. We have acknowledged that the statute was intended to provide non-tenured teachers with procedural due process. Swab v. Cedar Rapids Community Sch. Dist., 494 F.2d 353 (8th Cir. 1974). However, this does not mean a formal trial must be held. . . . we deem an informal procedure which meets the minimal requirements of fair play and provides a dismissed teacher with a reasonable opportunity to be heard compliance [sic] with the statute. Minimal requirements of due process are generally recognized to be: (1) clear and actual notice of the reasons for termination in sufficient detail to enable him or her to present evidence relating to them; (2) notice of both the names of those who have made allegations against the teacher and the specific nature and factual basis for the charges; (3) a reasonable time and opportunity to present testimony in his or her own defense; and (4) a hearing before an impartial board or tribunal.

The Iowa Supreme Court has not decided whether a teacher has a formal right of confrontation or cross-examination under § 279.13. In Brouillette, the 8th Circuit said that "the fundamental purpose of the statute is to provide a teacher with notice of charges and opportunity to be heard." Id. I believe that fundamental purpose was clearly achieved in this case, especially in light of the fact that although not allowed to have a formal cross-examination of witnesses, plaintiff was given the opportunity to ask questions during the hearing. The majority today has decided that a proceeding under § 279.13 should be a formal proceeding. This holding is not consistent with prior case law and decides a policy issue better left to either the legislature or the Supreme Court.

Carter, J., joins this dissent.

CARTER, J. (dissenting)

I join in the dissent of Donielson, J., on the belief that due process in the present case does not require a right of cross-examination because the type of hearing involved is not for purposes of making a record on which the ultimate decision is to be based.