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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

AR-WE-VA COMMUNITY SCHOOL DISTRICT,

Plaintiff-Appellant

vs.

ELIZABETH LONG,

Defendant-Appellee.

Filed December 27, 1979

251
2-62826

AR-WE-VA COMMUNITY SCHOOL DISTRICT,

Plaintiff-Appellant,

vs.

LEAH HENKENIUS,

Defendant-Appellee.

251
2-62827

Appeal from Crawford District Court - George F. Davis, Judge.

Plaintiff - school district appeals from judgment ordering reinstatement of defendants' teaching contracts. - Reversed.

Ronald H. Schechtman, of Schechtman & Eich, Carroll, and Edgar H. Bittle, of Ahlers, Cooney, Dorweiler, Haynie & Smith, Des Moines, for appellant.

James L. Sayre, of Dreher, Wilson, Adams & Jensen, Des Moines, and James F. Gaukel, of Gaukel & Nevins, Mapleton, for appellees.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

SNELL, J.

Plaintiff - school district appeals from a judgment ordering the reinstatement of defendants' teaching contracts, which were terminated because of the school board's determination that a reduction in staff was necessary. We reverse.

The teaching contracts of Elizabeth Long and Leah Henkenius were terminated pursuant to a school board determination that declining enrollment and budgetary constraints required a reduction in staff. The teachers were afforded a hearing before the school board pursuant to section 279.16, The Code 1977, after which the board approved the superintendent's recommendation that the teachers' contracts be terminated. The teachers appealed to an adjudicator pursuant to section 279.17, The Code 1977, and the adjudicator reversed the board's decision on the ground that the teachers were improperly evaluated in violation of the master contract between the board and the education association.[1] The school district then appealed the adjudicator's decision to district court pursuant to section 279.18, The Code 1977. The district court affirmed the adjudicator's order on a different ground, concluding that the evaluation provisions of the master contract were not applicable to these teachers, but that the staff reduction provision of the master contract[2] was not properly adhered to in that the board did not show that staff reduction could not be, and in fact, was not accomplished by attrition. The school district now appeals the district court's decision pursuant to section 279.18, The Code 1977.

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[1] The relevant portions of the master contract relating to teacher evaluations state as follows:

Section 1. The classroom teaching performance of regular full-time first and second year classroom teachers shall be formally evaluated a minimum of twice each school year. Beyond their second year of service, classroom teachers will be formally evaluated as deemed practical and possible by the administration.

. . . .

Section 3. Results of the minimum number of formal classroom observations provided for in Section 1, above, shall be in writing, with a copy to be given to the teacher, and shall be preceded by an in-class observation of the teacher's performance.

Section 4. The evaluator shall have a meeting with the teacher within twenty (20) school days following classroom observation and prior to submission of the written evaluation report to the Superintendent.

Section 5. The teacher shall have the right to submit an explanation or other written statements regarding any evaluation for inclusion in his/ her personnel file.

. . . .

Section 8. Procedure is defined to include the evaluation forms showing what situations are to be observed but such form shall not bar any miscellaneous observations the evaluator may make.

[2] The reduction in staff provision of the master contract stated as follows:

When, in sole, exclusive and final judgment of the Board of Education, decline in

I. At the outset, we note that in lieu of an appendix with contents prescribed by Iowa Rule of Appellate Procedure 15(a), the parties prepared an agreed statement of the case pursuant to Iowa Rule of Appellate Procedure 15(f) which incorporated the entire transcript of the proceedings before the school board by reference. Rule 15(f) expressly prohibits incorporating by reference any part of the record, the rationale being that such a method unduly inconveniences the appellate court by providing only one copy of that part of the record for perlustration by all the members of the court. Failure to comply with the rule concerning the required contents of the appendix has been held to be grounds for dismissal of the appeal. Myers v. Sellers, 234 N.W.2d 152, 153 (Iowa 1975). Because of our desire to reach the merits of this case, we decline to dismiss this appeal. However, absent extraordinary circumstances, noncompliance with the Rules of Appellate Procedure such as that demonstrated here will not be condoned by this court.

II. This appeal has been taken pursuant to section 279.18, The Code 1977, and because the waters of this recently-passed statute had been untested prior to the taking of this appeal, the parties raised the issue of the proper scope of review to be applied by the appellate court. This issue has been recently resolved by the case of Board of Education of Fort Madison Community School District v. Youel, 282 N.W.2d 677 (Iowa 1979). We review the case on the whole record made before the school board, and make anew the judicial determinations specified in section 279.18, The Code 1977. Youel, 282 N.W.2d at 679. While we are not bound by the fact findings of the board, we give them weight, especially when considering the credibility of witnesses. Id. at 684; § 279.18, The Code 1977. Our review is at law for the correction of errors under the seven standards set out in section 279.18. Youel, at 680.

In the case at bar, the issues raised by the parties may be phrased in terms of the following standards under section 279.18: (1) whether the board action was in violation

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enrollment, reduction or program or any other reason requires reduction in staff among teachers, the Administration shall attempt to accomplish same by attrition. Attrition is defined to mean death, retirement or teachers leaving the system. In the event necessary reduction in staff cannot be adequately accomplished by attrition given the necessity to hire and/or maintain the most competent and qualified staff available in the interest of perpetuating the highest quality education program possible, the Administration shall base its decision as to resulting contract renewals on the relative skill, ability, competence and qualifications or [sic] available teachers to do the available work. If a choice must be made between two or more teachers of equal skill, ability, competence and qualifications to do the available work, contract renewals will be given to the teacher(s) with the greater full-time continuous length of service in the district (system seniority).

of constitutional or statutory provisions; (3) whether the board action was in violation of a board rule or policy or contract; (6) whether the board action was unsupported by a preponderance of the competent evidence in the record made before the board and the adjudicator when that record is reviewed as a whole; and (7) whether the board's action was unreasonable, arbitrary or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion. The criteria for our review thus established, we now separately address the issues raised by the parties to this appeal.

III. The school district contends that reduction of staff necessitated by declining enrollment and budgetary restrictions constituted "just cause" for terminating the teachers and thus, the board did not abuse its discretion by terminating the teachers for that reason. "Just cause" includes legitimate reasons relating to the school district's personnel and budgetary requirements. Youel, 282 N.W.2d at 680 (quoting Briggs v. Board of Directors of Hinton Community School District, 282 N.W.2d 740, 742 (Iowa 1979). A finding of just cause for a teacher's termination obviates the need to address whether the termination was arbitrary, capricious, or an abuse of discretion. DeShon v. Bettendorf Community School District, 284 N.W.2d 329, 331, 332 (Iowa 1979). Accordingly, the board's action in terminating the teachers because of staff reduction necessitated by declining enrollment and budgetary constraints did not constitute an abuse of discretion.

IV. The school district argues that the district court erred in determining that the evidence did not show that the desired reduction in staff could not have been accomplished by attrition. The district court based its determination on the finding that two teachers had resigned during the year, thus providing two positions that could have been filled by Long and Henkenius. However, this conclusion overlooks the ultimate goal the school board was attempting to attain through staff reduction. The school board was attempting to reduce its elementary staff to one teacher for each of grades one through six and two teachers for kindergarten, or a total elementary teaching staff for grades K - 6 of eight. The evidence showed that at the beginning of the school year, there were twelve teachers in the elementary system. Given the finding that two teachers had resigned, a reduction of two teachers was still necessary to achieve the ultimate goal. The resignation of two teachers did not open up two positions on the elementary staff. Rather, the resignations merely reduced the number

of teachers that had to be terminated to two. The evidence shows that the board's desired reduction in staff was not accomplished by attrition, and the district court erred in holding to the contrary.

V. The district court concluded that the adjudicator inappropriately applied the evaluation provisions of the master contract to the evaluations of the teachers for purposes of staff reduction since there was no specific indication in the evaluation provisions that they should apply to staff reduction situations. We cannot agree with this conclusion. Just as there is no indication that the evaluation provisions should apply to staff reduction situations, neither is there any indication that once the administration determines that formal evaluations should be made for whatever reason, the formal evaluation procedures delineated in the master contract need not be followed. The record shows that formal evaluation procedures had been undertaken. There is no evidence in the record that shows that anyone knew that the teacher evaluations would be used for staff reduction purposes prior to March 13, when the board determined that staff reduction would be necessary. Apparently, the administration had undertaken to make teacher evaluations independent of any staff reduction motivations. That these evaluations would be subsequently used for staff reduction purposes would not seem to preclude following the formal evaluation procedures set out in the master contract once the administration initiated the evaluation process. We think the district court erred in concluding that the formal evaluation procedures as set out in the master contract did not apply to the evaluations of the teachers here just because those evaluations were subsequently used for the purposes of staff reduction.

Reaching the above conclusion, however, requires us to determine whether the adjudicator appropriately determined that the evaluation procedures were not properly complied with. The adjudicator concluded that the district failed to adequately show that the evaluator—in this case, the elementary school principal—had a meeting with the teachers within twenty days following classroom observation pursuant to section 4 of the teacher evaluation provisions of the master contract. See note 1 supra. We disagree. The principal testified before the board that he had met with the teachers within twenty days following his classroom observations of them.[3] The teachers

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[3] With regard to classroom observations of Elizabeth Long, the principal's relevant testimony was as follows:

Q. Did all those observations take place within 20 days of March 13, 1978?

testified to the contrary. The board apparently chose to believe the testimony of the principal over that of the teachers. We accord weight to the findings of the board especially with regard to the credibility of witnesses, Youel, 282 N.W.2d at 684; section 279.18, The Code 1977, and conclude that there was adequate evidence to show compliance with section 4 of the teacher evaluation provisions of the master contract.

The adjudicator also determined that the board did not show adequate compliance with section 5 of the teacher evaluation provisions, which provides the teacher with the right to respond to any evaluation by submitting an explanation or other statement with regard to the evaluation for inclusion in his or her personnel file. See note 1 supra. Again, we disagree with the adjudicator's conclusion. There is no showing that the teachers were denied their right under section 5. The adjudicator concluded that since the notice and recommendation to terminate the teachers' contracts was issued only one day after they had reviewed their evaluations, they were effectively denied their section 5 right. However, in a case of contract termination such as this, the opportunity to be heard at a hearing before the board adequately provided the teachers with the same right as provided by section 5 of the teacher evaluation provisions. Thus, the teachers were effectively granted their section 5 right under the circumstances here, and the adjudicator's finding to the contrary was in error.

VI. The adjudicator also determined that since Henkenius and Long possessed the typical elementary teaching certification to teach grades K-9, it was a violation of the master contract to only compare their skill, ability, competence, and qualifications to those of the other teachers of grades K-6, since the master contract requires a relative comparison of available teachers to do the available work. See note 2 supra. The adjudicator construed that provision to require that Henkenius' and Long's qualifications be compared with those of teachers of grades 7-9 as well as K-6. That construction requires the assumption that a teacher who is certified to teach a range of grade levels is also qualified to teach any of those grades. However, certification is only evidence

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A. Formal and informal, yes.

With regard to classroom observations of Leah Henkenius, the principal's relevant testimony was as follows:

Q. Well then, how do you know it was within 20 days that you talked with Miss Henkenius about your observations?

A. I think in terms of the informal evaluation and the formal evaluative processes, the information which I had gathered was within the 20-day period. . . .

of qualification. Bishop v. Keystone Area Education Agency Number 1, 275 N.W.2d 744, 750 (Iowa 1979).

We think the board could have come to the reasonable conclusion that the differences between teaching grades K-6 and 7-9 in the Ar-We-Va school system were significant enough to justify limiting the relative comparison of teachers in this situation to grades K-6. Grades 7-8 constitute the junior high school in the Ar-We-Va system. Grade 9 is the first level in the senior high school. In grades 7-9, the teachers teach specific subjects, as opposed to general instruction in a range of subjects in grades K-6. It was reasonable for the board to conclude that absent any evidence of Henkenius' or Long's special qualifications to teach grades 7-9, their certification to teach those grades was not sufficient to demonstrate their qualification. Consequently, there was no violation of the master contract by limiting the comparison of the relative credentials of available teachers to only teachers of grades K-6.

VII. The teachers assert that the board's decision to terminate Henkenius and Long was not supported by a preponderance of the evidence since that decision was based only on the testimony of the principal who evaluated all the elementary teachers. "Preponderance of the evidence" merely means the greater weight of the evidence, or that quality of evidence that outweighs the evidence of the other side. Hall v. Wright, 261 Iowa 758, 767, 156 N.W.2d 661, 667 (1968). The principal testified as an expert witness regarding the evaluation of teachers. He concluded from his evaluations that Long and Henkenius ranked lower in relative skill, ability, competence, and qualifications than the other elementary teachers. The board is entitled to rely on the testimony of its own expert witness. Scheelhaase v. Woodbury Central Community School District, 488 F.2d 237, 245 (8th Cir. 1973) (Bright, J., concurring), cert. denied, 417 U.S. 969, 94 S. Ct. 3173, 41 L. Ed. 2d 1140 (1974). The teachers contended that there were other elementary teachers in the school that they believed to be lower in the relative criteria for evaluation, but offered no additional evidence to support that contention. The board believed the principal's testimony and we give weight to the board's finding based on the credibility of the witnesses, Youel, 282 N.W.2d at 684; section 279.18, The Code 1977, and conclude that the decision to terminate Long and Henkenius was supported by a preponderance of the evidence.

VIII. The teachers contend that since the board made the decision to reduce staff,

and since they were the only teachers to receive notice of termination because of the decision to reduce staff, they were effectively charged and tried by the board, denying them their right to an impartial decisionmaker as supported by the case of Keith v. Community School District of Wilton, 262 N.W.2d 249, 256-62 (Iowa 1978). In Keith, however, the school board actually instigated the termination proceedings against the particular teacher. Id at 261. In the case at bar, it was not the school board that initially decided which teachers should be terminated; rather, it was the superintendent who initiated the proceedings against Long and Henkenius, pursuant to section 279.13, The Code 1977. Keith expressly stated that under such a procedure, it is possible for the board to be an impartial decisionmaker. 262 N.W.2d at 261. Absent a showing of a personal or financial stake that might create a conflict of interest or personal animosity, the school board is an appropriate impartial decisionmaker in teacher termination cases. Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 482, 491-93, 495-96, 96 S. Ct. 2308, 2313-14, 2315-16, 49 L. Ed. 2d 1, 9, 11 (1976). The teachers were not denied their right to an impartial decisionmaker in this case.

We regret that the declining enrollment evidenced in this school system, caused perhaps by the zero population growth of the past decade, or perhaps by the declining population of our rural communities, or perhaps by a combination of the two, coupled with the obvious effects of inflation on school budgets, has forced the school board of the Ar-We-Va school system to terminate the contracts of these admittedly competent teachers. The most difficult decisions are too often determined from the absence of choice.

The decisions of the district court and the adjudicator are reversed, and the decision of the school board terminating the teaching contracts of Elizabeth Long and Leah Henkenius is reinstated.

REVERSED.