



IN THE COURT OF APPEALS OF IOWA

DAVID M. BOLFIK,	)	
	)	
Appellant,	)	Filed april 26, 1979
	)	
vs.	)	
	)	
MARCUS COMMUNITY	)	103
SCHOOL DISTRICT,	)	<u>2-62563</u>
	)	
Appellee.	)	

Appeal from Cherokee District Court - Hon. J. H. Andreasen, Judge.

Plaintiff appeals from a district court decision upholding defendant school board's termination of his teaching contract. AFFIRMED.

Harry H. Smith and MacDonald Smith of Sioux City, Iowa, for appellant.

Larry C. Gipe of Marcus, Iowa; and Edgar H. Bittle of Belin, Harris, Helmick & Lovrien, Des Moines, Iowa, for appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff, David M. Bolfik, appeals from a district court order upholding decision of defendant school district to terminate his teaching contract. Plaintiff claims the procedure followed by the Marcus Community School Board (hereinafter Board), was defective in that it failed to provide him with findings of fact and conclusions of law at the same time it notified him of its decision to terminate his contract. We disagree and uphold the decision of the lower court.

In the case at bar, notice containing a statement of the vote of all the members of the board meeting in open session on April 3, 1978, was sent to plaintiff on April 4, 1978. This notice advised plaintiff of the Board's decision to terminate his employment on May 30, 1978. Plaintiff filed notice of appeal to an adjudicator on April 12, 1978. On April 18, 1978, the Board mailed plaintiff a copy of the findings of fact and conclusions of law.

The issue before this court is whether the "notice of the board's action" required by section 279.16, The Code 1977, as amended, must also contain findings of fact and conclusions of law. Section 279.16 provides in pertinent part as follows:

The decision of the board shall be in writing and shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts and supporting the findings. Each conclusion of law shall be supported by cited authority or by reasoned opinion.

When the board has reached a decision, opinion, or conclusion, it shall convene in open meeting and by roll call vote determine the continuance or discontinuance of the teacher's contract. The record of the private conference and findings of fact and exceptions shall be exempt from the provisions of chapter 68A. The secretary of the board shall immediately mail notice of the board's action to the teacher.

Initially we make a distinction between the "decision" of the board and the "notice of the board's action," as these items are employed in this statute. The board's "decision," which "shall be in writing and shall include findings of fact and conclusions of law," is the basis for the board's action at the open meeting.¹ The decision and the findings of fact become part of the record for the private hearing. The "notice of the

¹We construe the statute to require that the making of such findings of fact and conclusions of law precede the time the board convenes in open meeting and affirms its decision by roll call vote. Plaintiff has failed to establish that this did not occur in the present case. The findings and conclusions are dated April 3, 1978 and there is no evidence that they were not made at that time. The plaintiff's claim of error goes only to the time a copy of the findings and conclusions were mailed to him.

board's action" referred to in section 279.16 is merely notice of the ultimate disposition by the board of the matter before it; notice of the action taken regarding the teacher's employment as a result of the board's decision at the private hearing. The legislature's use of the words "decision of the board" and "notice of the board's action" cannot be attributed to chance. The phrases used refer to two distinct things.

Plaintiff argues that this interpretation of section 279.16 is improper when taken together with section 279.17, The Code. Section 279.17 requires a teacher desiring to appeal to file a notice of appeal within ten days of the board's decision, containing a concise statement of the grounds upon which relief is being sought. Plaintiff urges that in order for a teacher to properly state the grounds of his or her appeal, section 279.16 should be read to require the board to provide a teacher with a copy of its findings of fact and conclusions of law, which would theoretically disclose the rationale behind the decision, at the same time that notice of the action taken is given. We disagree. As previously noted, section 279.16 provides that the decision and findings of fact are to be part of the record of the private hearing. The fact that the statute does not specifically require a school board to provide a teacher with a copy of the findings of fact and conclusions of law does not mean they are not available to the teacher. The findings of fact and conclusions of law become part of the record, and as such, are available to a teacher for use in preparing a notice of appeal. The procedure provides adversely affected teachers with ample opportunity to pursue appellate review of the board's decision.

Plaintiff, in pursuing this appeal, has made no allegation that his dismissal was without merit or that the procedure followed did not comport with the requirements of due process. Indeed no prejudice of any sort is suggested. He has instead attempted to argue a statutory construction which would result in the Board having committed a technical procedural violation. We see no merit in plaintiff's position and find the procedure followed by the Board in terminating his employment complied with the letter and spirit of chapter 279 of the Code. For these reasons we uphold the decisions of the adjudicator and the lower court.

AFFIRMED.