IN THE COURT OF APPEALS OF IOWA

No. 9-551 / 89-386

FILED
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CLERK SUPREME COURT

JANICE WOLLESEN,

Appellant,

vs.

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CARLISLE COMMUNITY SCHOOL DISTRICT

Appellee.

Appeal from the Iowa District Court for Warren County, Peter Keller, Judge.

Appellant appeals the district court order affirming termination of her teaching contract with appellee. **AFFIRMED.**

Thomas Mann, Jr. of Mann & Mann, Des Moines, for appellant.

Kathleen A. Reimer of Rogers, Reavely, Shinkle & Reimer for appellee.

Considered by Oxberger, C.J., and Donielson and Habhab, JJ.

HABHAB, J.

Appellant Janice Wollesen appeals from the district court's order affirming termination of her teaching contract with appellee Carlisle Community School District. Appellant alleges appellee's decision to discharge her was: (1) in violation of the collective bargaining agreement, and (2) in violation of due process. We affirm.

Janice Wollesen was employed by appellee on September 11, 1987, as a special education teacher. Dennis Keeney, the school principal, was her immediate supervisor. During the time material to this controversy, she was on probationary status. After experiencing a parental complaint in November 1987, regarding that parent's concern about the lack of progress made by Ms. Wollesen with her child, Mr. Keeney met with Ms. Wollesen to discuss her teaching effectiveness and her loss of composure in dealing with students in her class.

In the late fall and winter of 1987-88 Mr. Keeney received reports from other teachers that the bickering between Ms. Wollesen and her students was so loud at times that the teacher in the next room was unable to continue with her students. Mr. Keeney suggested specific reading material she could use to help her in each of the areas of deficiencies.

In December 1987, Mr. Keeney, after observing her teaching in class, again met with Ms. Wollesen and outlined orally and in writing what she could do to improve her

teaching methods. Mr. Keeney gave Ms. Wollesen a specific assessment of his review of her work performance. Ms. Wollesen acknowledged that Mr. Keeney's formal evaluation of her work was critical and that after her discussions with him, she was aware he was not satisfied.

On January 21, 1988, after further observing Ms. Wollesen's work performance, Mr. Keeney prepared a detailed written critique which noted specific deficiencies. At Ms. Wollesen's request, Mr. Keeney returned to observe her teaching technique the next day and prepared a written critique of the deficiencies he observed. Mr. Keeney reviewed these critiques with her. He again observed her teaching techniques and provided her with critiques in February and March.

On March 10, 1988, Mr. Keeney prepared an annual evaluation of her work performance throughout the school year. She was provided with a copy of this evaluation, and Mr. Keeney invited her to meet with him to discuss it. Initially she refused, but finally, on March 14, 1988, Mr. Kenney advised her that she had to participate in the conference.

The annual evaluation detailed specifically the problems with Ms. Wollesen's work performance. On March 11, 1988, the school's superintendent, Dean Turner, served Ms. Wollesen's with a formal notice that he would recommend to the school board that her contract be terminated. This recommendation contained a list of the reasons, all of

which had been outlined in detail in the annual performance review which she already possessed. Ms. Wollesen ultimately met with Mr. Keeney to discuss the annual evaluation report, and on March 16, 1988, she signed the same.

The hearing before the school board was scheduled for April 5. The school provided Ms. Wollesen with a witness list, copies of all the documents the superintendent intended to use as exhibits, and her entire personnel file five days before the hearing date. There is no dispute that the superintendent's witness and exhibit lists were timely provided prior to the hearing pursuant to section 279.15, Iowa Code, however, the teacher's witness and exhibit lists were not provided to the superintendent at least three days prior to the hearing as required by section 279.15. Notwithstanding this lack of compliance, she was not precluded from presenting her evidence to the board.

On the hearing date, Ms. Wollesen moved for a more specific statement of the alleged reasons for discharge. Her motion was denied. After three days of hearings in which both sides presented their positions, the school board issued its April 23, 1988, decision terminating Ms. Wollesen's contract. Ms. Wollesen then filed her petition for judicial review of the decision of the school board to terminate her employment as a probationary teacher pursuant to sections 279.18 and 279.19, Iowa Code.

Our review of a district court's decision in a teacher termination case is limited to the correction of errors of law. Larsen v. Oakland Community School Dist., 416 N.W.2d 89, 91 (Iowa App. 1987). Iowa Code section 279.19 provides in relevant part:

> The first two consecutive years of employment of a teacher in the same school district are a probationary period . . . .
>
> In the case of the termination of a probationary teacher's contract, the provisions of sections 279.15 and 279.16 shall apply.
>
> The board's decision shall be final and binding unless the termination was based upon an alleged violation of a constitutionally guaranteed right of the teacher or an alleged violation of public employee rights of the teacher under section 20.10.

In view of the foregoing statute, the review on appeal involves (a) whether there was any violation of a constitutionally-guaranteed right of the teacher; or (b) whether there has been a violation of public employee rights of the teacher under section 20.10 of the Code of Iowa.

The first issue to be addressed concerns appellant's claims appellee had violated her rights under the collective bargaining unit by not holding orientation meetings to acquaint her with the evaluation procedures and the instrument to be utilized in the evaluations. Appellant further alleges the collective bargaining agreement was violated because of Mr. Keeney's supposed creation of a separate personnel file in his desk.

Appellant argues that these infractions of the collective bargaining unit constitute a violation under Iowa Code section 20.10(2)(f). That section provides:

> 2. It shall be a prohibited practice for a public employer or the employer's designated representative to:
>
> * * *
>
> f. Deny the rights accompanying certification or exclusive recognition granted in this chapter.

We conclude from our examination of the record that a violation of section 20.10 of the Code has not been shown. As it relates to the burden of proof, the superintendent had the burden to establish the case against Ms. Wollesen in the first instance. Thereafter, Ms. Wollesen must demonstrate error. As the court stated in Board of Education of Fort Madison Community v. Youel, 282 N.W.2d 677, 680 (Iowa 1979), "This does not change the burden of proof. It merely places on the one saying the burden was not met the task of pointing out why it wasn't." The two alleged violations of the collective bargaining unit were not substantiated by appellant.

With that ruling, we need not address the question of whether Ms. Wollesen has waived her right to raise these questions on appeal because of her failure to file a timely grievance with the Public Employment Relations Board. See Ferre v. Board of Education of Benton Community School District, 338 N.W.2d 870, 872 (Iowa 1983).

The second issue before us concerns appellant's claims that she was denied procedural and substantive due process. The Iowa Supreme Court has held that while a non-tenured teacher has no constitutionally-protected property interest in a continuing contract, Chapter 279 does provide non-tenured teachers with procedural due process. See Keith v. Community School Dist. of Wilton, 262 N.W.2d 249, 257-61 (Iowa 1978).

In order "[t]o comport with due process, a person must ordinarily be informed somehow of the issues involved in order to prevent surprise at hearing and allow an opportunity to prepare." Wedergren v. Board of Directors, 307 N.W.2d 12, 16 (Iowa 1981). The notice provided by appellee was of sufficient specificity to meet the requirements of due process. Additionally, prior to hearing, appellant was provided with her personnel file, a list of the documents the superintendent intended to present at the hearing, and a list of those witnesses which the superintendent intended to call at the hearing. We deduce from this record substantial evidence exists that the hearing met the minimal requirements of due process and provided appellant with a reasonable opportunity to be heard. We further find substantial evidence that appellant was not deprived of substantive due process since the reasons for appellee's discharge of appellant were neither arbitrary nor capricious.

AFFIRMED.