IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

ANNE LUBECK,)

Plaintiff-Appellant,) Filed December 30, 1981

vs.)

SAC COMMUNITY SCHOOL DISTRICT,) 1-292
2-65647

Defendant-Appellee.)

Appeal from Sac District Court - James C. Smith, Judge.

Plaintiff appeals from trial court's decision on judicial review affirming defendant's termination of her teaching contract for just cause, asserting (1) that she was denied procedural due process during her termination hearing and (2) that the termination was unsupported by a preponderance of the competent evidence. AFFIRMED.

Robert Malloy of Larson & Malloy, Goldfield, Iowa, for plaintiff-appellant.

Colin J. McCullough of the McCullough Law Firm, Sac City, Iowa, for defendant-appellee.

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

PER CURIAM

Plaintiff, Anne Lubeck, appeals from trial court's decision on judicial review affirming defendant's, Sac Community School District's, termination of her teaching contract for just cause. She asserts: (1) that she was denied procedural due process during her termination hearing by (a) the alleged failure of the school board to include in her personnel file certain evaluations, thereby rendering her personnel file incomplete, (b) the school board's failure to have the superintendent of schools present at the first date set for the termination hearing, and (c) the fact that counsel for the administration was formerly general counsel for the adjudicating school board; and (2) that the termination was unsupported by a preponderance of the competent evidence. We affirm.

Plaintiff had taught elementary music in the defendant school district for six years when, on February 8, 1979, she was served with notice of the administration's recommendation to terminate her contract. The following reasons were given:

1. Failure to carry out administrative directives.
2. Disrespect for administrative authority.
3. Numerous late arrivals for work.

Plaintiff requested a private hearing with the board, which was scheduled for March 1, 1979. At the hearing, plaintiff asserted a violation of procedural due process because the superintendent was not present to offer his evidence and argument for termiantion. Defendant board allowed the hearing to commence, but subsequently granted, over plaintiff's objection, the administration's request for a continuance until the following day to allow the superintendent to testify. The hearing concluded the following evening. On March 14, 1979, defendant rendered its decision to terminate plaintiff's continuing contract. Plaintiff timely appealed the board's decision to an adjudicator pursuant to section 279.17, The Code 1977. The adjudicator determined that the administration had failed to carry its burden of proof on two allegations: 1) failure to carry out administrative directives and 2) disrespect for administrative authority. However, the adjudicator found that the board's decision should be upheld on the grounds of plaintiff's tardiness. Plaintiff rejected the adjudicator's decision and filed a notice of appeal with the district court. The court concluded that the preponderance of the evidence supported the findings of fact made by the board and therefore upheld the board's decision. This appeal followed.

I. Scope of Review. Appeal to this court under section 279.18 is at law for corection of error under the seven delineated standards. Board of Education v. Youel, 282 N.W.2d 677, 680 (Iowa 1979).

II. Unlawful Procedure. Plaintiff's first assignment of error concerns three alleged procedural errors. First, she complains that section 279.15, The Code, was not complied with because her complete personnel file of employment was not available to her. Second, she argues that she was denied a fair tribunal because the attorney for the administration was previously attorney for the school board which was adjudicating the matter. Finally, she argues that the superintendent's absence at the hearing on March 1st denied her procedural due process of law.

We note initially that plaintiff preserved error on these issues by making a timely objection at the hearing, by arguing the alleged errors to the district court, and by arguing the errors on appeal to this court.

A. Personnel File. Section 279.15(2) requires, in part, that "[a]s a part of the termination proceedings, the teacher's complete personnel file of employment shall be available to the teacher, which file shall contain a record of all periodic evaluations between the teacher and the appropriate supervisors." Plaintiff bases her allegation of noncompliance with this section on the fact that her evaluations were not attached to her personnel folder, but were filed in a separate drawer under the name of the evaluating principal.

Our review of the record indicates that the evidence supports plaintiff's factual assertion and further reveals that no one in the administrator's office, except for the administrator, knew of the separate filing system. The administrator was absent for an extended period due to illness after plaintiff received notice of termination and his office staff was confused for some time as to the location of the evaluations. We do not believe, however, that these facts are dispositive of the issue. Our review of the record also reveals that plaintiff made no request for her personnel file until February 27 or 28, 1979, just one or two days before the hearing, and that her personnel file was then available, complete with the evaluations. Any prejudice plaintiff may have suffered by receiving her personnel file only one or two days before the hearing thus cannot be visited upon the board. We will not speculate as to whether the administrative staff's initial disorganization would have denied appellant her complete record if she had asked for it at an earlier date. We thus find no violation of section 279.15, The Code.

B. Fair Tribunal. Plaintiff argues that she was denied a fair tribunal because the attorney for the administration at the hearing previously had been the regular counsel for the school board. Our review of the record reveals that the attorney's function in representing the board terminated on the night of the hearing and a new attorney replaced him. The record also reveals that, except for informing the board of the subject matter of the scheduled hearing, the attorney had not communicated with the board about the subject matter of the proceedings.

Termination proceedings pursuant to section 279.13, The Code, are intended to provide nontenured teachers with procedural due process. Keith v. Community School, 262 N.W.2d 249, 258 (Iowa 1978). Although a formal trial is not required, an informal procedure which meets the minimal requirement of fair play is mandated. Id. The minimal requirements of due process includes a hearing before an impartial board or tribunal. Id. at 259. The question before us then is whether the trial court was correct in finding that the board constituted an impartial decisionmaker under these circumstances.

Our analysis of this issue is guided by In re Murchison, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955) (a case which dealt with the Michigan practice whereby a single judge could act as grand jury in order to conduct secret investigations). The court stated in pertinent part:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered.

349 U.S. at 136, 75 S. Ct. at 625, 99 L. Ed. at 946, as quoted in Keith, 262 N.W.2d at 259-66. In Keith, the board of education was found not to be an impartial decisionmaker by virtue of the fact that it had conducted the investigation, prosecution, and judgment of the case.

The circumstances and relationships in the instant case lead us to conclude that no similar probability of bias has been shown by plaintiff. Here, the attorney originally representing the board severed that relationship before proceeding as the representative of the administration. He took no part in rendering the decision in this case nor did he advise the board on the applicable law and the facts of the case. He did not even consult the board in preparation for the hearing except to advise the board of the

subject matter of the hearing. We note that the representation of the administration by counsel was initiated only after plaintiff, who had indicated she would be represented by her husband, appeared with counsel. At that time the relationship between the attorney and the board was severed and another attorney for the board replaced him. Further, the record is devoid of evidence which would suggest that the board, by its prior relationship with the attorney, was actually biased. Indeed, the evidence supports the opposite conclusion in that the record establishes the board had no consultation with this attorney on the case. Thus, even a de facto relationship, despite formal severance, is unsupportable in light of the fact that the board had new counsel to advise it.

C. Superintendent's Presence. We find no merit in plaintiff's allegation that the absence of the superintendent at the first hearing denied her procedural due process because it was the superintendent's responsibility under the provisions of section 279, The Code, to conduct the hearing. Our review of section 279.16, The Code, indicates that "the superintendent, [or] the superintendent's designated representative, if any," may be responsible for the conduct of the school district's case. (emphasis added). Furthermore, the continuance granted by the board to allow the superintendent to testify on behalf of the school district did not deny plaintiff procedural due process. It is clear that his absence at the original hearing was due to his prolonged illness and hospitalization outside of Iowa. Under such circumstances, we do not consider the board's grant of a continuance unfair treatment of plaintiff.

II. Just Cause. As her second assignment of error, plaintiff argues that the board's decision was not supported by a preponderance of the competent evidence and that district court erred in so finding. She argues that we should only judge her ability to teach students and not consider any problems with peripheral working relationships. Moreover, she argues that the cited causes for termination were based on petty and trivial differences. She urges this court to conclude that her termination was unfair and arbitrary.

We begin our analysis by reviewing some general principles which guide our resolution of this matter. Although our review is for correction of errors only, and not de novo, it is our duty to determine if the findings of the board are supported by a preponderance of the competent evidence. Youel, 282 N.W.2d at 679. "[T]he resolution of each case depends on its own circumstances, which necessitates our thorough review of the record." Board of Directors v. Mroz, 295 N.W.2d 447, 449 (Iowa 1980). In an

educator termination context, the term "just cause" has a flexible nature. It cannot be reduced to a legal certainty. See Cook v. Plainfield Community School District, 301 N.W.2d 771, 772 (Iowa App. 1980). See also Youel, 282 N.W.2d at 680. "Where allegations against competence and duty performance are concerned, just cause is derived from conduct which 'directly or indirectly significantly and adversely affects what must be the ultimate goal of every school system: high quality education for the district's students.'" Cook, 301 N.W.2d at 772, quoting Briggs v. Board of Directors of Hinton Community School District, 282 N.W.2d 740, 743 (Iowa 1979). "Just cause" includes considerations of leadership and role model effectiveness. Cook, 301 N.W.2d at 773; Briggs, 282 N.W.2d at 743. It, however, requires good faith, fairness and reasonableness by the party exercising power as to the grounds alleged. Youel, 282 N.W.2d at 680-81. It cannot be based on reasons that are "arbitrary, unfair or generated out of some petty vendetta." Briggs, 282 N.W.2d at 743.

Plaintiff argues that "just cause" should be restricted to considerations of the teacher's competence in the classroom and should not encompass what she terms as problems with "peripheral working relationships." We reject her contention that "just cause" requires such a narrow focus. In this regard, we believe that the causes cited for plaintiff's termination, if supported by competent evidence, are legitimate considerations relating to the teacher's discharge of duties and to continuation of employment. Cook, 301 N.W.2d at 773. Youel, 282 N.W.2d at 682. Lateness diminishes a teacher's leadership and role model effectiveness. Failure to follow directives, whether they be administrative, health, or safety, undermines the control necessary for a school system to function effectively. Tension in administrative and personnel relationships may undermine the school organization, as well as adversely affect the student's education.

We now turn to a review of the evidence before the board to determine its sufficiency. The record shows that over the six years plaintiff had been teaching in the Sac Community School, she gradually implemented the various elements of the ORFF method of instruction in her elementary music program.[1] She first sought the approval of the superintendent and principal to remove the furniture from her classroom. Later

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[1] The ORFF method of instruction is a type of teaching based upon the study of the origin and development of patterns and movement of people and the relationship of these movements to the individual's learning efficiency.

she required students to leave their shoes outside her classroom. She repeatedly tried to enlist support for the ORFF method from the superintendent and the principal with both verbal and written descriptions of her work and to promote a sympathetic understanding of this method with the school board and the parents of the students. Nevertheless, tension arose between the elementary school principal and plaintiff concerning the way she conducted her class. On a number of occasions, plaintiff sent students who were not fully participating back to their home rooms because she felt this inattentiveness would impede the progress of the class. The principal felt this was an unsatisfactory solution because the teachers in the home room used the music period for their class preparation and the presence of the returned students interfered with this free period. Plaintiff then tried to place the students who were not fully participating into the hall outside her classroom. The evidence indicates that several students spent periods in the halls as long as two months. Although plaintiff attempted to provide work for the students in the hall, the principal felt they were not properly supervised. He also believed that expulsion from the music room for such long periods of time caused many students to be dissatisfied with music. Some parents also objected to the program and complained to the principal. He then asked plaintiff to inform him of any parental complaints she received, but plaintifff refused to do so. In November 1978 a pair of boots that had been left in the hall was lost or stolen. Testimony indicates that the matter was brought to the school board's attention by parents of the student with the missing shoes. The school board directed that plaintiff keep the students' shoes in her room, and communicated this directive to plaintiff through the principal. Plaintiff refused to allow her students' property to be placed inside her classroom, but did make an adjacent room available for such items. However, teachers supervising the children's movement to class did not make use of it. The students' shoes and other possessions therefore remained in the hall. Tension between the principal and plaintiff continued to mount and the principal began to keep a log of plaintiff's late arrivals and her responses to administrative authority. At the hearing, the principal testified that plaintiff was frequently five to ten minutes late in arriving at school and on one occasion arrived twenty minutes after she was required to be in her room. When this was brought to her attention, she contended that she was always on time for the beginning of her class period at 8:30 a.m., did not use the breaks provided for teachers, and often stayed at school well after the time required. She argued that as long as she was getting her work done it should not matter when she got to school. The tardiness continued. The

superintendent's testimony indicates that a formal evaluation of a teacher's effectiveness requires that the principal observe a full class period prior to the evaluation. Apparently, the principal failed to do this and merely made frequent, brief visits to plaintiff's classroom. In his report, the principal chiefly criticized plaintiff's performance because of her tardiness, her inattention at teacher's meetings, and his belief that her concern was more for the implementation of the ORFF program than for her students. He also concluded that many students who were required to sit in the hall did not enjoy the music program. He testified that he attempted to bring his observations to plaintiff's attention, but that she failed to demonstrate patience, calmness, or self control and reacted to him with emotional outbursts. From these circumstances, he was persuaded plaintiff would have similar difficulty with her emotions in the classroom.[2]

Upon this evidence, defendant board found just cause for dismissal. The adjudicator, however, found that the only "just cause" for termination which had been proven was plaintiff's lateness in arrival at work and upheld the board's decision on this basis. The district court, however, concluded that the school board's original determination was correct in that all three grounds were supported by the evidence and constituted just cause for termination. Having reviewed the record in its entirety, we find that this court's conclusions are the same as the district court's. Plaintiff, without question, was not punctual, but we do not need decide whether this would be "just cause" for termination standing alone. We believe the board had sufficient basis for concluding that plaintiff's inflexibility with respect to her teaching methodology clearly adversely effected those students who, for one reason or another, did not adapt to her methods and were excluded from classes. While there was certainly an adverse impact on the ORFF method by the problem students, plaintiff's solution was antithetical to the goal of quality education for all students. Further, we are mindful of the fact that, while administrative, safety, and health rules issued by a board of education may adversely affect a particular method of teaching, those requirements are necessary in maintaining an effective school system and cannot be ignored for the sake of any particular teacher's method of instruction.

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[2] We note that plaintiff received the principal's formal evaluation of her performance on February 5, 1979, although there was no discussion of her tardiness, lack of self control, or the question of whether to retain the pure "ORFF" methodology.

Finally, we believe the following language from Youel is also applicable:

> The Board was not obliged to continue a situation which was disruptive, was harmful to the school's athletic program, and for which there appeared to be no alternative except to dismiss the one the Board found responsible for the continuing dissension. The fact that Youel may not have been totally responsible for all the ills does not mean his contract cannot be terminated. Faced with a situation in which bickering and bitterness held sway, the Board must have the final say as to how best to bring that intolerable state of affairs to an end as long as the action taken is within the provisions of the statute designed to meet that very problem.

282 N.W.2d at 684.

We thus conclude that the board's grounds for termination were supported by a preponderance of the competent evidence and that district court correctly affirmed its decision.

AFFIRMED.