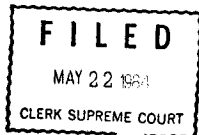


IN THE COURT OF APPEALS OF IOWA



CHARLES HECHT,)

Plaintiff-Appellant,)

Filed May 22, 1984

vs)

BOARD OF EDUCATION OF THE)
EASTERN ALLAMAKEE COMMUNITY)
SCHOOL DISTRICT and the EASTERN)
ALLAMAKEE COMMUNITY SCHOOL)
DISTRICT,)

4-122
83-1288

Defendnat-Appellee.)

Appeal from the Iowa District Court for Allamakee County - Dale S. Missildine, Senior Judge.

Teacher appeals from the district court decision terminating his contract on judicial review of an adjudicator's decision. **AFFIRMED.**

Gerald L. Hammond and James L. Sayre of Sayre & Gribble, P.C., Des Moines, Iowa, for plaintiff-appellant.

John W. Schafer and Richard T. Heiderscheit, Lansing, Iowa, for defendant-appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

Teacher appeals from the district court decision terminating his contract on judicial review of an adjudicator's decision. We affirm.

On March 1, 1982, the superintendent of the Eastern Allamakee Community School District recommended termination of Charles Hecht, a shop teacher, pursuant to Iowa Code section 279.15 (1981). The recommendation which was approved by the school board listed the following reasons for the termination:

1. The shop is maintained in a disorderly unorganized manner, with lumber, projects and other matter scattered haphazardly around the room rather than stored in proper order.
2. Insufficient attention to safety matters in the shop. On December 3, when Mr. Hecht was ill, Mr. Rauker found it necessary to close down the shop until it was corrected to a safe condition.
3. Lack of care of shop equipment. A high rate of damage occurs, and there is insufficient maintenance on equipment to keep it in proper, safe, running order.
- 4 Shop cleanliness is below standard. Insufficient effort is made to keep the dust under control.
- 5 Poor health. Mr. Hecht has a high degree of absence because of illness. While on duty he also exhibits low energy levels which contribute to his ability to maintain the shop program.
- 6 An unacceptable discipline level. Several of the above problems are related to lack of student respect for the teacher and frequent discipline problems. Material in the file indicate this has been a problem in the past.
- 7 Passive teaching methods. Students are often left on their own without sufficient instructor assistance in developing projects.

On appeal an adjudicator found that the school board's decision was not supported by a preponderance of the competent evidence in the record and refused to permit the termination. The school board did not reject the arbitrator's decision as permitted by section 279.17 and appeal to the district court under the provisions of section 279 18

On August 10, 1982, after the time period for appealing the adjudicator's decision had run, the superintendent sent a recommendation of termination pursuant to Iowa Code section 279.27 (1981). The following reasons were given for the recommendation:

1. Failure to complete professional duties during the 1981-82 school year as required.
2. Unauthorized expenditures of District funds.
3. Failure to exercise adequate care for school-owned equipment and supplies entrusted to you.

The school board once again terminated the contract of Mr. Hecht and an adjudicator reversed its decision. The school board appealed and the district court held that the decision to terminate was supported by a preponderance of the evidence and that the board was not precluded from proceeding pursuant to section 297.27 because of the earlier attempted termination pursuant to section 297.15.

On appeal Hecht does not argue the merits of the reasons for termination. He states in his brief that the issue before this court is not one of res judicata or issue preclusion. His contention is that the school district, by failing to appeal the adjudicator's decision in the section 297.15 termination, is limited to acts by the teacher occurring subsequent to the first termination proceeding.

Appeal of the district court decision is authorized by section 279.18. This appeal is at law for the correction of errors under the seven standards set forth in the statute. Board of Education of Fort Madison Community School District v. Youel, 282 N.W.2d 677, 679-80 (Iowa 1979).

Chapter 279 of the Code contains two provisions for termination of teacher contracts. Section 279.15 allows termination at the end of the school year. Section 279.27 provides that a teacher "may be discharged at any time during the contract year for just cause." Hecht maintains that once a school board has unsuccessfully attempted a year-end termination, it may not initiate a mid-year

termination. Hecht describes the second termination in this case as a "subterfuge" used by the board to correct its own negligence in failing to appeal from the adverse decision in the first termination.

A similar situation arose in Hartman v. Merged Area VI Community College, 270 N.W.2d 822 (Iowa 1978). In Hartman, the school board determined that due to declining enrollment and the deterioration of the school district's financial position, a number of teachers' contracts should be terminated. The board originally planned to utilize the year-end termination provision. However, when the board failed to give timely notice to the teachers, it proceeded to terminate the contracts relying on the statutory provision for mid-year termination. The supreme court held that the board had acted improperly. The court maintained that while termination for economic reasons was permissible under the provisions for nonrenewal of a contract at the end of the school year, a mid-year termination requires reasons personal to the teacher such as incompetence or dereliction of duty. Id. at 828-29. Although the court in Hartman was construing the 1973 Code, the court has reaffirmed this distinction between the two different termination procedures subsequent to the revision of chapter 279. De Shon v. Bettendorf Community School District, 284 N.W.2d 329, 331 (Iowa 1979).

Although Hecht relies on Hartman and DeShon, these cases deal merely with the types of reasons for termination permissible under the two sections. The present situation did not violate the rule of these cases since the reasons given for the second termination were personal ones. Neither case holds or implies that a school board cannot utilize both sections to terminate a teacher's contract. A school board has no obligation to pursue an appeal rather than to wait and institute a separate termination proceeding. As long as there is "just cause" supported by the evidence as required by the statute, we know of no reason why a 279.27 termination could be considered a subterfuge even if a prior unsuccessful 279.15 termination has not been appealed.

AFFIRMED.