

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GRAYNLE EDWARDS,
Plaintiff,

v.

CHESTER UPLAND SCHOOL
DISTRICT, CHESTER UPLAND
SCHOOL DISTRICT BOARD OF
CONTROL, and JOHN TOMMASINI,
Defendants.

Civil Action
No.96-7162

Gawthrop, J.

July 29, 1998

M E M O R A N D U M

Plaintiff Dr. Graynle Edwards has filed for summary judgment on three counts in his suit against defendants Chester Upland School District and Chester Upland Board of Control (Board). Plaintiff alleges that defendants violated i) his rights to constitutional due process, ii) his tenure and bumping rights under state law, and iii) the collective bargaining agreement. Plaintiff seeks: i) a declaratory judgment that the defendants' actions were illegal, ii) reinstatement in accordance with his seniority rights, iii) an award of backpay, benefits, and seniority accrued since the defendants' actions, and iv) punitive damages, along with attorney's fees. Defendants argue that they gave the plaintiff his constitutionally required notice and opportunity to be heard, and thus their actions were consistent with constitutional due process, and that they did not violate state law. They have filed a cross-motion

for summary judgment on Count I and to dismiss the state causes of action for lack of jurisdiction. For the following reasons, I shall grant in part and deny in part plaintiff's motion, and deny defendants' motion, and order Dr. Edwards reinstated with backpay, benefits, and accrued seniority.

Background

The Chester Upland School District hired Dr. Edwards in August 1993. In January 1996, he was appointed Director of Secondary Education for the school district. In June, 1996 he was allegedly told, in several conversations with Dr. Johnson, the substitute superintendent, that the Board was considering administrative changes, including eliminating Dr. Edwards' position. The parties dispute the exact content of these conversations. On June 28, 1996, Dr. Edwards received a letter informing him that the Board was suspending him as of July 1, in conjunction with eliminating his position as a result of the "need to reorganize, consolidate and/or eliminate positions in the Central Administrative Office of the School District." The letter told him he could request a hearing on the suspension, which he did. The hearing was set for July 30, 1996.

Both parties claim the other said the hearing was unnecessary; Dr. Edwards says he believed the Board had canceled the hearing, and so he did not attend. Defendants

proceeded with the hearing on July 30, without Dr. Edwards. Dr. Johnson testified at the hearing that Dr. Edwards' position was eliminated to reorganize the central office for economic reasons. By decision dated August 22, 1996, the defendants enacted a resolution giving plaintiff a substitute teaching position. Plaintiff did not learn of this decision until September 19, 1996. On September 14, 1996, the plaintiff started working as a teacher for the Philadelphia School District.

Between July 1 and July 30, 1996, the Board hired a new person to fill the empty position of assistant principal at Chester High School. Plaintiff was qualified to fill this position.

Summary Judgment Standard

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Unless evidence in the record would permit a jury to return a verdict for the non-moving party, there are no issues for trial, and summary judgment becomes appropriate. Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986). In considering a motion for summary judgment, a court does not resolve factual disputes or make credibility

determinations and must view facts and inferences in the light most favorable to the party opposing the motion. Siegel Transfer, Inc. v. Carrier Express, Inc., 54 F.3d 1125, 1127 (3d Cir. 1995). The party opposing the summary judgment motion must come forward with sufficient facts to show that there is a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

Due Process Violations

As a matter of federal jurisprudence, when faced with both constitutional and non-constitutional claims I must first decide the non-constitutional claims. Hagans v. Levine, 415 U.S. 528, 545 (1974); Erie Telecommunications, Inc. v. City of Erie, Pa., 853 F.2d 1084, 1092 (3d Cir. 1983). Since Dr. Edwards seeks the same relief on both his constitutional and his state-law claims,¹ disposing of the latter may dispose of the case. Accordingly, I first examine the claims for violation of the Public School Code of 1949, 24 P.S. §§ 11-1124 and 11-1125.²

¹Although his complaint sought punitive damages for defendants' alleged violation of his constitutional rights, at oral argument plaintiff's counsel stated that plaintiff sought only reinstatement and other compensatory remedies. These latter are, in fact, the only remedies available to Dr. Edwards, since punitive damages may not be awarded against a municipal entity, such as a school district. Collier v. William Penn Sch. Dist., 956 F. Supp. 1209, 1217 (E.D. Pa. 1997).

²Defendants have asked that I decline jurisdiction over the pendent state-law claims. The law is clear that, in a

Suspension under 24 P.S. § 11-1124

In reviewing this matter, I note that I am required to affirm the decision of the local agency unless it is determined that constitutional rights were violated, that an error of law was committed, that the procedure before the agency was contrary to statute, or that necessary findings of fact were unsupported by substantial evidence. 2 P.S. § 754(b); Public Advocate v. Philadelphia Gas Comm'n, 674 A.2d 1056 (Pa. 1996). I find it clear that an error of law was committed and that the suspension procedure was contrary to state statute.

In Pennsylvania, a teacher may only be suspended or furloughed³ for one of the reasons listed in 24 P.S. § 11-1124.⁴ Warwick Bd. of Sch. Dir. v. Theros, 430 A.2d 268,

case such as this, if jurisdiction is properly vested in the federal court, as it is when plaintiff raises a question of constitutional rights, the court may exercise supplemental jurisdiction over pendent state-law claims, rule solely on those nonfederal grounds, and decline to address the constitutional claim. Hagans, 415 U.S. at 547. Indeed, it has been held an abuse of discretion to do otherwise. Schmidt v. Oakland Unified Sch. Dist., 457 U.S. 594, 595 (1982)(per curiam) (Court of Appeals committed abuse of discretion when it did not address pendent state-law claim but instead decided case on constitutional grounds).

³ "A suspension is an impermanent separation: a furlough or layoff." Filoon v. Middle Bucks Voc. Tech. Sch., 634 A.2d 726, 729 (Pa. Commw. 1993). The terms are used interchangeably in this opinion.

⁴ Section 1124 of the School Code, states:
Any board of school directors may suspend the necessary number of professional employe[e]s, for any of the causes hereinafter enumerated:

(1) Substantial decrease in pupil enrollment in

271 (Pa. 1981). "Economic reasons," or a reorganization which does not meet the requirements of § 11-1124(2), are not valid reasons for a suspension. Somerset Area Sch. Dist. v. Starenchak, 599 A.2d 252, 254 (Pa. Commw. 1991) (under § 11-1124 School Board cannot suspend professional employee, even one in an administrative position, solely to achieve cost savings); Brisner v. Cumberland-Perry Area Voc.-Tech. Sch. Jt. Op. Comm., 405 A.2d 964, 967, (suspension of teacher for economic reasons invalid, even though position may properly be abolished for economic reasons), aff'd by an equally divided court 430 A.2d 276 (Pa. 1981); Theros v. Warwick Bd. of Sch. Dir., 401 A.2d 575 (Pa. Commw. 1979) (suspension invalid when due to abolition of position for economic reasons). The "need to reorganize,

the school district;

(2) Curtailment or alteration of the educational program on recommendation of the superintendent, concurred in by the board of school directors, approved by the Department of Public Instruction, as a result of substantial decline in class or course enrollments or to conform with standards of organization or educational activities required by law or recommended by the Department of Public Instruction;

(3) Consolidation of schools, whether within a single district, through a merger of districts, or as a result of joint board agreements, when such consolidation makes it unnecessary to retain the full staff of professional employe[e]s;

(4) When new school districts are established as the result of reorganization of school districts pursuant to Article II., subdivision (i) of this act, and when such reorganization makes it unnecessary to retain the full staff of professional employe[e]s.

consolidate and/or eliminate positions in the Central Administrative Office of the School District," the reason cited by the school district in their letter to Dr. Edwards of June 26, 1996, is not one of the permissible grounds for a suspension.⁵

Plaintiff maintains, and defendants concede, that the July 1 action was a suspension. As a suspension, it clearly violated state law and is invalid.⁶

Defendants now argue that their action of August 22, 1996, when the Board resolved to assign Dr. Edwards to a teaching position, changed their first action from suspension to one of demotion. As a demotion, they argue, the action is governed by 24 P.S. § 11-1151, and can be based on economic reasons. However, defendants do not argue, as they could not, that the action was a demotion on July 1. The June 24, 1996, letter to Dr. Edwards, the August 22, 1996, Board of Control resolution, and the Findings of Fact and Law adopted by the Board on January 23,

⁵In their January 23, 1997, resolution the Board found that the elimination of Dr. Edwards' position was for "economic reasons." This is not a permissible basis for a suspension either. Warwick, 430 A.2d at 271; Somerset, 599 A.2d at 254; Brisner, 405 A.2d at 967.

⁶Dr. Edwards also claimed in Count II that the defendants violated his bumping rights under 24 P.S. § 11-1125.1. Having determined that Chester Upland improperly suspended Dr. Edwards from his position as a professional employee, I need not reach the issue of whether it properly determined his seniority before it suspended him. Altoona Area Voc. Tech. Sch. v. Pollard, 520 A.2d 99, 102 (Pa. Commw. 1987).

1997, all refer to "the furlough of Dr. Edwards." Given that all the documents created by the defendants refer to this action as a "furlough" I find it hard to give credence to defendants' present argument that Dr. Edwards was really demoted.⁷

Accordingly, I shall grant summary judgment to plaintiff on Count II. Having found that the defendants violated state law, I need not reach the issue of whether they also violated Dr. Edwards' due process rights, and, thus, expressly do not decide that issue. Hagans, 415 U.S. at 545-46.

⁷Even were the court to consider the action to have been a demotion under 24 P.S. § 11-1151, as defendants urge, this would not require the court to find the defendants' actions lawful. Section 11-1151, which governs demotions of Pennsylvania teachers, states:

...there shall be no demotion of any professional employe[e] either in salary or in type of position, except as otherwise provided in this act, without the consent of the employe[e], or, if such consent is not received, then such demotion shall be subject to the right to a hearing before the board of school directors and an appeal in the same manner as hereinbefore provided in the case of the dismissal of a professional employe[e].
24 P.S. § 11-1151 (emphasis added). The parties concur that Dr. Edwards did not agree to the actions of the Board of Control. If the demotee does not agree, he must be given a hearing before the demotion is effective. Tassone v. Redstone Twns. Sch. Dist., 183 A.2d 536, 539 (Pa. 1962); Botti v. Southwest Butler Co. Sch. Dist., 529 A.2d 1206 (Pa. Commw. 1987); McCoy v. Lincoln Int. Unit No. 12, 391 A.2d 1119 (Pa. Commw. 1978) (holding demotion cannot take place before a hearing is held). If, as the defendants argue, the Board action on August 22, 1996, was a demotion, there is a genuine issue of material fact as to whether Dr. Edwards was given a hearing before the demotion became effective. However, given my finding above, such a determination is unnecessary.

Wrongful Termination with Specific Intent to Harm

Defendants have also moved for summary judgment on plaintiff's claim for wrongful termination with specific intent to harm. Plaintiff claims that defendants could "no more fire plaintiff as if he were an at-will employee than they could fire an individual with a specific contract for a specific term."

It is well settled in Pennsylvania that a wrongful discharge action will not be extended to employees who are otherwise protected by contract or statute. See Phillips v. Babcock & Wilcox, 503 A.2d 36, 38 (Pa. Super. 1986). "[T]he wrongful discharge action in Pennsylvania was judicially created to protect otherwise unprotected employees from indiscriminate discharge and provide unorganized workers a legal redress for improper actions by their employers." Id. at 37 (citing Geary v. U.S. Steel Corp., 319 A.2d 174 (Pa. 1974)). Therefore, "an action for the tort of wrongful discharge is available only when the employment relationship is at-will." Id. Since the employment relationship at issue here is governed by Pennsylvania statutory law, Dr. Edwards cannot bring a claim for wrongful discharge, and so defendants' motion for summary judgment on this claim, Count IV, will be granted.

Remedy for violation of 24 P.S. 11-1124

Having found Dr. Edwards' suspension improper, I hold that he must be reinstated. Altoona Area Voc. Tech. Sch. v. Pollard, 520 A.2d 99, 102 (Pa. Commw. 1987). Once reinstated, if the board chooses to suspend Dr. Edwards again, they must afford him appropriate due process, and comply with applicable state laws.

The defendants must also compensate Dr. Edwards for damages caused by the improper suspension by providing him with backpay, seniority, and benefits. Colonial Ed. Assoc. v. Colonial Sch. Dist., 645 A.2d 336, 339 (Pa. Commw. 1994). When employees are furloughed or discharged, they are entitled to all compensation lost if the employer's action is later determined to be illegal or improper. Shearer v. Commonwealth, Sec. of Ed., 424 A.2d 633, 634 (Pa. Commw. 1981). An employee should be paid "an amount of money equal to the compensation he would have been paid during the period of his suspension." Theros v. Warwick Board of Sch. Directors, 401 A.2d 575, 577 (Pa. Commw. 1979). This amount must, of course, be reduced by the amount, if any, by which Dr. Edwards was able to mitigate his damages by taking other employment. See Somerset Area Sch. Dist. v. Starenchek, 599 A.2d 252, 254 (Pa. Commw. 1991). Additionally, the employee is entitled to recover out-of-pocket losses for health insurance premiums paid by the employee to obtain alternative insurance coverage, or for medical expenses paid by the employee which would have been covered by the

employer's insurance plan. Arcurio v. Greater Johnstown Sch. Dist., 630 A.2d 529, 531 (Pa. Commw. 1993).

Accordingly, I shall direct the defendants to pay Dr. Edwards an amount equal to his lost compensation and any of the other incidental expenses mentioned above incurred by him, as well as granting him his due measure of seniority.

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O R D E R

AND NOW, this 29th day of July, 1998, Plaintiff's Motion for Summary Judgment (Doc. No. 8) is DENIED on Counts I and V and GRANTED on Count II. Plaintiff has withdrawn Counts VI and VII (incorrectly labeled as the second Count V in the complaint). Defendants' Cross-Motion for Summary Judgment (Doc. No. 10) is GRANTED on Count IV, and defendants' Cross-Motion for Summary Judgment is DENIED on Counts I, II, III, and V. The defendants are ordered to i) reinstate plaintiff to his prior position, ii) pay him backpay to June 30, 1996, minus compensation he received from any other employment, iii) pay him for other expenses incurred, as discussed in the memorandum accompanying this order, iv) grant him the seniority, benefits, and other incidents of employment due as if he had been employed by defendants since the date of the wrongful suspension, and v) expunge from plaintiff's personnel records the suspension of

July 1 and any personnel actions which followed.

Further, because the court has granted the plaintiff all allowable relief requested in his complaint, the remaining claims are dismissed as moot.

BY THE COURT:

Robert S. Gawthrop, III J.