

IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO

STATE ex. Rel. GINGER MIDLAM	:	CASE NO. 04-CV-61626
	:	
Relator,	:	
	:	JONATHAN P. HEIN, Judge
-vs-	:	
	:	
GREENVILLE CITY SCHOOL DISTRICT	:	
BOARD OF EDUCATION	:	
	:	DECISION AND
Defendant.	:	<u>JUDGMENT ENTRY</u>

This matter came before the Court on the 23rd day of August, in the year of our Lord, 2004 for hearing on the Relator’s request for preliminary injunction pursuant to Notice. Relator was represented by Beverly J. Farlow, Esq. and Vicki K. Johnson, Esq. The Respondent was represented by Richard W. Ross, Esq. By agreement of counsel, the parties consented to this matter being heard as a full trial on the merits of the issues presented. These issues include (1) whether Ginger Midlam was properly terminated as a building principal by the Greenville City School District, and/or (2) if properly terminated as a principal, whether Ginger Midlam was the entitled to be employed by Greenville City School District as a classroom teacher. The Court heard the testimony of various witnesses and admitted various exhibits. The matter was taken under advisement by the Court for written decision.

Case Facts

Ginger Midlam filed an appeal to this Court from the decision of the Greenville City School Board of Education wherein her employment as an elementary building principal was not renewed. The facts establish that Mrs. Midlam has been a certificated school teacher in the State of Ohio for 15 years. Prior to being employed by the Greenville City Schools, she taught for two (2) years in the Vandalia-Butler School District and then taught for 13 years in the Tri-County North School District. In June, 1993 while at Tri-County North, she was awarded a “continuing contract” as authorized by R.C. 3319.08. [See Relator’s Exhibit AB.]

In August, 2002, pursuant to the authority of R.C. 3319.02, Mrs. Midlam was employed by the Greenville City Schools as a building principal for the south elementary school building; this was her first opportunity to serve as an administrator. Her contract of employment was for the term of August 1, 2002 through July 31, 2004. [See Relator’s Exhibit AA.]

As required by R.C. 3319.02(D), the Greenville City Schools adopted policies and procedures for the evaluations of school administrators. [See Respondent’s Exhibits 7, 8.] To assist with the evaluations, the Greenville City Schools developed forms to guide the evaluation process. [See Relator’s Exhibits AD, AE, AF.] These forms allow both numerical rankings and narrative comments.

Following a third evaluation of Mrs. Midlam by Superintendent Mark Weedy on February 26, 2004, Mrs. Midlam was notified of his recommendation that her contract should not be renewed by the Board of Education. Thereafter, a meeting with the Board of Education was conducted on March 23, 2004 to discuss the recommendation. By action taken March 30, 2004,

the

Board of Education voted to not renew her contract as a principal. Additionally, her request to be employed as a teacher was also denied.

From these decisions of the Board of Education, the Relator has filed an appeal to this Court.

Legal Analysis

Several questions must be decided to determine the employment status of the Relator. First, Mrs. Midlam claims that the process for evaluating administrators as set forth in R.C. 3319.02(D) was not followed. She argues that her evaluations were generally scored well and that the timing between the evaluations and the renewal deadline (to-wit March 31st) does not allow sufficient time to make improvements.

R.C. 3319.02 provides, in its pertinent parts, as follows:

(D)(1) Each board shall adopt procedures for the evaluation of all assistant superintendents, principals, assistant principals, and other administrators and shall evaluate such employees in accordance with those procedures. The evaluation based upon such procedures shall be considered by the board in deciding whether to renew the contract of employment of an assistant superintendent, principal, assistant principal, or other administrator.

(2) The evaluation shall measure each assistant superintendent's, principal's, assistant principal's, and other administrator's effectiveness in performing the duties included in the job description and the evaluation procedures shall provide for, but not be limited to, the following:

(a) Each assistant superintendent, principal, assistant principal, and other administrator shall be evaluated annually through a written evaluation process.

(b) The evaluation shall be conducted by the superintendent or designee.

(c) In order to provide time to show progress in correcting the deficiencies identified in the evaluation process, the evaluation process shall be completed as follows:

(i) In any school year that the employee's contract of employment is not due to expire, at least one evaluation shall be completed in that year. A written copy of the evaluation shall be

provided to the employee no later than the end of the employee's contract year as defined by the employee's annual salary notice.

(ii) In any school year that the employee's contract of employment is due to expire, at least a preliminary evaluation and at least a final evaluation shall be completed in that year. A written copy of the preliminary evaluation shall be provided to the employee at least sixty days prior to any action by the board on the employee's contract of employment. The final evaluation shall indicate the superintendent's intended recommendation to the board regarding a contract of employment for the employee. A written copy of the evaluation shall be provided to the employee at least five days prior to the board's acting to renew or not renew the contract.

(3) Termination of an assistant superintendent, principal, assistant principal, or other administrator's contract shall be pursuant to section 3319.16 of the Revised Code. Suspension of any such employee shall be pursuant to section 3319.17 or 3319.171 of the Revised Code.

(4) Before taking action to renew or nonrenew the contract of an assistant superintendent, principal, assistant principal, or other administrator under this section and prior to the last day of March of the year in which such employee's contract expires, the board shall notify each such employee of the date that the contract expires and that the employee may request a meeting with the board. Upon request by such an employee, the board shall grant the employee a meeting in executive session. In that meeting, the board shall discuss its reasons for considering renewal or nonrenewal of the contract. The employee shall be permitted to have a representative, chosen by the employee, present at the meeting.

(5) The establishment of an evaluation procedure shall not create an expectancy of continued employment. Nothing in division (D) of this section shall prevent a board from making the final determination regarding the renewal or nonrenewal of the contract of any assistant superintendent, principal, assistant principal, or other administrator. However, if a board fails to provide evaluations pursuant to division (D)(2)(c)(i) or (ii) of this section, or if the board fails to provide at the request of the employee a meeting as prescribed in division (D)(4) of this section, the employee automatically shall be reemployed at the same salary plus any increments that may be authorized by the board for a period of one year, except that if the employee has been employed by the district or service center as an assistant superintendent, principal, assistant principal, or other administrator for three years or more, the period of reemployment shall be for two years. [Emphasis added.]

On this first issue, the Court finds that there is no performance standard set forth in the Revised Code by which an administrator must be evaluated for purposes of the renewal of a contract. Instead, R.C. 3319.02(D) merely sets forth a time line by which evaluations must be conducted and by which decisions must be made. This same conclusion is reached when

considering the policy and procedure manual of adopted by the school district. [See Exhibits 7 and 8.] Although Ginger Midlam has argued to the contrary, it does not matter whether the Superintendent's motive is benevolent, malevolent or indifferent – or whether there is any motive at all. While it appears to the Court that the objective evaluation scores were favorable to Mrs. Midlam, and that any narrative criticisms were not insurmountable, the Superintendent need not articulate any reason why he recommended non-renewal of the contract. The reasons to recommend renewal or nonrenewal may be as arbitrary or as articulated as the Superintendent may desire; the decision of the Board of Education may be the same.

The only method available to an administrator to retain employment occurs if the timing for the evaluations and meetings is not fulfilled. [See R.C. 3301.02(D)(5) and Exhibit 8, paragraph 6.] In this case, the Court finds that the evaluations were conducted in a timely manner; that notices were timely provided; that the meeting between the Board of Education and Mrs. Midlam was timely; and that the decision to non-renew her principal's contract was timely made by the Board of Education. The provisions of R.C. 3319.02(D) and the Board's policy have been fulfilled. Therefore, the Relator is not entitled to re-employment with Greenville City schools as a building principal.

Next, the Court must determine whether Ginger Midlam is entitled to be re-employed with Greenville City Schools as a teacher. This question centers around an interpretation of the following language in R.C. 3319.02(C):

“When a teacher with continuing service status becomes an assistant superintendent, principal, assistant principal, or other administrator with the district or service center with which the teacher holds continuing service status, the teacher retains such status in the teacher's nonadministrative position as provided in sections 3319.02 and 3319.09 of the

Revised Code.

On the facts presented, Ginger Midlam was not granted continuing service status by the Greenville City Schools, but instead the status was granted by Tri-County North School District.

Therefore, it may appear that she is not entitled to continuing service status in Greenville.

However, this statutory interpretation has been litigated on several occasions, with the following holding from State ex rel. Kelley v. Clearcreek Local School Dist. Bd. of Edn. (1990) 52 Ohio St.3d 92, being authoritative on this question.:

“Certified teacher who has attained continuing service status in one school district and has served at least two years as an administrator in a second school district is entitled to a continuing service contract as a teacher in the second district if the administrative contract is not renewed.

See also State ex.rel. Specht v. Painesville Twp. Local School District (1980), 63 Ohio St. 2d 146.

Nonetheless, the Respondent herein asserts that both Kelly and Specht are factually distinguishable since Mrs. Midlam has not been employed by Greenville City Schools for two years (or stated another way, that Greenville City Schools must take “some affirmative action * * * to employ the individual beyond the second year.) See Respondent’s Memorandum filed August 20, 2004 at page 5.

Respondent’s argument is based on the language of R.C. 3319.11(B) which sets forth the following:

“(B) Teachers eligible for continuing service status in any city, exempted village, local, or joint vocational school district or educational service center shall be those teachers qualified as described in division (B)(1) or (2) of section 3319.08 of the Revised Code, who within the last five years have taught for at least three years in the district or center, and those teachers who, having attained continuing contract status elsewhere, have served two years in the district or center, but the board, upon the recommendation of the superintendent, may at the time of employment or at any time within such two-year period, declare any of the latter teachers eligible.

“(1) Upon the recommendation of the superintendent that a teacher eligible for continuing service status be reemployed, a continuing contract shall be entered into between the board and the teacher

unless the board by a three-fourths vote of its full membership rejects the recommendation of the superintendent. If the board rejects by a three-fourths vote of its full membership the recommendation of the superintendent that a teacher eligible for continuing service status be reemployed and the superintendent makes no recommendation to the board pursuant to division (C) of this section, the board may declare its intention not to reemploy the teacher by giving the teacher written notice on or before the thirtieth day of April of its intention not to reemploy the teacher. If evaluation procedures have not been complied with pursuant to division (A) of section 3319.111 of the Revised Code or the board does not give the teacher written notice on or before the thirtieth day of April of its intention not to reemploy the teacher, the teacher is deemed reemployed under an extended limited contract for a term not to exceed one year at the same salary plus any increment provided by the salary schedule. The teacher is presumed to have accepted employment under the extended limited contract for a term not to exceed one year unless such teacher notifies the board in writing to the contrary on or before the first day of June, and an extended limited contract for a term not to exceed one year shall be executed accordingly. Upon any subsequent reemployment of the teacher only a continuing contract may be entered into.

“(2) If the superintendent recommends that a teacher eligible for continuing service status not be reemployed, the board may declare its intention not to reemploy the teacher by giving the teacher written notice on or before the thirtieth day of April of its intention not to reemploy the teacher. If evaluation procedures have not been complied with pursuant to division (A) of section 3319.111 of the Revised Code or the board does not give the teacher written notice on or before the thirtieth day of April of its intention not to reemploy the teacher, the teacher is deemed reemployed under an extended limited contract for a term not to exceed one year at the same salary plus any increment provided by the salary schedule. The teacher is presumed to have accepted employment under the extended limited contract for a term not to exceed one year unless such teacher notifies the board in writing to the contrary on or before the first day of June, and an extended limited contract for a term not to exceed one year shall be executed accordingly. Upon any subsequent reemployment of a teacher only a continuing contract may be entered into. [Emphasis added.]

“(3) Any teacher receiving written notice of the intention of a board not to reemploy such teacher pursuant to this division is entitled to the hearing provisions of division (G) of this section.

The Court agrees with Respondent’s proposition that a continuing contract is not automatically renewed, and concludes that R.C. 3319.11(B) sets forth various procedural safeguards which must be fulfilled before continuing employment is granted.

Further, upon review of the record, the Court finds that the Board of Education properly gave notice of its “intention not to reemploy the teacher by giving the teacher written

notice

on or before the thirtieth day of April of its intention not to reemploy the teacher.” Further, the Board of Education complied with the evaluation provisions of R.C. 3319.111(A).

Therefore, the Court finds that Ginger Midlam is not entitled to reemployment with the Greenville City Schools as a teacher under a continuing teaching contract.

Conclusion

From the testimony presented, the Court finds that the claims of Ginger Midlam are without merit and that her employment by Greenville City Schools Board of Education was properly terminated, both as a building principal and as a teacher.

IT IS THEREFORE ORDERED AND DECREED that the Relator’s motion for a preliminary injunction and the request for a writ of mandamus are denied. The Relator’s complaint is dismissed. Costs taxed to the parties equally. **FINAL APPEALABLE ORDER.**

Jonathan P. Hein, Judge

cc: Beverly J. Farlow / Vicki K. Johnson, Attorneys for Relator
Richard W. Ross, Attorney for Respondent

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NOTE: Case affirmed in part and reversed in part, per CA. Ct should have placed the principal into the classroom as a teacher.