

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN NEIL,

Plaintiff-Appellant,

v

DETROIT PUBLIC SCHOOLS,

Defendant-Appellee.

UNPUBLISHED

May 16, 1997

No. 190396

State Tenure Commission

LC No. 95-000002

Before: Sawyer, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals as of right from a decision of the State Tenure Commission, affirming Administrative Law Judge Tessema Berga's order dismissing plaintiff from his teaching position. We affirm.

In reviewing a decision of the Tenure Commission, our function is to determine from the record whether there is competent, material, and substantial evidence to support the commission's findings. *Beebee v Haslett Public Schools (After Remand)*, 406 Mich 224, 231; 278 NW2d 37 (1979). Here, in undertaking a review of the record as a whole, we find that competent, material, and substantial evidence was presented to support the commission's findings.

Plaintiff was found by the State Tenure Commission to have violated Detroit Public Schools Work Rule No. 20, prohibiting fraternization with students, by inappropriately touching boys: kissing their necks, touching them on the buttocks, and whispering in their ears, during school years 1993-1994 and 1994-1995.

At the five-day hearing before Administrative Law Judge Tessema Berga, four lifeguards and a locker room attendant testified that they observed plaintiff engaged on numerous occasions in this inappropriate behavior with several boys from the Oakman School. This behavior occurred while the boys participated in an aquatics program at the Adams-Butzel Recreation Center Pool.

Plaintiff presented the testimony of several witnesses who testified that while they had the opportunity to observe plaintiff with the boys in the pool, they had never seen inappropriate behavior. In addition, plaintiff himself stated that he had not violated Work Rule No. 20.

However, as the review undertaken by this Court must give due deference to the administrative expertise of the commission and not invade the province of administrative fact-finding by displacing the commission's choice between two reasonably different views, we will not disagree with the commission's finding that the testimony presented against plaintiff was more credible. *Beebee, supra*, 406 Mich 231.

Affirmed.

/s/ David H. Sawyer

/s/ William B. Murphy

/s/ Mark J. Cavanagh