

STATE OF MICHIGAN
COURT OF APPEALS

PAUL COUSINO,

UNPUBLISHED

August 29, 1997

Plaintiff-Appellant,

v

No. 193782

State Tenure Commission

UTICA COMMUNITY SCHOOLS BOARD OF
EDUCATION,

STC No. 95-000020

Defendant-Appellee.

Before: Smolenski, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Appellant teacher appeals as of right from a State Tenure Commission (“Commission”) decision upholding his discharge from employment with the Utica Community Schools. We affirm.

In September, 1994, appellant returned to teaching following an eight-year medical leave of absence. Within a week of his return, parents of appellant’s students began complaining about appellant. Throughout the year, school administrators met with appellant and informed him of his unacceptable performance. In particular, at an October, 1994, meeting, school administrators provided appellant with an Individualized Development Plan (“IDP”). In January, 1995, appellant was given a status report on the IDP. This report was more detailed than the original IDP, but reflected the original IDP. Ultimately, tenure charges seeking appellant’s dismissal were filed with the appellee board of education, which voted to proceed on the charges. In order to contest this decision, appellant filed a claim of appeal with the Commission.¹ Following a hearing, an administrative law judge (ALJ) issued a preliminary decision and order that, while implying that appellant had not been given sufficient notice of and opportunity to correct his deficiencies, granted the discharge requested in the tenure charges.² The ALJ concluded that reasonable and just cause existed to discharge appellant on the ground that appellant’s performance as a teacher had had an adverse affect on his students.³ Appellant filed exceptions to the ALJ’s decision.⁴ The Commission affirmed the ALJ’s determination of reasonable and just cause for discharge and further found, contrary to the ALJ’s implication, that appellant had been given sufficient notice of and an opportunity to improve his deficiencies.⁵

Under the teacher tenure act, tenured teachers may be discharged or demoted only for reasonable and just cause. MCL 38.101; MSA 15.2001; *Satterfield v Grand Rapids Public Schools Bd of Ed*, 219 Mich App 435, 437; 556 NW2d 888 (1996). The school district bears the burden of showing reasonable and just cause. *Satterfield, supra*. Reasonable and just cause can be shown only by significant evidence proving that a teacher is unfit to teach. *Benton Harbor Area Schools Bd of Ed v Wolff*, 139 Mich App 148, 154; 361 NW2d 750 (1984). The adverse effects that a teacher's actions has on the students, staff or institution is a permissible basis of discipline. *Satterfield, supra* at 438. However, "[t]his Court has stated its agreement with the 'general principle' prohibiting a teacher's discharge unless the teacher is first notified of and given a reasonable opportunity, considering all the circumstances, to correct the deficiency." *Perron v Royal Oak Sch Dist Bd of Ed*, 155 Mich App 759, 768; 400 NW2d 709 (1986).

Appellant first argues that the ALJ should have dismissed the charges against him after it found that he was not given a sufficient opportunity to improve his performance. However, our review is limited to whether the Commission's findings of fact were supported by competent, material, and substantial evidence on the whole record. *Lakeshore Bd of Ed v Grindstaff (After Second Remand)*, 436 Mich 339, 354-355; 461 NW2d 651 (1990); *Satterfield, supra* at 439.

As indicated previously, the Commission disagreed with the ALJ and found that appellant had been provided with sufficient notice of and an opportunity to improve his deficiencies as early as October, 1994, when appellant was presented with the IDP. The IDP identified eight performance areas of concern, including the lack of control and discipline in the classroom, poor presentation of material, and inadequate lesson planning. The IDP also set forth ways to improve performance, including visiting classrooms of effective teachers, learning to develop effective lesson plans, and utilizing the resources within the school. Appellant signed the IDP. We conclude that the Commission's findings of sufficient notice and opportunity to improve are supported by competent, material, and substantial evidence on the whole record. *Satterfield, supra*.

Next, appellant argues that the ALJ erred in ignoring the proven lack of administrative support. Again, we note that our review is of the Commission's findings of fact. *Id.* In this case, the Commission rejected this argument below and specifically found that the administration had supported appellant through written feedback, a seminar recommendation, teacher observations, sample lesson plans, and information about methods of instruction and classroom management. We conclude that this finding is supported by competent, material, and substantial evidence on the whole record. *Id.*

Finally, appellant argues that the appellee did not prove by a preponderance of the evidence that his teaching performance had an adverse effect on student achievement. We disagree. In this case, the evidence indicated that the classes taught by appellant were unsatisfactory both in terms of the knowledge the students acquired and the manner in which appellant handled the classroom. Overall, the record reveals that the information presented was insufficient, the quizzes and handouts were not challenging, and there was a lack of organization to appellant's presentation of the material. Additionally, students slept during class, threw items, such as snowballs, paper and food, about the classroom, talked amongst themselves during lectures, and were generally disruptive and inattentive during the class hour. The Commission found that appellant's teaching performance had had an adverse

effect on the students. We conclude that this finding is supported by competent, material, and substantial evidence. *Satterfield, supra*.

Affirmed.

/s/ Michael R. Smolenski

/s/ E. Thomas Fitzgerald

/s/ Hilda R. Gage

¹ See MCL 38.104(1); MSA 15.2004(1).

² See MCL 38.104(5)(i); MSA 15.2004(5)(i).

³ Specifically, the hearing officer found that appellant failed to impart knowledge to his students or to manage his class, thereby fostering an environment not conducive to learning.

⁴ MCL 38.104(5)(j); MSA 15.2004(5)(j).

⁵ If exceptions are filed, the Commission may adopt, modify or reverse the ALJ's preliminary decision and order. MCL 38.104(5)(m); MSA 15.2004(5)(m).