BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF MONTANA:

TRUSTEES, HILL COUNTY SCHOOL DISTRICT NO. 13 & G,

Appellant,

v.

NO. OSPI 141-87
Decided: Dec. 13, 1988

MARTIN DICKERSON,

Respondent.

Appeal from the Hill County Superintendent of Schools.

Decision and Order by Ed Argenbright, State Superintendent.

REDUCTION IN FORCE--Whether the district can reduce a full time teaching position to a half-time position.

Hill County Sch. Dist. No. 13 & G, Appellant, v.
Dickerson, Respondent
7 Ed Law 248

This is an appeal by the trustees of Hill County School District NO. 13 & G of a decision rendered by the Hill County Superintendent of schools on August 14, 1987. This matter has been full briefed and argued by the parties and is deemed submitted for decision.

This controversy involves a decision by a small rural school district, hereinafter referred to as "Box Elder", which decided to reduce its industrial arts teacher. The Respondent, hereinafter referred to as "Mr. Dickerson," was reduced to a half-time position a5 a result of financial constraints.

Even though Mr. Dickerson accepted the half-time position, he appealed an? sought reinstatement to his full-time position which wa5 granted by the Hill County Superintendent of Schools. Mr. Dickerson is endorsed in the field of industrial arts and holds no other endorsements.

At the hearing in this matter which was held on July 2, 1987, the financial constraints were discussed by Box Elder's witnesses and as noted by the County Superintendent in Finding of Fact 111: "the petitioner did not challenge the issue." Remarkably, the County Superintendent disregarded this undisputed and unchallenged testimony. Further, the Box Elder district presented testimony which went undisputed by Mr. Dickerson that the industrial arts program had lost enrollment. Again, the County Superintendent made a Finding of Fact (IV) contrary to that undisputed proof.

Next, in Finding of Fact V of the decision, the Hearing Officer concluded: "that a full-time program will be part of the curriculum offered to the students enrolled in the Box Elder District." Even in the prehearing order which the Hearing Officer signed and approved on June 10, 1987, there was still no dispute as to whether or not the program was actually reduced from full-time to part-time. Her finding makes little sense in terms of the record or the prehearing order she established.

In Findings of Fact VI, VII, VIII and IX, the Hearing Officer discusses the legal theory which she deems "controlling" in this matter, despite centering largely on Section 20-4-203, MCA, which was not raised by either party in the pre-trial order signed by the County Superintendent. Her discussion here is, in part, contrary to a statement of uncontested facts which again the parties agreed to and the County Superintendent signed, to the effect that there was no dispute about the manner of termination or the issue of termination procedures. Because these findings are either without substantial credible evidence in the record to support them and because they are in conflict with the Hearing Officer's own order setting forth the issues and agreed upon statements of fact, they cannot and do not constitute justifiable support for the conclusions of law and order entered by the County Superintendent. Indeed, they were entered upon unlawful procedure.

The purpose of a prehearing order is to simplify the issues and to give each side the opportunity to present its position fairly and

to clearly frame what is to happen at the hearing. Therefore, the Hearing Officer cannot reach out and grasp a new theory under which she can rule. She is not only bound by the record of evidence established at the hearing, but also by her own pretrial order. See Yanzick v. School District #23, Lake County, — Mont.—, 196 Mont. 375, 641 P.2d 431 (1982) [1 Ed Law 1]. Both the record and the prehearing order have a purpose, and they should be implemented and followed by all parties to the hearing, including the County Superintendent. Needless to say, Box Elder suffered substantial prejudice through the actions of the County superintendent, who made findings not supported by the record and raised issues which were settled by the prehearing order. Findings of Fact and Conclusions of Law were made upon unlawful procedure. See Section 10.6.125 (4)(c), ARM.

Box Elder had the duty, authority and discretion to manage itself in a financially responsible manner. See Section 39-31- 303, MCA. See also Sorlie v. School District No. 2, 205 Mont.22, 667 P.2d 400 (1983) [2 Ed Law 145]. See also Section 20-3-324 (1)(2) (8)(9), MCA. The fiscal constraints placed upon Box Elder were undisputed and therefore constituted a permissible basis for the reduction of Mr. Dickerson's position from full-time to half- time. There was no dispute over the procedures followed to implement this reduction in force. There was also no dispute that enrollment in the classes taught by Mr. Dickerson was dropping. Finally, the County Superintendent went beyond the record in Finding of Fact I when she speculated that Mr. Dickerson would be eligible for a Class 5 provisional teaching certificate by relying on a document that was not part of the record.

As I more recently noted in the case of Harris v. Cascade School District, OSPI 138-87, December 12, 1988 [7 Ed Law 2461, I am not sympathetic to hypertechnical maneuvers suggested by creative counsel or creative hearing officers who attempt to trip up the responsible citizens teaching in our schools and serving on boards of trustees. In Harris, I affirmed a County Superintendent who saw the thin veil offered by the school district supporting its decision to terminate and then re-create a new half-'time position. In this impending matter, a more innovative County Superintendent has transformed a half-time position back into a full-time one.

Montana is largely comprised of small, rural school districts. Our state faces tough economic times, and many rural districts are suffering declines not only in enrollment, but also in funding from multiple sources. Tough decisions must be made. The flexibility granted by the legislature in Section 39-31-303, MCA, which was recognized by the Montana Supreme Court in Sorlie, supra, must be maintained in the coming years if small, rural school districts with teachers dedicated to serving students in that environment are to survive and succeed.

This memorandum is to be considered as Findings of Fact and Conclusions of Law. The decision of the Hill County Superintendent of Schools is hereby reversed and this matter is remanded to her to enter an order consistent with this opinion, which affirms the decision of

Box Elder to reduce Mr. Dickerson's full-time position to half-time.

IT IS SO ORDERED.

DATED this 13th day of December, 1988.

s/Ed Argenbright
State Superintendent