BEFORE THE STATE OF MONTANA

SUPERINTENDENT OF PUBLIC INSTRUCTION
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In the matter of the Appeal of BOARD OF TRUSTEES OF SCHOOL DISTRICT NO. 9, OPHEIM, MONTANA	)	DECISION AND ORDER

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This is an Appeal by the Board of Trustees of School District No. 9, Opheim, Montana, from a decision of Harry L. Axtmann, sitting in place of the County Superintendent of Schools of Valley County, Montana. The hearing examiner reversed the decision of the Board of Trustees of School District No. 9, (hereinafter referred to as the Board), not to renew the contract of Clyde Knudsen, (hereinafter referred to as Respondent).

Respondent is a tenured teacher and served in the Opheim schools for nine consecutive years. On March 24, 1981, the Board voted not to renew the contract of Respondent. The Board gave Respondent notice of its decision along with a statement of reasons. On April 17, 1981 the Respondent requested a hearing before the Board to have its decision reconsidered. On April 22, 1981 the Board conducted a hearing to reconsider its decision. Respondent was given due notice and was present at the hearing. The Board reaffirmed its decision of March 24, 1981 not to renew Respondent's contract.

The statement of reasons, which was a reflection of the statement of reasons provided earlier to Respondent, cited the following grounds for the Board's decision:

1. Respondent violated Board policy by failing to attend all teachers meetings called by the Principal and Superintendent, including Orientation Day, August 21, 1980, and Teacher's Appreciation Night,

October 9, 1980;

2. Respondent violated Board policy by failing to provide the school administration an official statement of years of service and an official transcript of credits, despite being requested to do so by the Superintendent.

3. Respondent violated Board policy by conducting himself in an unprofessional manner with fellow staff members and teachers, including confrontations with the high school secretary and fellow teachers;

4. Respondent violated Board policy in that he has not strived to improve the relationship between himself and the community.

5. Respondent failed to correct certain inadequacies directed to his attention by the Board.

Respondent appealed that board decision to the Valley County Superintendent of Schools pursuant to Section 20-3-310, M.C.A. The Valley County Superintendent disqualified himself from this case. He appointed Mr. Harry Axtmann as the Hearing Examiner. A hearing was conducted. The Hearing Examiner issued Findings of Fact, Conclusions of Law and Order reversing the Board's decision. The Board appeals from that decision.

The Administrative Procedures Act applies to appeals such as the one presented here. Section 2-4-704, M.C.A. provides a standard of review which I have adopted in reviewing the Findings of Fact, Conclusions of Law and Order. Section 2-4-704, M.C.A. states:

> Standards of review. (1) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.
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> (2) The court may not substitute its judgement for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse

or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(g) because findings of fact, upon issues essential to the decision, were not made although requested.

The sections applicable to non-renewal of tenured teachers are Sections 20-4-203, 20-4-204 and 20-4-205, M.C.A. No legislative guidelines have been drafted that a school board is required to follow in deciding whether or not to renew a tenured teacher's contract.

Respondent cites Yanzick v. School District No. 23, Lake County, Montana State Superintendent, Georgia Rice's Decision and Order dated September 14, 1979, for the rule that the reasons given for non-renewal are left to the sound discretion of the local trustees and should not be held insufficient unless they are wholly inappropriate and constitute an abuse of discretion. The District Court for the First Judicial District of the State of Montana, in Yanzick v. School District No. 23, Lake County, Montana, Cause No. 44513, MEMORANDUM AND ORDER found that standard erroneous. The District Court noted the extent of such School Board discretion has been addressed and considered in federal and state jurisdictions. It has been widely concluded that constitutional rights of tenured teachers limit the board's discretion in dismissing tenured teachers. In attempting to define the scope of the school board's discretion, the district court recognized a conflict of interest: those belonging to the teacher as a tenured employee and as an individual versus the interest of the school community and its children. Yanzick v. School District No. 23, p.3.

The argument that a county superintendent or higher authority may only reverse the decision of the board of trustees where there has been a clear abuse of discretion, i.e. where the board's reasons have no basis in fact, is error. See Yanzick. The State Superintendent is an administrative appeals judge. When a district court reverses the State Superintendent's decision, as was in the case of Yanzick, the law the State Superintendent developed is reversed and void and the district court's Order and Memorandum becomes law. Because of the timing of this appeal, I attempted to withhold an opinion until such time as the Montana Supreme Court clarifies and reviews the District Court Order in Yanzick. Yanzick v. Board of Trustees, School District No. 9, Montana Supreme Court, Docket No. 80-394. Because of the need of expediting this case for the parties involved, I have been unable to receive an opinion from the Montana Supreme Court and therefore must follow the district court rule as outlined in the Memorandum and Order.

The courts have taken away many of the powers of the local board of trustees in determining whether in fact a tenured teacher may be denied a contract. The Montana Supreme Court has declared that tenure is "substantial, valuable, and beneficial." State ex. rel. Saxtorph v. District Court, Fergus County, 128 Mont. 253, 275 P. 2d 209 (1954). The Board, not Respondent, has the burden of proving by preponderance of the evidence the charge or charges which is the basis for non-renewal of his teaching contract. Conley v. Board of Education, 143 Conn. 488, 112 A.2d 747; Board of Education v. Shockley, 52 Del. 237, 155 A.2d 323.

The Board must show good cause. Courts have often held that the meaning of good cause is not restricted to specifically enumerated causes, but includes any cause which bears a reasonable relation to the teacher's fitness and capacity to discharge the duties of his position.

McQuaid v. State, 211 Ind. 595, 6 N.E. 2d 547, 118 Alr. 1079. See also Yanzick. "In order to maintain a reasonable balance between the interest of the teacher and the school community on behalf of its children, the courts have construed an implied qualification to the statutory language: there must be a rational nexus between the teacher's conduct and his teaching. In other words, the school board cannot characterize a teacher's conduct as immoral and dismiss him on that basis unless that conduct indicates that the teacher is unfit to teach." Yanzick.

I am not totally inclined to agree with that standard. The Board has statutory and constitutional powers as outlined by the Constitution. I have continued to maintain that the control and direction of the school rests within the local school board's authority and discretion who are accountable to the people in their districts. A school teacher has a very great impact on the young, impressionable minds, and for that reason all aspects of his or her life that could influence a student are subject to scrutiny by employers. That must always be the case in order that our young people in this state receive and are guaranteed the basic instruction prescribed by the statute. However, at the same time, I must recognize, as the State Superintendent that my dictates are not always law. Courts have taken the major step in this area and have declared that teachers, as individuals, have constitutionally guaranteed rights. State ex. rel. Zander v. District Court of Fourth Judicial District, 36 St. Rptr. 489, 591 P. 2d 656 (1979), State v. Colburn, 165 Mont. 488, 530 P. 2d 442 (1974). I cannot avoid these decisions.

Unfortunately, both Appellant's and Respondent's briefs have failed to be guided by the correct standards of review or the recent developments in Montana Courts on non-renewal of tenured teacher contracts.

Unless directed otherwise by the Montana Supreme Court, a district

court or an administrative appeals judge may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. Section 2-4-711 (2) M.C.A. I may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are

(a) in violation of constitutional or statutory provisions;
(b) in excess of the statutory authority of the agency;
(c) made upon unlawful procedure;
(d) affected by other error of law;
(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
(g) because findings of fact, upon issues essential to the decision, were not made although requested.

From the readings of the briefs submitted to the hearing examiner and the State Superintendent, the Board does not contest violation of the first four provisions. The issue is whether the Findings of Fact, Conclusions of Law and Order is 1) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or 2) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion or 3) because a finding of fact, upon issues essential to the decision, were not made although requested.

I have reviewed the transcript of the record with great scrutiny.

The Hearing Examiner viewed the witnesses, heard the testimony, and weighed the evidence. The Montana Supreme Court has said, and I agree that the hearing examiner who is the closest to the dispute who viewed the witnesses and examined the testimony has a better understanding of the case than would an administrative appellate judge. Applying the standards of review to the specific allegations of absence from teachers' meetings, orientation day, teacher's appreciation night, or unprofessional conduct, I find that there was no clearly erroneous findings of fact in view of the reliable probative and substantial evidence on the whole

record. I cannot review the record in a different light but than what is stated under the standard of review in the administrative procedures act. The hearing examiner's Findings of Fact, Conclusions of Law and Order was not acted on arbitrarily or capriciously or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Poor communications between the particular teacher involved and the school administration resulted in an unfortunate situation.

The school board asserted that the Respondent has not improved his teaching and stayed at the same level he had had for the past several years. A review of the record reflects testimony of students and parents who alike testified Respondent was one of the best teachers in the school system, as a person who has the fewest disciplinary problems of any teacher. The Opheim School has made several achievements in the science area and are comparable to other larger high schools. That indicates concern on the part of the Board, administration and faculty. A vague allegation without specific facts that Respondent's program was not improving was not sufficiently documented so as to allow the State Superintendent, under the Standard of Review, to reverse the decision of the hearing examiner. In fact, testimony in the record indicated that the school administration found Respondent's teaching to be acceptable and satisfactory. I must always be reminded that this particular person has tenured rights, therefore, it is a substantial and valuable right that cannot be lightly set aside.

The record, on the whole, indicates that this school board has failed to find nexus to which there is community loss of support to the effectiveness of the teaching of this particular Respondent. The record discloses that there are a group of dissatisfied concerned persons in the Opheim area who requested Respondent's removal. However, the

school board had granted previous right of tenure, which protects this teacher. Unless substantial evidence is provided to show that the group's dislike affects his teaching effectiveness in the classroom, that right cannot be denied.

Finally, the Board contends that the hearing examiner failed to make a specific finding of fact on the missing transcript in the file. The transcript issue, in and of itself, is not essential to this decision. The dispute in the testimony indicated that a transcript was apparently filed with the school, but was disputed by the testimony of another individual. The hearing examiner determined the weight of evidence. This action alone does not constitute "just cause" for dismissal of this tenured teacher and therefore I will not reverse or remand because a finding of fact, upon a non-issue essential to the decision were not made although requested.

The Board feels that if the hearing examiner order is affirmed the Board would be "effectively stripped of its power to operate its local school system." I disagree. I maintain that the local school district has an obligation to control the activities of its schools. I cannot, however, go contrary to the dictates of district court or the Montana Supreme Court and fulfill the obligations of my oath of office. I maintain that if proper action is brought against a teacher, as outlined above and the application of the test as will be promulgated in the Yanzick decision from the Montana Supreme Court, that both the Board and the school teachers involved will have a clearer definition of the power and discretion of the local school boards. I commend the school board and the attorneys for their professionalism in presenting the issue. Because of recent rulings by the courts in this state, I must affirm the hearing examiner's order.

DATED NOVEMBER 19, 1981.