

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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WILLIAM A. BENNETT :
: :
: :
vs. :
: :
: :
CRANSTON :
SCHOOL COMMITTEE :
: :

D E C I S I O N

September 4, 1990

This case was heard de novo on March 28 and 29, 1990 upon an appeal from an action of the Cranston School Committee in terminating the employment of William A. Bennett as a hockey coach in the Cranston School System. Jurisdiction to hear this appeal lies under §16-39-2. The appeal was heard by the undersigned Hearing Officer. Witnesses were sworn, testimony taken, cross-examination conducted and a record kept. The parties presented briefs and the case was closed on June 12, 1990.

Issues in the Case

1. Did the Superintendent of Schools violate law or regulation when she terminated Mr. Bennett?
2. If not, does Mr. Bennet have a legitimate claim to due process rights which were violated by the Superintendent and School Committee?

Findings of Fact

1. William A. Bennett had been appointed and served as hockey coach at Cranston West for three seasons (1986-87, 1987-88 and 1988-89) and had been reappointed for the 1989-90 season.
2. Mr. Bennett was appointed annually and served as coach for the hockey season as defined by the School Committee.
3. The Superintendent terminated Mr. Bennett on December 22, 1989.
4. There was an acrimonious verbal interchange, in a public place, between Mr. Bennett and Stephen G. Dambruch, Chairman of the Cranston School Committee on the evening of December 21, 1989.
5. Mr. Dambruch reported the incident to the Superintendent of Schools, Dr. Diane M. Gibson, the next morning, December 22, 1989.

6. Dr. Gibson requested that the School Department's attorney and two (2) Supervisors of Mr. Bennett investigate the allegation and report to her.
7. The Supervisors spoke with Mr. Bennett who refused to come to their office to discuss the case.
8. Late on that day, December 22, Mr. Bennett's attorney called the Supervisors and indicated that Mr. Bennett would appear that day.
9. Mr. Bennett and his attorney, Joseph V. Cavanagh, Jr. met with the two Supervisors (Kenneth J. Hopkins and Paul Cardoza), the School Committee's attorney, Vincent J. Piccirilli, and the High School Principal, Edward Rondeau.
10. As a result of their investigation the Supervisors made recommendation to Dr. Gibson for discharge.
11. The Superintendent discharged Mr. Bennett.
12. The School Committee affirmed the Superintendent's action on January 22, 1990 and refused the Plaintiff's request for a hearing before the Committee.

Position of the School Committee

The Superintendent in her testimony indicated that when she became aware of the situation, because of the telephone conversation of the Chairman of the School Committee, she contacted the School Attorney and the Director of Physical Education and Health and directed them to conduct an investigation of the incident.

An attempt was made to contact Mr. Bennett to have him appear to answer to the charges levied against him but he refused to appear and as a consequence, the Director of Athletics prepared a press release indicating

that he had been terminated for the incident. When Mr. Bennett's attorney then contacted the Director, a hearing was arranged and conducted on December 22nd at twelve o'clock in the afternoon. At that point, Mr. Bennett admitted the allegations and attempted to explain them. The Director of Physical Education and Health recommended that Mr. Bennett be terminated for inappropriate conduct and violation of the Coach's Code of Ethics. Dr. Gibson, in reliance on the recommendation, terminated Mr. Bennett.

Clearly the Coach's Code of Ethics received by Mr. Bennett and acknowledged by him required him to set an example of good conduct towards the general public by acting in a sportsmanlike manner at all times. The Superintendent testified that the conduct displayed by Mr. Bennett was reprehensible and that she would not tolerate such conduct by persons employed by her.

The laws of the State of Rhode Island are quite clear in that Mr. Bennett is not afforded any tenure in his position as Athletic Coach. Additionally, he is not entitled to any protection of a Collective Bargaining Agreement since he is not the member of any bargaining unit. The actions of the Superintendent in terminating Mr. Bennett are not prohibited or in any way inhibited by any external legislation. The only argument that might be made on Mr. Bennett's behalf is that somehow he was treated unfairly by the Superintendent.

Mr. Bennett chose to introduce into evidence the circumstances surrounding the failure of the Committee to appoint him to the coaching position in June of 1989. Pursuing that further, the testimony clearly showed that

the Superintendent of Schools supported Mr. Bennett in his appointment even though there were members of the School Committee who did not want him to be appointed as coach. These actions on the part of the Superintendent belie any intent on her part to treat Mr. Bennett improperly during his term as coach. The evidence clearly showed that from the time of appointment until the date of this incident, the Superintendent had no dealings with Mr. Bennett.

Position of the Plaintiff

The Plaintiffs argue that Mr. Bennett was abruptly fired in mid-season because the Superintendent acted unreasonably on the spur of the moment to an emotional telephone complaint from the Chairman of the School Committee.

The School Department's conduct was procedurally flawed because Mr. Bennett's due process rights were violated by (a) the School Committee's refusal to give him a requested hearing, (b) the abrupt notice of a hurry-up meeting, and (c) the lack of neutrality surrounding the so-called "hearing" which was conducted by Dr. Cardoza who, knowing that Dr. Gibson had already decided to fire Mr. Bennett, went through the charade of having a "hearing".

The Plaintiffs also argue that the School Department failed to carry its burden of proof in this de novo proceeding to show that "good cause" existed to discharge a coach with a one-year contract for an isolated incident which did not directly involve his role or duties as a coach. The firing of Mr. Bennett for the reasons stated amounted to an arbitrary and unjustified action.

Decision

Mr. Bennett was a coach appointed annually by the School Committee upon recommendation of the Superintendent. In the instant case the Superintendent discharged the coach and the School Committee affirmed the action. There is no law in the State of Rhode Island which gives Mr. Bennett protection from discharge. What is clear, however, is that if the discharged employee can prove a property interest in continued employment, a case may be made for due process.

Mr. Bennett's contract was an annual one subject to regular review and annual action. This fact, however, does not imply that there would not ever be a circumstance(s) which would occur which would by proof, cause one to be discharged. Mr. Bennett's contract, clearly annual and seasonal (having a defined time for execution within the school calendar) gives him a property right to continued employment. In this case we are not finding that Mr. Bennett has the right to continued employment from year to year. Our finding is only that in this case Mr. Bennett had a contract that was for the duration of the activity for which he was hired and attendant duties before and after the pupils activity as directed by his employer. His "property right" to continued employment is limited to that duration and that contract only. It is, however, a "property right" that gives to him certain rights of due process.

Fundamental fairness is the guiding principle for determining which of a range of due process elements are required in a given case.

The meeting with Mr. Bennett and his counsel and the Supervisors,

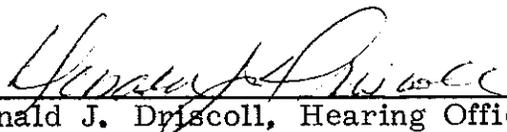
Principal and School Committee's counsel was not a hearing on charges which meet the test of due process. The Committee argues that it was a pre-deprivation hearing (Loudermill v. Cleveland Board of Education) and that is all that was required. By the Committee's action in that required due process element, it gives recognition to the existence of all of those elements and the Committee failed to provide them.

Mr. Bennett did not receive a hearing "at a meaningful time and in a meaningful manner" as required by law. Mathews v. Eldridge, 424 U.S. 319, 335 (1976). The notice was oral and abrupt and allowed for no preparation in a meaningful way. Action between incident and discharge took less than 24 hours.

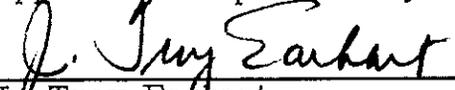
The "hearing" was conducted as a one-way examination of the plaintiff. In most disputes there are varying points of view and observations. Fundamental fairness would require that there is a right to confront and challenge adverse evidence and witnesses before the plaintiff's one-year contract would be terminated.

We find that Mr. Bennett had a property right (limited though it may be), of which he has been deprived. We find that that property right has been denied through a failure of the Superintendent and School Committee to provide due process of a sufficient nature to avoid a possible error.

We, therefore, remand this case to the Superintendent and School Committee for review and hearing which preserve Mr. Bennett's right to due process.


Donald J. Driscoll, Hearing Officer

Approved: September 4, 1990


J. Troy Earhart
Commissioner of Education