

Travel of the Case

On July 3, 2007 counsel for William Hicks filed an appeal from his termination by a five to two vote of the Cumberland School Committee on May 24, 2007. The matter was assigned to a designated hearing officer for hearing and decision. A hearing was scheduled by agreement of the parties for September 18, 2007. On that date, Mr. Hicks appeared pro se, and the Cumberland School Committee was represented by counsel. The parties agreed to submit as evidence at this level the record made on May 24, 2007 before the School Committee, with some supplementary evidence submitted by Mr. Hicks. The record closed on October 15, 2007 upon receipt of the transcript.

Jurisdiction to hear this appeal arises under R.I.G.L. 16-13-4.

Issues

- ♦ Was William Hicks insubordinate in refusing to respond to various requests for information made by the administration of the Cumberland school department?
- ♦ If he was insubordinate, does his insubordination constitute good and just cause for his termination?

Findings of Relevant Facts:

- ♦ William Hicks was a tenured teacher in the Cumberland school department, employed for eight years and at the time of his termination assigned to the position of resource teacher at Cumberland High School. S.C.Ex.A, p.56.
- ♦ On March 22, 2007 the Cumberland school department's Director of Administration requested that Mr. Hicks provide him with certain information, in writing, no later than four o'clock (4 p.m.) on Monday, March 26, 2007. The March 22, 2007 request for information was contained in a letter sent by certified mail and received by Mr. Hicks on Saturday, March 24, 2007. S.C. Ex.A Pet. Ex. 5.
- ♦ Prior written requests for the same information had been made by the Director of Administration on March 13, 2007¹ (information related to a complaint against Mr. Hicks filed by the chair of his department) and March 14, 2007² (information related

¹ The March 13, 2007 letter required an "immediate written response" from Mr. Hicks including information and documentation which would support statements Mr. Hicks had made which were critical of the chairperson of the special education department of the high school. S.C.Ex.A Pet.Ex.3.

² The March 14, 2007 letter required Mr. Hicks to respond in writing "as soon as possible" to explain his actions with respect to two incidents in which he allegedly divulged confidential information related to special education students. S.C.Ex.A Pet.Ex.7. With respect to the first such incident, which allegedly occurred on January 17, 2007, an initial request for information had been made in a memo to Mr. Hicks from his principal dated January 19, 2007. See S.C. Ex.A.Pet.Ex.8 The principal requested a response before Mr. Hicks left school that same day, but this deadline was extended to a date not identified in the

to two incidents in which Mr. Hicks had allegedly violated confidentiality laws with respect to special education students). S.C.Ex.A. Pet. Ex.3 and 7.

- ◆ The March 14, 2007 letter to Mr. Hicks from the Director of Administration also notified him that he was “suspended”³, as a result of two violations of confidentiality requirements and the fact that he had not yet responded to any requests to explain his actions. S.C. Ex.A Pet.Ex.7.
- ◆ Although the March 14, 2007 request for information also notified Mr. Hicks of his suspension, he was paid his teaching salary throughout the period prior to his termination on May 24, 2007. Tr. pp.52-53,70.
- ◆ On March 26, 2007 Mr. Hicks provided a written “response” to the Director of Administration’s March 22, 2007 request for information. He indicated that he would provide the requested information only in an interview and with his union representative present and stated “Please feel free to make an appointment with Rod and myself at your convenience”. He also enclosed a summary of “Weingarten Rights” which outlined the right of unionized employees to have union representation at investigatory interviews. S.C.Ex.A. Pet.Ex.6.
- ◆ Also enclosed with Mr. Hicks’ March 26, 2007 “response” to the Director of Administration’s March 22, 2007 request for information was a “Description of Grievance” in which Mr. Hicks filed a “grievance” challenging the lawfulness of his suspension. S.C.Ex.A. Pet.Ex.6.
- ◆ Apparently⁴ finding Mr. Hicks’ response of March 26, 2007 unsatisfactory, the Director of Administration sent Mr. Hicks a letter dated April 9, 2007 notifying him that a recommendation for his termination would be presented to the Cumberland School Committee on May 24, 2007. The reason was “for insubordination for failure to provide valid responses to questions by the administration regarding the complaint by David Rosen and the issues of breach of confidentiality (sic) concerning special education students”. S.C.Ex.A Pet.Ex.1.
- ◆ After a hearing on May 24, 2007 Mr. Hicks was terminated by the Cumberland School Committee by a vote of 5 to 2. The basis for the School Committee’s action was “insubordination”.⁵
- ◆ William Hicks has no prior disciplinary record with the school department. Tr. p.75.

record. The March 14, 2007 request for information on both incidents from the Director of Administration requested the information “as soon as possible”.

³ Mr. Hicks had not filed an appeal with respect to this suspension at the time of hearing in this matter, but statements on the record indicated that this was his intent. Tr. pp.61-63.

⁴ The Director of Administration did not testify.

⁵ Although the Order of Termination dated June 14, 2007, signed by the Chair, Frederic C. Crowley, was not submitted into evidence, it was attached to Mr. Hicks’ letter of appeal. A special statute relating to the town of Cumberland, R.I.G.L. 16-12-6, requires a two-thirds vote for dismissal of a teacher.

Positions of the Parties

The Appellant

At the hearing on September 18, 2007 Mr. Hicks, appearing pro se, argued that the Cumberland School District did not follow the law in its decision to terminate him. He argues that the material he prepared as “Grievances” and submitted to the school administration, has been relied on as a pretext to terminate him. He asserts that he has “whistleblower” status, and argues that the district relied on his various writings as a pretext for his termination because he had sent numerous letters to the Rhode Island Department of Education regarding Cumberland High School’s noncompliance with special education laws and regulations. He requests that he be reinstated to his teaching position at the high school.

His attorney made additional arguments on his behalf at the time the School Committee heard this matter. These arguments have been incorporated in this record by the submission of the transcript of the hearing before the members of the Committee as School Committee Ex.A. At the time of that hearing, May 24, 2007 counsel for Mr. Hicks noted at the outset of the hearing that he had not been charged with either of the “underlying charges” (S.C.Ex.A pp.11-12) i.e. violations of confidentiality laws or harassment of a co-worker. Instead the very narrow issue of whether Mr. Hicks was guilty of insubordination was presented to the committee, based on the April 9, 2007 notice from the Director of Administration. His attorney cautioned the members of the Committee to narrow their scope to the charge of insubordination, and not consider other matters relating to Mr. Hicks of which they might be aware.

A charge of insubordination involves the willful disregard of the directions of an employer and a refusal to obey reasonable orders, noted Mr. Hicks’ attorney during his appearance before the School Committee. When Mr. Hicks was first directed to provide written information to his principal, the request demanded this information before Mr. Hicks could leave school premises that day. Counsel questions the reasonableness of that original request for information. When re-contacted in mid-March for information on the first “incident” as well as on two other issues, Mr. Hicks did not respond by March 22, 2007, a little over one week later. His employer found the delay to be indicative of insubordination. Counsel submits that the delay was excusable, given the short timeframe and the fact that at this time there clearly was an investigatory purpose for the administration’s request. When finally given an ultimatum on March 22, 2007, Mr. Hicks did respond – to assert his right to have his union representative present to answer the questions posed to him. Assertion of this right does not constitute insubordination, since Mr. Hicks’ intent was to comply but protect himself from disciplinary action. His refusal to respond in writing was not a willful refusal to comply with a reasonable request by his employer. He has not been shown to be insubordinate, since he would have provided the requested information if school administrators had scheduled an appointment with him and his union representative.

Cumberland School Committee

Counsel for the School Committee submits that it has met the burden of proof necessary to support Mr. Hicks' termination. The transcript of testimony from the May 24, 2007 hearing and the accompanying documentation have established that Mr. Hicks was insubordinate on numerous occasions. Mr. Hicks' insubordination prevented the school administration from gathering the information it needed to form a position⁶ with respect to what it believed were improper disclosures of confidential student information. In addition, Mr. Hicks' refusal to provide information on allegations he had made against the chair of the special education department at the high school undermined its ability to investigate the harassment complaint the department chair had filed against Mr. Hicks. Counsel submits that Mr. Hicks exposed the Cumberland School Department to possible litigation by parents and by a fellow teacher because of his "actions or inaction" (see letter of April 9, 2007 S.C.Ex.A Pet.Ex.1)

There is, the school department contends, always a responsibility of an employee to comply with reasonable requests by his employer for information. In this particular case there was, at least initially, no issue of discipline – termination, suspension or anything else with respect to Mr. Hicks. The request was strictly informational in nature, the school department asserts. Mr. Hicks persisted in ignoring these requests for information, and then when he finally did reply in writing on March 26, 2007 there was no substantive response provided. Counsel questions the ability of an employee to rebuff a request for important written information with a directive to the employer to make an appointment with him for an interview. This is not the prerogative of the employee – the school department was entitled to a reasonable – and substantive – response, not a directive to follow a procedure different from that which the school district had chosen.

Furthermore, there is absolutely no evidence that the district was motivated by any intent to retaliate against Mr. Hicks for his involvement in the filing of complaints with the Rhode Island Department of Education. Mr. Hicks produced no evidence on his claim that he was a whistleblower. There was one special education complaint that the district attributed to Mr. Hicks, and it was disposed of in the school department's favor after it provided the information requested by the Department of Education.⁷ The disciplinary action taken here was strictly in response to Mr. Hicks' ongoing insubordination, which, the district argues, placed it in a difficult position if parents should complain of violation of confidentiality rights and/or the co-worker in question made a claim against the district for failure to protect him from harassment.

⁶ In the event a parent questioned a disclosure of confidential information See Tr. pp.70-71.

⁷ There is an allusion to another complaint filed by Mr. Hicks which is the subject of a hearing currently pending before the Commissioner, but no information is provided with respect to that complaint in the record of this case. See pages 72-75 of the transcript.

DECISION

The evidence in this case demonstrates that William Hicks was insubordinate when he failed to comply with the March 22, 2007 request made by the Director of Administration that he provide information in writing on two matters which had been the subject of prior requests, i.e. confidentiality violations and the complaint of harassment made by his co-worker. Although the information was requested in a disciplinary context⁸, there is no proof that Mr. Hicks' compliance with the request to provide a written response on these matters would have violated a law or regulation, would be inconsistent with a provision of the collective bargaining agreement, or was otherwise unreasonable or invalid. The request for information made in the March 22, 2007 letter (S.C.Ex.A Pet. Ex.5) was a valid and reasonable request and even though the time frame for Mr. Hicks' written response was short (the close of business on March 26, 2007), there had been prior requests for this same information. If the short time frame for his response were an issue, Mr. Hicks could have requested a reasonable extension. He did not do so, nor did he substantively comply with the request. He clearly could have gathered the information pertaining to each issue and developed a written response with the assistance of any person he wished, including his union representative. His failure to do so constitutes insubordination.

An ALR Annotation entitled "Dismissal of Teacher-Insubordination", 78 A.L.R. 3d Section 2(a) (1977) states:

While the courts' definitions of "insubordination" in teacher dismissal cases have varied somewhat from one jurisdiction to another, it seems fairly clear that the term at least includes, and perhaps requires, a willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation, or order issued by the school board or by an administrative superior.

In this case, the March 22, 2007 letter from the Director of Administration clearly constituted an order to provide the previously-requested information and set a deadline for the written response. Mr. Hicks did not provide a substantive response in writing as he was directed to do. The information was requested primarily⁹ in a disciplinary context. Mr. Hicks had already been notified on March 14th of his suspension for two violations of student confidentiality. However, there is no evidence that the school department was limited by contract or otherwise to conducting a disciplinary interview with Mr. Hicks,

⁸The district's argument that the requests were purely informational is not supported in the record. The principal's January 19, 2007 request to Mr. Hicks for information attached a copy of a letter to parents which apologized for the fact that Mr. Hicks had "compromised the confidentiality of your student" and assured parents that as an administrator, the principal was taking a number of steps to ensure that this occurrence does not take place again. Mr. Hicks was told he should not leave the building until he provided a written response to the principal.

⁹ It may also have been that the district needed to know the requested information for other reasons, such as to be prepared to respond to questions and concerns of parents.

rather than obtaining information from him in writing. The record demonstrates that the request was both valid¹⁰ and reasonable¹¹.

The record in this matter also demonstrates that Mr. Hicks' refusal to comply with the directive was willful and intentional. Some cases on insubordination have drawn a distinction between willful noncompliance and situations in which the employee's refusal to comply with the directive is based on a "reasonable belief" that compliance would violate law or school policy.¹² Mr. Hicks has not offered any evidence that his refusal to provide information in writing (and his insistence on doing so in a face-to-face interview) was due to his reasonable belief that the School Department was somehow restricted to gathering information from him in a disciplinary interview. He simply directed his supervisor to "make an appointment" with him and his union representative. Without factual support for this position, his behavior is insubordinate.

This is a case in which there is evidence of allegations of other misconduct that has not formed the basis for Mr. Hicks' termination. Recognizing that it is the prerogative of the Cumberland School Committee to take disciplinary action against Mr. Hicks solely on the basis of insubordination, rather than proceeding on the other allegations, it should be made clear that this case is not about whether he violated student confidentiality rights on two occasions or that he harassed a fellow employee. No inferences are drawn from his refusal to provide information to the school department about these issues. The sole basis for his termination by the Cumberland School Committee was insubordination and it is this infraction that we must weigh in determining whether there was "good and just cause" for termination.

Insubordination is serious misconduct and undermines the authority of those who must manage and direct a school system in an efficient manner. It can constitute good and just cause for termination of a tenured teacher, but not every act of insubordination rises to that level. More often than not, it gives rise to lesser disciplinary actions with the notion that principles of progressive discipline apply. The record in this case does not demonstrate that Mr. Hicks' insubordination had the type of adverse impact on the district's interests that would justify his termination. We find that the sanction of

¹⁰ Refusal to comply with a request that did violate the collective bargaining agreement may not constitute insubordination. See Moosa v. State Personnel Board, 126 Cal.Rptr.2d 321 (Cal.App. 3 Dist. 2002)

¹¹ It may be somewhat unusual for a school department to choose a written format, rather than an investigatory interview; but gathering information in writing may be preferable, especially when there is hostility between the parties.

¹² The cases analyze whether the motivation for the disobedience was "contumaciousness" or a defiance of, or contempt for authority, rather than a legitimate disagreement over the legal propriety or reasonableness of an order. See Butts v. Higher Education Interim Governing Board/Shepherd College, 569 S.E.2d 456 (W.Va.2002); Delran Education Association v. Delran Board of Education, 650 A.2d 7 (N.J.Super.A.D. 1994).

termination is disproportionate to his misconduct¹³ and that his insubordination did not constitute cause for his termination as is required under R.I.G.L. 16-12-6 and 16-13-3.¹⁴

Mr. Hicks' appeal is sustained and this matter is remanded to the Cumberland School Committee so that it may determine what sanction – other than termination – is appropriate.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

December 17, 2007
Date

¹³ Case law on employee discipline for insubordination indicates the imposition of lesser penalties such as a verbal or written reprimand, denial of salary increments, or temporary demotion.

¹⁴ Section 16-12-6 provides special rules on the dismissal of teachers in Cumberland (and Woonsocket), but retains the requirement for “cause”. This statute must be read consistently with the Teacher Tenure Act and its requirement for “good and just cause” for the dismissal of a tenured teacher.