

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JANE O'CONNELL

V.

PROVIDENCE SCHOOL BOARD

Decision

Held: Indemnification statute does not provide for reimbursement of attorney's fees incurred by teacher in employment matter.

Date: April 19, 2010

Introduction

This is a request for an award of attorney's fees for a teacher who was placed on paid administrative leave pending an investigation of alleged misconduct.¹

Background

Appellant Jane O'Connell is a teacher employed by the Providence School Department. Following a meeting with the School Department's human resources director and Appellant's union representative, Appellant was placed on paid administrative leave on May 12, 2006 "until further notice." [Exhibit A]. Not having heard from the School Department for more than a month, Appellant retained private counsel. By letter dated June 20, 2006, Appellant's counsel demanded that the School Department rescind Appellant's administrative leave, issue a public vindication, and award her attorney's fees pursuant to Rhode Island General Law 9-1-31.

In a letter dated August 12, 2006, Appellant was informed by the School Department that "the administrative leave on which you were placed on May 12, 2006 is ended, effective immediately. You may plan to report to work for orientation on August 28, 2006." [Exhibit C]. The letter did not include a final disposition of the allegations of misconduct against Appellant.

On November 6, 2006, Appellant's counsel made a second demand for a public acknowledgement that Appellant had been cleared of wrongdoing and for attorney's fees. Counsel notified the School Department that its failure to comply would result in an appeal to the Commissioner of Education. The School Department did not comply and this appeal was filed. A mediation session was held, but the dispute about attorney's fees remained unresolved.

¹ The appeal filed with the Commissioner originally sought an order mandating Appellant's public vindication, awarding attorney's fees pursuant to Rhode Island General Law 9-1-31, and, if necessary, requiring a name-clearing hearing to absolve Appellant of the allegations against her. A mediation conducted at the Department of Education resulted in the resolution of the vindication and hearing issues, but not the attorney's fee issue. The parties subsequently submitted an agreed statement of facts and memoranda to the undersigned hearing officer.

Positions of the Parties

Appellant contends that the clear and explicit language of §9-1-31(a) requires the Providence School Department to indemnify her for attorney's fees in this matter. Appellant is a public school teacher who was accused of misconduct allegedly occurring within the school building, during school hours, while discharging her duties as a teacher. The alleged misconduct never happened, but Appellant "was essentially forced to retain private counsel in light of the ineffective and slow process undertaken by the PSD and Ms. O'Connell's union to investigate and clear her name." Appellant was compelled to defend herself against the false claims of misconduct and she was not publicly vindicated until more than 5 months after her administrative leave ended. No criminal charges were filed against her. A formal judicial or administrative proceeding should not be a prerequisite to indemnification. Providence's investigation, the appeal to the Commissioner, and the resulting mediation all constitute civil proceedings. Comparable statutes and pertinent case law in New Jersey and Connecticut support Appellant's position in this case, as does longstanding public policy regarding the protection of teachers.

The School Board contends that §9-1-31 protects against suits for civil damages. Because placement on paid administrative leave is not a civil proceeding, Appellant is not entitled to the reimbursement of legal fees. No civil proceeding was brought against Appellant. She therefore was not required to defend herself in such a proceeding. She retained private counsel because she apparently was not satisfied with her union representation. Being placed on paid administrative leave pending an investigation, without more, does not constitute an adverse employment action. The School Board has a duty to investigate allegations of teacher misconduct. These investigations are in the best interest of students. Requiring indemnification for legal fees voluntarily incurred by a teacher during an investigation of this type is not supported by public policy and would financially cripple school districts.

Discussion

Section 9-1-31(a) of the Rhode Island General Laws states in pertinent part that each school committee "shall protect and save harmless" any teacher, supervisor or administrator

from financial loss and expense, including legal fees and costs, if any, arising out of any claim, demand, or suit for actions resulting in accidental bodily injury to or death of any person, or in accidental damage to or destruction of property, within or without the school building, or any other acts, including but not limited to infringement of any person's civil rights, resulting in any injury, which acts are not wanton, reckless, malicious, or grossly negligent, as determined by a court of competent jurisdiction, provided the teacher, supervisor, or administrator, at the time of the acts resulting in the injury, death, damages, or destruction, was acting in the discharge of his or her duties or within the scope of his or her employment or under the direction of the school committee . . .

The issue in this case is whether Appellant's attorney fees arose out of a "claim, demand, or suit" as described in §9-1-31(a). The statute does not define these terms, and the circumstances of this case are not directly addressed by Rhode Island case law.

In Monti v. Warwick School Committee,² the Rhode Island Supreme Court reviewed §9-1-31(a) to determine whether a school committee was required to reimburse a school principal for legal expenses he incurred in the successful defense of criminal charges. Based on its analysis of the phrase "any claim, demand or suit" in the statute, the Court held that the indemnification provision applied only to "civil proceedings," not to criminal charges.³ In its analysis, the Court noted that an explanation prepared by the legislative council regarding the extent of the indemnification provision stated that "a teacher would be 'protected against suits for civil damages.'"⁴

The Restatement of Agency includes a discussion of the rights to indemnification with regard to litigation, which states, in part, that

[i]n the absence of an express contractual provision that requires the principal to indemnify an agent in connection with litigation against the agent, a principal has a duty to indemnify the agent against expenses and other losses incurred by the agent in defending against actions brought by third parties if the agent acted with actual authority in taking the action challenged by the third party's suit.⁵

² 554 A.2d 638 (1989).

³ Ibid. at 640.

⁴ Ibid. at 639.

⁵ Restatement (Third) of Agency, §8.14 (2006).

Given the circumstances of this case, we find that Appellant's request for attorney's fees does not fall within the parameters of §9-1-31(a). Here, the School Department received a complaint alleging misconduct by Appellant. The School Department placed Appellant on paid administrative leave pending investigation of the complaint. After a month had passed without any contact from the School Department or the scheduling of a hearing, Appellant retained private counsel. Appellant's counsel promptly took up her cause and demanded that the School Department return Appellant from leave and publicly clear her of any wrongdoing. No disciplinary or civil actions were brought against Appellant, and she was eventually reassigned to her teaching duties.

We note that the party who complained to the School Department did not directly pursue an action against Appellant. Instead, the issue was treated as an employment matter. The School Department changed Appellant's employment status and commenced an investigation. Appellant was entitled to legal representation from her collective-bargaining representative. The School Department assessed Appellant's conduct in light of the district's rules, policies and procedures. There is no evidence that Appellant was ever subjected to an action by a third party. Appellant and her counsel dealt exclusively with the School Department. Appellant's decision to retain private counsel did not change the fact that this was an employment matter.⁶

The purpose of indemnification is to shield employees from personal loss and expense resulting from third-party actions brought against them in connection with the performance of their duties. There is no third-party action in this case.⁷ A complaint about Appellant was lodged with her employer, but the complaining party did not pursue a "claim, demand, or suit" against Appellant. The School Department investigated the complaint and took action based on the circumstances and its findings, as is its duty.

⁶ We note that Appellant was not suspended from employment during the time she was on administrative leave. In Martone v. Johnston School Committee, the Rhode Island Supreme Court reviewed the application of the teacher suspension statute (§16-13-5) to a teacher placed on leave with pay pending an investigation of alleged unprofessional conduct. The Court stated that "[a] determination that a teacher has been suspended does not depend on the length of time that the leave is imposed. If an individual continues to be paid during the period in question, he or she has not been suspended. Even a constructive suspension requires that an individual be denied pay during the period in question. [citation omitted]." 824 A.2d at 432 (2003).

⁷ Unlike the New Jersey and Connecticut cases cited by Appellant, which involved criminal charges of sexual assault [Bower v. Board of Education of East Orange, 670 A.2d 106 (N.J. 1996)] and a civil action alleging, *inter alia*, sexual assault and battery [Vibert v. Board of Education, 793 A.2d 1076 (Conn. 2002)].

Being a personnel matter, Appellant was entitled to legal representation from her union. She chose to retain private counsel, however. We find that the resulting attorney's fees in this employment matter are not covered by §9-1-31(a) because reimbursement by the school district would not serve the purpose of the indemnification provision and it would subvert the district's duty to address allegations of employee misconduct. For these reasons, we deny the appeal.

Conclusion

Rhode Island General Law 9-1-31(a) does not provide for the reimbursement of attorney's fees incurred by a teacher in an employment matter.

Paul E. Pontarelli
Hearing Officer

Approved:

Deborah A. Gist
Commissioner of Education

Date: April 19, 2010