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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0692**

Mary Jo Morgan,
Relator,

vs.

Independent School District No. 482, Little Falls, Minnesota,
Respondent.

**Filed April 7, 2009
Affirmed
Stauber, Judge**

Independent School District No. 482, Little Falls, Minnesota

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Considered and decided by Minge, Presiding Judge; Larkin, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

In this certiorari appeal, relator Mary Jo Morgan challenges the termination of her
employment as an employee of respondent school district, asserting that (1) she was
entitled to continuing contract rights under Minn. Stat. § 122A.40 (2008), and (2) the

district's denial of her request for a hearing violated her procedural due process rights. We affirm.

FACTS

This dispute involves the nonrenewal of relator Mary Joe Morgan's employment contract with respondent Independent School District No. 482 (the district). In early 1999, the district advertised an opening for the position of director of human resources. Responsibilities for the position included, among other things, managing and evaluating human resources personnel, assessing staffing needs, making recommendations for employment decisions, maintaining personnel records, conducting training sessions for employees, negotiating and administering union contracts, and managing benefits programs. The job description for the position indicated that an applicant should possess an administrative license, a degree in human relations, or such alternatives as the board may find appropriate and acceptable.

Morgan, who possessed only a secondary principal's license and teacher's license, applied for the position and was hired by the school board on March 8, 1999. At the time of her hire, Morgan signed a standardized employment contract form intended for use in teacher contracts, which referred to the position as "Director of Human Resources." The contract, which was initially for two months, stated that the agreement was subject to the provisions of the continuing contract statute. By its own terms, the contract terminated on June 1, 1999. For the remainder of 1999 until 2003, Morgan did not sign an employment agreement with the district, but received annual notices of assignment as director of human resources. By the 2001-02 school year, Morgan was listing herself as

tenured on the district's seniority list, and the district's policy manual at the time of her hire stated that all administrators, including the human resources director, would be considered continuing-contract employees.

On March 17, 2003, as part of an effort to reduce budget expenses, the school board passed resolutions discontinuing three positions within the district including the director of human resources. Recognizing that the duties of these positions must continue to be fulfilled, the board passed another resolution creating two non-licensed positions that would take their place. Morgan was assigned to one of the positions, which included the title of administrative assistant to the superintendent for school operations (AASSO). This position required her to assist the superintendent in providing leadership and guidance in the development, implementation, and evaluation of school operations in addition to her primary duties as human resources director. Morgan subsequently signed another employment agreement, which was effective from July 1, 2003, through June 30, 2005. After her assignment to the new position, Morgan was no longer included on the seniority list for tenure. In 2006, Morgan signed another similar agreement that covered the period of July 1, 2005, through June 30, 2008.

On April 10, 2007, Morgan met with school officials to discuss her employment with the district. The superintendent informed Morgan that the district was concerned about her practice of sharing information with union representatives and did not intend to renew her contract. The superintendent also indicated that Morgan's title had been changed to assistant to the superintendent and she would now act only as a consultant rather than in a supervisory capacity over other district employees.

On January 10, 2008, Morgan sent a letter to the district, claiming that she maintained continuing contract rights under Minn. Stat. § 122A.40 based on the language of her original contract. In response, the district denied that Morgan had any continuing contract rights because she maintained “an administrative position for which no license exists or is required.” On February 26, 2008, the school board passed a resolution terminating the assistant to the superintendent position and declining to renew Morgan’s employment after the expiration of her current contract. After learning of the resolution, Morgan sent a letter to the district requesting a hearing to discuss the board’s decision and demanding the opportunity to exercise her bumping rights as a continuing contract employee. The superintendent denied her request. This certiorari appeal followed.

D E C I S I O N

This court will reverse a school board’s decision to terminate an employee only if the decision is “fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law.” *Dokmo v. Indep. Sch. Dist. No. 11*, 459 N.W.2d 671, 675 (Minn. 1990).

Morgan contends that the protections afforded by Minn. Stat. § 122A.40 (2008), pertaining to the employment, contracts, and termination of teachers, should apply to her because she qualifies as a “teacher” for purposes of the statute. Under the statute, teachers who have completed a probationary period while employed by a school district are entitled to a continuing contract that may only be terminated on certain statutory grounds after written notice and the opportunity for a hearing. Minn. Stat. § 122A.40, subd. 7. “A principal, supervisor, and classroom teacher and *any other professional*

employee required to hold a license from the state department shall be deemed to be a ‘teacher’ within the meaning of [the statute].” *Id.*, subd. 1 (emphasis added). When material facts are undisputed or no evidence in the record supports a contrary conclusion, whether a school employee is a teacher under the statute is a matter of law not requiring a hearing. *Cloud v. Indep. Sch. Dist. No. 38*, 508 N.W.2d 206, 209 (Minn. App. 1993).

Morgan claims that she qualifies as a teacher under the statute because she was required by law to maintain an administrative license. Both parties focus their arguments on Minn. R. 3512.0300, subp. 1 (2007). The rule provides that:

A person who serves as or performs the duties of a superintendent or principal shall hold a license appropriate to the position of school superintendent or school principal. Performance of duties includes duties that provide assistance to the superintendent or principal consisting of 50 percent or more in administration, supervision, evaluation, and curriculum.

Minn. R. 3512.0300, subp. 1.

Morgan argues that she was required to be licensed in her positions as director of human resources and AASSO because the majority of her duties involved administration, supervision, evaluation, and curriculum. But based on the job description contained in the record, Morgan’s responsibilities as human resources director were ones traditionally performed by a human resources director rather than by a superintendent or principal. In contrast, the job description for the AASSO position she held from July 1, 2003, through June 30, 2005, suggests that Morgan was accountable for some of the superintendent’s responsibilities within the district. Morgan’s position involved leadership in several areas of school operations, but in reality her duties remained primarily focused on human

relations, rather than administration, supervision, evaluation, or curriculum. Moreover, even if this position required licensure under the rule, Morgan did not hold the appropriate license. The appropriate license for someone performing the responsibilities of a superintendent would be a superintendent's license. *See* Minn. R. 3512.0200, .0600 (2007) (providing the licensure and educational program requirements for superintendents). Morgan maintains only teaching and principal's licenses, which are unrelated to her duties.

Morgan also claims that her duties are analogous to those of the employee in *Strege v. Indep. Sch. Dist. No. 482*, No. C1-00-867, (Minn. App. Dec. 19, 2000), an unpublished decision of this court.¹ In *Strege*, this court concluded that an employee who was employed in the same district as Morgan and held the position of director of teaching and learning was entitled to tenure. 2000 WL 1855070, at *1, 3. However, the facts here are distinguishable from *Strege*. The employee in that case was required to hold a teaching license, was consistently treated as tenured by the district, and had substantial involvement in development, implementation, and evaluation of curriculum, instruction of students, and supervision of employees, including teachers. 2000 WL 1855070, at *3. Here, Morgan was not required to hold a license for her employment, unilaterally decided to include herself on the tenure list, and generally performed duties that did not relate to administration, supervision, evaluation, or curriculum. Morgan's responsibilities are

¹ We acknowledge that unpublished opinions are not precedential. Minn. Stat. § 480A.08, subd. 3 (2006). But because *Strege* and *Herdegen* involve similar tenure disputes between Little Falls School District and its employees, we do find these decisions persuasive. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993) (holding that unpublished opinions may be persuasive).

more akin to those of the employee in *Herdegen* who performed duties related to finance and business in the same district as Morgan. *Herdegen v. Sch. Bd. of Indep. Sch. Dist. No. 482*, No. C6-00-783, 2000 WL 1778301, at *2 (Minn. App. Nov. 21, 2000) (concluding that a finance and business director is not entitled to tenure).

Next, Morgan contends that she is entitled to continuing contract rights because the district: (1) provided her with an initial contract form that was subject to laws concerning qualifications and licensure; (2) stated in its policy manual that all administrators, including the director of human resources, would be considered continuing-contract employees; (3) preferred that she hold an administrative license; (4) and included her on its seniority list along with other continuing-contract teachers. We disagree. Continuing contract rights are a “creature of statute, and no one can have a valid claim to [a continuing contract] except as authorized by statute.” *Bd. of Educ. of City of Minneapolis v. Sand*, 227 Minn. 202, 211, 34 N.W.2d 689, 695 (1948). Thus, employees are only entitled to a continuing contract if they satisfy the definition of teacher found in Minn. Stat. § 122A.40, subd. 1. Morgan does not claim to be a principal, supervisor, or classroom teacher under the statute, and as discussed above, even if she was required to hold a license, she did not hold the appropriate license for the position. Accordingly, Morgan is not entitled to a continuing contract.

Finally, Morgan claims that the district violated her due process rights by denying her a hearing. Procedural due process affords a party certain protections against state action, including notice and an opportunity to be heard, if the party has a protected property or liberty interest at stake. *Humenansky v. Minn. Bd. Of Med. Exam'rs*, 525

N.W.2d 559, 565 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995). To have a property interest, a government employee must have a legitimate claim of entitlement to continued employment; a unilateral expectancy is insufficient. *Bd. of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 2709 (1972). A continuing contract employee has a protected property interest in employment that can only be terminated under the procedural requirements of the Teacher Tenure Act. *See Sweeney v. Special Sch. Dist. No. 1*, 368 N.W.2d 288, 292 (Minn. App. 1985) (providing that tenure rights rise to the level of entitlement). But “[a]n untenured teacher at a public school . . . has no constitutional right to due process after [the] contractual term of employment expires and the school decides not to rehire [the teacher].” *Phillips v. State*, 725 N.W.2d 778, 783 (Minn. App. 2007), *review denied* (Minn. March 28, 2007). Therefore, because Morgan is an untenured employee, she is not entitled to a hearing.

Affirmed.