STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1348

Lynn Tchida,
Relator,

vs.

Independent School District No. 31, Bemidji Area Schools,
Respondent.

Filed July 7, 2009
Affirmed
Willis, Judge[*]

Independent School District No. 31

Andrea B. Niesen, Bird Jacobsen & Stevens, P.C., 305 Ironwood Square, 300 Third Avenue Southeast, Rochester, MN 55904 (for relator)

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Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Willis, Judge.

[*]Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

WILLIS, Judge

Relator seeks review by writ of certiorari of respondent school district's decision not to renew her employment contract. She argues that the district violated Minn. Stat. § 122A.40, subd. 5(a) (2006), because it failed to provide her with three performance evaluations during her year of employment. Because relator was a probationary employee and the district substantially complied with section 122A.40, subdivision 5(a), we affirm.

FACTS

Respondent Bemidji Independent School District No. 31 hired relator Lynn Tchida as its Community Education Director for the 2007-08 school year. On June 25, 2008, the Bemidji school board decided not to renew Tchida's contract for the following school year. Tchida appeals by writ of certiorari.

D E C I S I O N

Appellate courts generally review a school board's action to determine if the action "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). But "[a] school board has total discretion when deciding not to renew the contract of a probationary teacher." *Allen v. Bd. of Educ. of Indep. Sch. Dist. No. 582*, 435 N.W.2d 124, 126-27 (Minn. App. 1989) (acknowledging that appellant cited "no authority preventing a school district from refusing to renew an annual contract of a probationary teacher for arbitrary reasons"), *review denied* (Minn.

Apr. 19, 1989); *see also Pearson v. Indep. Sch. Dist. No. 716*, 290 Minn. 400, 402, 188 N.W.2d 776, 778 (1971) (applying predecessor statute and describing the decision of whether to renew a probationary teacher's contract as within the "total discretion" of the school board). If a school district substantially complies with the provisions of section 122A.40, subdivision 5, courts "will not interfere with the district's decision not to renew a probationary teacher's contract." *Savre v. Indep. Sch. Dist. No. 283*, 642 N.W.2d 467, 471 (Minn. App. 2002) (citing *Skeim v. Indep. Sch. Dist. No. 115*, 305 Minn. 464, 472-73, 234 N.W.2d 806, 812 (1975)).

Under Minnesota law, the first three consecutive years of a teacher's first teaching experience are deemed to be a probationary period of employment. Minn. Stat. § 122A.40, subd. 5(a) (2006). During this probationary period, "any annual contract with any teacher may or may not be renewed *as the school board shall see fit*. However, the board must give any such teacher whose contract it declines to renew for the following school year written notice to that effect before July 1." *Id.* (emphasis added).

> If the teacher requests reasons for any nonrenewal of a teaching contract, the board must give the teacher its reason in writing, including a statement that appropriate supervision was furnished describing the nature and the extent of such supervision furnished the teacher during the employment by the board, within ten days after receiving such request.

Id.

In addition, the school board must adopt a plan for the written evaluation of probationary teachers, and probationary teachers who perform services on 120 or more school days are to be provided with three performance evaluations each year. *Id.* This

court has concluded that the evaluation provision is directory. *Savre*, 642 N.W.2d at 472. This court has held, therefore, that a school board may substantially comply with section 122A.40, subdivision 5(a), even if it does not strictly follow the evaluation provision. *Id.* at 472-73; *see also Allen*, 435 N.W.2d at 127 (concluding that a district substantially complied with the evaluation provision by providing one evaluation, rather than three, during a probationary superintendent's second year).

There is no dispute that Tchida was a probationary teacher. *See* Minn. Stat. § 122A.40, subd. 1 (2006) (defining a teacher); *id.*, subd. 5(a) (defining probationary employment status). And there is no dispute that Tchida performed services on at least 120 school days during her year of employment. The only issue, therefore, is whether the school district substantially complied with section 122A.40, subdivision 5(a).

Tchida argues that the school district did not substantially comply with the statute because she was not provided with three performance evaluations during her year of employment. Tchida contends that the school district's failure to comply with the evaluation provision requires this court to reverse the school board's decision not to renew her contract.

On June 2, 2008, the school district's superintendent provided Tchida with a written performance evaluation. The evaluation listed the general responsibilities of Tchida's job and the superintendent's rating of Tchida's performance of each responsibility. The evaluation also described specific examples of Tchida's performance that in the superintendent's judgment demonstrated a need for improvement. On June 23, 2008, Tchida's counsel sent the superintendent a letter in which he argued that the district

had not provided Tchida with the required number of performance evaluations. On June 24, 2008, the superintendent sent Tchida a memorandum entitled "Administrative Evaluation (2)" in which he stated his concerns about Tchida's adherence to the district's summer-work-hour requirements. And on June 25, 2008, the superintendent sent Tchida a memorandum entitled "Administrative Evaluation (3)" in which he expressed concerns regarding Tchida's requests-and-expense-reimbursement claims.

On the same day that the final memorandum was sent to Tchida, the district's school board decided to not renew her contract. On June 26, 2008, the district's school board provided Tchida with written notice of the nonrenewal of her contract. Tchida subsequently requested reasons for the nonrenewal of her contract, and on July 1, the school board sent Tchida written reasons for not renewing her contract, stating that Tchida was given appropriate supervision and describing the nature and the extent of that supervision.

We conclude that the school district did not comply with the evaluation provision. The record shows that the only real performance evaluation was the written evaluation dated June 2, 2008. Neither of the administrative evaluations later in June is in the format of or has the formality of the June 2, 2008 performance evaluation. The June 2 evaluation reviewed the range of Tchida's employment responsibilities. But each of the administrative evaluations addressed only a discrete job responsibility. The superintendent used a uniform scale in the June 2 evaluation to rate Tchida's performance in each area of her responsibility. By contrast, each of the two administrative evaluations was a narrative description of Tchida's performance in a specific area.

But because the statutory evaluation requirement is directory only, absent a clear directive from the legislature, we are reluctant to overrule a school district's discretionary decision to not renew a probationary teacher's contract. Although the district did not provide Tchida with three performance evaluations, we conclude that it substantially complied with section 122A.40, subdivision 5(a).

Here, there was one full, written evaluation of Tchida's performance, and the school district made some efforts to evaluate Tchida's performance further in the later memoranda that were sent to her. As required by statute, the school board provided Tchida with a written notice of the nonrenewal of her contract before July 1, 2008, and within ten days after receiving her request, the school board sent Tchida a letter giving its reasons for not renewing her contract and containing a statement that appropriate supervision was furnished, and describing the nature and the extent of that supervision.

We conclude that because the school district substantially complied with requirements of section 122A.40, subdivision 5(a), its failure to comply strictly with the evaluation provision is not reversible error.

Affirmed.