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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1454

Ann L. Wilson,
Relator,

vs.

Independent School District No. 720, Shakopee, Minnesota,
Respondent.

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

School Board of ISD No. 720, Shakopee, Minnesota

Rebecca H. Hamblin, Education Minnesota, 41 Sherburne Avenue, St. Paul, MN 55103-2196 (for relator)

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Considered and decided by Toussaint, Chief Judge; Halbrooks, Judge; and Muehlberg, Judge.

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

MUEHLBERG, Judge

Relator Ann L. Wilson challenges a decision by respondent Independent School District No. 720, Shakopee, Minnesota to not renew her teaching contract following a

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

three-year probationary period. Relator asserts that she could only be terminated for cause because, having achieved continuing contract status during an earlier employment with another school district, her probationary period was one year. Because we conclude that relator did not achieve continuing contract status during her previous employment, we affirm.

FACTS

Relator Ann L. Wilson taught Family and Consumer Sciences (FACS) at Shakopee Junior High School during the 2005-06, 2006-07, and 2007-08 school years. In her application for this position, Wilson indicated that she had never achieved "tenure"[1] in Minnesota. The district treated Wilson as a new Minnesota teacher subject to a three-year probationary period under Minn. Stat. § 122A.40, subd. 5 (2008). In April 2008, Wilson learned through a performance review that the district did not intend to offer her a contract for the 2008-09 school year.

Wilson's employment before accepting the FACS position included more than a decade of teaching interior design courses at Dakota County Technical College (DCTC), which during a portion of Wilson's employment was a part of Independent School District No. 917 (ISD 917). DCTC employed Wilson on a quarter-to-quarter basis, and reserved the right to cancel classes if enrollment was low. Wilson asserts that she began employment with DCTC in 1987, and the documentary record reflects that she taught

[1] Although the Minnesota Statutes use the term "tenure" only with respect to teachers employed in cities of the first class, *see* Minn. Stat. § 122A.41 (2008) (teacher tenure act), as a practical matter, tenure and continuing contract rights are interchangeable concepts. *See Jurkovich v. Indep. Sch. Dist. No. 708*, 478 N.W.2d 232, 233 n.1 (Minn. App. 1991) (recognizing that "the two terms identify the same legal concept").

between 84 and 269 hours per year from 1990 until 1997. From 1987 through 1991, Wilson was licensed as a vocational educator by the Minnesota Department of Education (MDE). Wilson is certain that she was licensed from 1991 through 1995, but neither party was able to locate evidence of licensure for this time period.

After learning that the Shakopee school district did not intend to renew her contract, Wilson consulted with a union field representative from Education Minnesota. The union representative met with the district's superintendent to argue that Wilson had achieved continuing contract status during her employment with DCTC, asserting that Wilson's probationary period with the district was only one year and that the district could no longer terminate her contract without complying with the notice and cause requirements of Minn. Stat. § 122A.40, subd. 7(a) (2008). The superintendent disagreed, and the school board adopted a resolution to terminate Wilson's contract effective at the end of the 2007-08 school year.

Wilson petitioned for and this court issued a writ of certiorari to review the decision of the school board.

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).

Relator argues that the district's decision is based on an error of law. This appeal turns on the parties' dispute over whether Wilson's probationary period with the district

was one year or three years. *See* Minn. Stat. § 122A.40, subd. 5(a) (defining probationary periods).[2] The distinction is important because "during the probationary period, any annual contract with any teacher may or may not be renewed as the school board shall see fit." *Id.* Upon the completion of the probationary period, however, a teacher may be terminated only for reasons permitted by statute and only with proper notice and the right to a hearing. Minn. Stat. § 122A.40, subd. 7(a). Moreover, upon the completion of a three-year probationary period in one Minnesota school district, the probationary period in a subsequent district is only one year. Minn. Stat. § 122A.40, subd. 5(a). The determination of the appropriate probationary period here depends upon whether relator's DCTC employment satisfied the three-year probationary period, and thus entitled her to a one-year probationary period with the Shakopee school district.

At the outset, we note that this case arises out of an unusual, and dated, set of circumstances. At the time that Wilson commenced her employment with DCTC, school boards were responsible for "operat[ing] and maintain[ing] post-secondary vocational education" in Minnesota, which included employing post-secondary vocational education teachers. Minn. Stat. § 136C.05, subds. 1, 3 (1986). This remained the case until 1995, when the legislature merged the community and technical colleges with the state universities to form the Minnesota State Colleges and Universities system. *See* 1995 Minn. Laws ch. 212, art. 4, §§ 14, *codified at* Minn. Stat. § 136F.10 (2008) (defining

[2] Both Wilson and the district have raised equitable arguments supporting their preferred result in this case. Because continuing contract rights are a "creature of statute," *Bd. of Educ. of City of Minneapolis v. Sand*, 227 Minn. 202, 211, 34 N.W.2d 689, 695 (1948), we reject the parties' equitable arguments.

state colleges and universities to include community and technical colleges); 65 (repealing Minn. Stat. § 136C.05). At present, there is no relationship between the school districts and the community and technical colleges, and thus no basis for a post-secondary educator to claim continuing contract rights with a school district. But from the commencement of her employment in 1987 until June 30, 1995, Wilson was employed by ISD 917, even though she taught exclusively for DCTC. Therefore, we must determine the impact of Wilson's previous district employment, under the now defunct structure, on her present right to a continuing teaching contract with the Shakopee school district.

The district asserts that Wilson was not a "teacher" within the meaning of the statute governing continuing-contract rights because she was neither a classroom teacher nor an employee required to hold a license. A teacher is defined as "[a] principal, supervisor, and classroom teacher and any other professional employee required to hold a license from the state department." Minn. Stat. § 122A.40, subd. 1 (2008). Because the plain language of the statute encompasses any "professional employee required to hold a license from the state department [of education]," we reject the district's assertion that Wilson's DCTC employment fell outside the statute because she was not a "classroom teacher." Instead, we focus our inquiry on whether Wilson was required to hold a license from the department of education.

At the time that Wilson commenced employment with DCTC, teaching licensure requirements applied to "all persons employed in a public school as members of the instructional and supervisory staff such as superintendents, principals, supervisors,

classroom teachers, and librarians." Minn. Stat. § 125.03, subd. 1 (1986). Exempt from licensing requirements by statute were persons teaching "in a part-time vocational technical education program no more than 61 hours per fiscal year." Minn. Stat. § 125.031 (1986). Rules adopted by MDE required licensure for "[a]ny person holding a position as a postsecondary vocational instructor . . . responsible for . . . developing, teaching, and evaluating instruction in areas assigned, including programs involving simulation and laboratory activities." Minn. R. 3515.5000, subp. 1 (1987).[3]

Wilson asserts that she satisfied the initial three-year probationary period between 1987 and 1990 and transitioned to a continuing contract in 1991. The record supports that Wilson was licensed as a vocational educator during this time period. The record, however, is insufficient for us to conclude that Wilson was *required* to be licensed during this time period. *See Cloud v. Indep. Sch. Dist. No. 38*, 508 N.W.2d 206, 210 (Minn. App. 1993) (holding that "[b]ecause relator was not required to hold a license she does not fit the statutory definition of a teacher" (internal quotation omitted)). For instance, we are unable to determine whether Wilson worked less than 61 hours and was thus

[3] In 1989, the legislature amended the statutes governing teachers to clarify that "[t]he authority to license post-secondary vocational and adult vocational teachers . . . in technical institutes is vested in the state board of vocational technical education." 1989 Minn. Laws ch. 251, § 3 (codified at Minn. Stat. § 125.05, subd. 1 (Supp. 1989)). Rules adopted by the board of vocational technical education following the 1989 amendment, in addition to setting forth requirements in certain technical areas not relevant here, incorporated and required compliance with the department of education rules for licensure of post-secondary vocational instructors. Minn. R. 3700.0100, subp. 2 (requiring compliance with Minn. R. 3515.0100-.4400 and 3515.5000).

exempt from any licensing requirement that might otherwise apply. Minn. Stat. § 125.031 (1986).[4]

Beginning in 1990, the record reflects that Wilson worked at least 84 hours a year. However, there is no evidence, beyond her own self-serving statements, that Wilson was licensed during this time period. Wilson asserts that she was required to be licensed under MDE rules because she held a position as a post-secondary vocational instructor and was engaged in teaching. The district reads the phrase "developing, teaching, and evaluating instruction" to mean developing, teaching and evaluating *teaching*, and argues that the rule thus extends only to those who teach others how to teach vocational education classes. The phrase, however, could also reasonably be interpreted to reference the development, teaching and evaluation of *curriculum*. We conclude that the MDE rules were ambiguous with regard to whether Wilson was required to be licensed during the relevant time period.

When an agency rule is ambiguous, we will defer to the agency's reasonable interpretation of that rule. *In re Cities of Annandale & Maple Lake NPDES/SDS Permit for the Discharge of Treated Wastewater*, 731 N.W.2d 502, 516 (Minn. 2007). Here, it appears that MDE construed its rule to require licensure of some vocational educators, but not others. The fact that neither Wilson nor the district was able to obtain copies of licenses allegedly issued to Wilson between 1991 and 1995 supports the conclusion that

[4] Remand is usually appropriate when the record is insufficient to permit meaningful appellate review. *Dokmo*, 459 N.W.2d at 675. In this case, however, it appears that the parties have made significant efforts to ensure a complete record for this appeal, and that the deficiency lies in the availability of information, not the failure to present it.

licenses were not issued during that period. Further, the contracts entered into between Wilson and DCTC did not require her to be licensed as a part-time, or "limited" teacher. In contrast, full-time "unlimited" teachers were expressly required by their contracts to hold a license from MDE. This evidence reflects a consistent licensing practice in the relevant time period that supports the district's interpretation of the MDE licensing rules. We conclude that this interpretation is a reasonable one, and accordingly that Wilson was not required to be licensed during the relevant time period.

Because her DCTC position did not require her to be licensed, Wilson was not a "teacher" within the meaning of the statutes governing continuing contracts and she did not complete the initial three-year probationary period during her DCTC employment. Accordingly, we reject Wilson's assertion that she was entitled to a continuing contract following one year of employment with the Shakopee school district.

Affirmed.