IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BOBBIE HODGINS — **APPELLANT**

V. — **CAUSE NO. 2006-TS-01919 CC**

PHILADELPHIA PUBLIC SCHOOL DISTRICT — **APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representation are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Philadelphia Public School District (Appellee);
2. Bobbie Hodgins (Appellant);
3. D. Joseph Kilgore of Alford, Thomas & Kilgore (counsel for the Philadelphia Public School District);
4. Honorable J. Max Kilpatrick, Chancellor, Neshoba County, Mississippi;
5. Terry L. Jordan of Jordan & White, PLLC (counsel for Bobbie Hodgins); and
6. Bill T. May and Tanya L. Phillips of Logan & May, P.A. (counsel for Bobbie Hodgins).

RESPECTFULLY SUBMITTED,

BY: _____

D. JOSEPH KILGORE, MSBN [redacted]
ATTORNEY OF RECORD FOR THE PHILADELPHIA PUBLIC SCHOOL DISTRICT, APPELLEE

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SUMMARY OF THE ARGUMENT

The position of the Philadelphia Public School District that the decision of the Chancellor should be upheld, is based on four points: First, the Chancellor was correct in interpreting the plain meaning of the *Education Employment Procedures Law of 2001"* (EEPL), which includes *Miss. Code Ann.* §§ 37-9-101 through 37-9-113. If the statute in question is not ambiguous, the court should interpret and apply the statute according to its plain meaning without the aid of principles of statutory construction. In doing so, the Chancellor ruled that Bobbie Hodgins was not employed for two (2) continuous years as the plain meaning of the statute required, and thus she does not qualify as an employee under the EEPL. Ms. Hodgins makes no argument requiring a reversal of the Chancellor's reasoning in finding no ambiguity in the statute.

Second, paragraph (a) of *Miss. Code Ann.* § 37-9-113 requires that a person be employed for a continuous period of two (2) years with the district before they are covered by the EEPL. Until the employee has been employed by the ending date of the second year of the contract, that employee has not been employed for a continuous period of two years. Having a contract for the second year does not mean that the employee has been employed for the full duration of the second year. Mrs. Hodgins was properly notified before the end of her second year of employment that she would not be offered a contract as assistant principal for the next school year. (Appellant's Rec. Exc. Pg. 28). Non-renewal without a hearing prior to the end of the second year is allowable under paragraph (a) of the statute and was proper in this case.

The wording in the school district's policy manual and the contract for employment signed by the Superintendent and Mrs. Hodgins leaves no question that it is the school district's intent to follow state law and the current state law covering non-renewal of an employee is the

EEPL.

Third, since Mrs. Hodgins is expressly excluded from the protections of the EEPL, the school was not required to give reasons for non-reemployment.

Fourth, because there is no statutory provision allowing Mrs. Hodgins a hearing on the non-renewal, there is no requirement that the school board take any action whatsoever on the issue. When the board does not vote, there is no legal act to be recorded in the minutes.

ARGUMENT

I. APPELLANT MAKES NO ARGUMENT REQUIRING A REVERSAL OF THE TRIAL COURT, WHICH ACTED PROPERLY IN INTERPRETING THE PLAIN MEANING OF THE STATUTES

It is well settled law in the State of Mississippi that when a court considers a statute passed by the Legislature, the first question before the Court is whether the statute is ambiguous. *Harrison County School Dist. v. Long Beach School Dist.*, 700 So.2d 286, 288 (Miss. 1997) citing *Mississippi Power Co. v. Jones,* 369 So.2d 1381, 1388 (Miss. 1979). If the statute in question is not ambiguous, the court should interpret and apply the statute according to its plain meaning without the aid of principles of statutory construction. *Id.* The Chancellor in the case sub judice expressly interpreted the plain meaning of the *Education Employment Procedures Law of 2001"* (EEPL), which includes Sections 37-9-101 through 37-9-113 and looked to the text of the statute itself and sought its plain meaning (Appellant's Rec. Exc. Pgs. 10-14). In doing so, the Chancellor ruled that Bobbie Hodgins was not employed for two continuous years as the plain meaning of the statute requires and thus does not qualify as an employee under the EEPL. The Chancellor acted properly in interpreting the plain meaning of the EEPL and Mrs. Hodgins makes no argument requiring a reversal of the Chancellor's reasoning in finding no ambiguity in

the statute. When the language chosen by the Legislature is clear and unambiguous, the plain meaning is given deference. *Harrison* at 290.

II. BOBBIE HODGINS WAS NOT ENTITLED TO A DUE PROCESS HEARING BECAUSE SHE WAS NOT EMPLOYED WITH THE SCHOOL FOR TWO CONTINUOUS YEARS AND WAS THUS, NOT A COVERED EMPLOYEE UNDER THE *EDUCATION EMPLOYMENT PROCEDURES LAW OF 2001 (EEPL)*

Section 37-9-105 of the Mississippi Code, as cited by the Appellant, is part of the *Education Employment Procedures Law of 2001"* (EEPL), which includes Sections 37-9-101 through 37-9-113. In order to be covered under the EEPL, an employee must be: "(a) Any teacher, principal, superintendent or other professional personnel employed by the local school district for a *continuous period of two (2) years* with that district and required to have a valid license issued by the State Department of Education as a prerequisite of employment; or (b) Any teacher, principal, superintendent or other professional personnel who has completed a continuous period of two (2) years of employment in a Mississippi public school district and one (1) full year of employment with the school district of current employment, and who is required to have a valid license issued by the State Department of Education as a prerequisite of employment." *Miss. Code Ann. §* 37-9-103.

These requirements provide an opportunity for the school districts to remove certain licensed employees without the necessity of providing reasons for non-renewal and/or an opportunity for a hearing during the employee's first two (2) years of employment. (7 MS Prac. Encyclopedia MS Law §65:89).

The school district does not deny that the Appellant had a valid license issued by the State Department of Education. However, paragraph (a), as quoted above, also requires that a person be employed for a continuous period of two (2) years with the district before they are covered by the EEPL. Until the employee has been employed by the ending date of the second year of the contract, they have not been employed for a continuous period of two years according to the plain language of the statute. Having a contract for the second year does not mean that the employee has been employed for the full duration of the second year. The Appellant entered into a contract with the school district on June 3, 2003 for the 2003-2004 school year (Rec. Exc. P. 1) and on June 23, 2004 for the 2004-2005 school year (Rec. Exc. P. 2). Appellant was properly notified on April 8, 2005, before the end of her second year, that she would not be offered a contract as assistant principal for the next school year. (Appellant's Rec. Exc. Pg. 28).[1]

Paragraph (a) of the statute refers to employees being employed for a continuous period of two years before the employee is deemed to be covered by the Education Employment Procedures Law. Paragraph (b) refers to employees who have been employed for a continuous period of two years in a Mississippi school district and one full year with the current district before they are covered by the EEPL. If the assertions of Mrs. Hodgins that she was entitled to a

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[1] It is important to note that leading up to April 25, 2005, the Superintendent, Dr. Britt Dickens, found it necessary to suspend, with pay, the Appellant for the rest of the school year because of "disruptive and divisive" actions. (Appellant's Rec. Exc. Pg. 29). Appellant *was* entitled to a hearing regarding the suspension with pay according to the provisions of *Miss. Code Ann. §* 37-9-59. Appellant timely made a request for the hearing and was allowed a hearing on said suspension (Rec. Exc. Pgs. 3-4). Due to the unavailability of a stenographer, a change in counsel, and conflicts in the schedules of both sides, the thirty (30) day requirement was waived and the hearing was eventually held on August 3, 2005 (Rec. Exc. Pgs. 5-6). The school board heard the matter as an impartial body since the decision to suspend with pay was made by the Superintendent alone. Mrs. Hodgins chose not to hear the Superintendent's evidence in support of the suspension. She also chose not to cross examine the witnesses or present evidence in her defense. (Rec. Exc. Pgs. 7-9).

hearing since she was in the second year of a continuous employment were correct, then both paragraphs (a) and (b) would mean that only employees in their first year with a school district, regardless of their background, could be non-renewed without a hearing. In that event, the legislature had no need to create two paragraphs to say the same thing. Having a contract for the second year does not mean that a person has been employed for a continuous period of two (2) years. Non-renewal without a hearing prior to the end of the second year is allowable under paragraph (a) of the statute since the Appellant had not yet been employed for a full two (2) years.

A look at the employment contract of Bobbie Hodgins dated June 23, 2004 provides that it shall be "subject to all applicable policies, resolutions, rules and regulations of the employer *and the laws of the State of Mississippi, copies of which are available from the Superintendent's office.* (Rec. Exc. P. 2) (emphasis added). The language on the face of the contract makes clear two points: First, it is the intention of the school to follow current state law, and second, the copies of the school policies and laws of the State of Mississippi were available for viewing in the office of the Superintendent. There is no evidence that Mrs. Hodgins received a personal copy of the policy manual when she began her employment with the school. The policy manual, which was submitted to the Chancellor in its entirety prior to his ruling, is constantly being revised and is approximately five inches in thickness. It is unreasonable to assume that Mrs. Hodgins relied on the policy manual any more than she did Mississippi State law, which is also referenced in the contract for employment.

Even if Mrs. Hodgins did rely on the school district's policy manual, a look at Section CGM of the manual, in its entirety, reveals that it is clearly the intent of the policy to mirror state

statute. (Rec. Exc. Pgs. 10-12). The final paragraph of Section CGM of the policy manual puts all employees on notice that all school board policies "follow state and federal laws and related regulations and procedures for employment, retention, and dismissal of all personnel." Said paragraph goes on to cite the relevant Code Sections including EEPL Sections 37-9-101 through 113. Further, the "NOTE" at the end of Section GCM of the policy manual directs the employee, in bold ink, to the School Employment Procedures Handbook, also known as the Education Employment Procedures Law Handbook, published by the Mississippi School Boards Association and available for immediate viewing at http://www.msbaonline.org/publications/EEPL.pdf

The wording in the school district's policy manual leaves no question that it is the school's intent to follow state law. Even if this were not the case, when a school district's policy manual and a state statute are in conflict, obviously the statute trumps. Nothing in the school's policy manual indicates that it was designed to overrule current state law, as shown by the express language that said policies "follow state and federal laws and regulations and procedures for...dismissal of all personnel." A case on point is *Jordan v. Smith*, 669 So.2d 752, 758 (Miss. 1996) which held that even if the employee manual at issue could be interpreted as a city ordinance attempting to alter the status of city employees, when there is a conflict between a municipal ordinance and a state statute, the statute must prevail. The school lacks the authority to alter the procedures established under the EEPL and the statute must prevail.

Appellant relies on *Bobbitt v. The Orchard Ltd.,* 603 So.2d 356 (Miss. 1992) to support her contention that the school's policy manual created a further contractual obligation. The holding in Bobbitt provides an exception to the employment at-will doctrine and states that an

employees' handbook may create obligations on its part that override the at-will doctrine in *Miss. Code Ann. §* 21-3-5. Further, the holding in Bobbitt can be distinguished in that the manual in that case did not make clear the intention to follow state law as the school manual clearly does.

III. THE SCHOOL WAS NOT REQUIRED TO COMPLY WITH THE NOTICE REQUIREMENTS OF THE *EEPL* BECAUSE BOBBIE HODGINS WAS NOT A COVERED EMPLOYEE UNDER THE *EEPL*.

Bobbie Hodgins relies on *Miss. Code Ann. §* 37-9-105 as the basis for her second argument. As stated in Section I. above, the EEPL includes Sections 37-9-101 through 37-9-113 and Hodgins is expressly excluded from the protections of the EEPL in Section 37-9-103 since she has not been employed by the school district for a continuous period of two (2) years. Therefore, the school was not required to give reasons for non-reemployment nor were they required to provide a hearing because Hodgins was not a covered employee under the EEPL. The non-renewal letter dated April 8, 2005 provides all of the notice that is required under state law and school policies. (Appellant's Rec. Exc. Pg. 28)

IV. THERE IS NO STATUTORY REQUIREMENT THAT A SCHOOL BOARD TAKE ANY ACTION ON THE ISSUE OF NON-RENEWAL OF AN EMPLOYEE AND THUS, THERE IS NO LEGAL ACT TO BE RECORDED IN THE MINUTES OF THE BOARD MEETING.

The minutes of a school board meeting must reflect: "[1] the members present and absent; [2] the date, time and place of the meeting; [3] an accurate recording of any *final action* taken at such meeting; [4] and a record, by individual member, of any *votes taken*; and [5] any other information that the school board requests to be included or reflected in the minutes." *Miss.*

Code Ann. § 25-41-11*; Cf. Miss. Code Ann. §* 37-6-9 (italics added).

The Appellant is correct in her assertion that the minutes of the meeting do not reflect that a vote was taken. This is because there was no vote taken. Dr. Joe Jordan, Board President, stated twice that there will be no vote regarding the non-renewal issue. (Appellant's Rec. Exc. Pg. 18). As the statute above states, the minutes must only reflect "an accurate recording of any final actions taken at such meeting" and "any votes taken". Because there is no statutory provision allowing the Appellant a hearing on the non-renewal, there is no requirement that the school board take any action whatsoever on the issue. When the board does not vote, there is no legal act to be recorded in the minutes. *Miss. AG Op. No. 2001-0093* .

CONCLUSION

The Philadelphia Public School District, in exercising its statutory authority, made the determination not to renew the contract of the Appellant for the 2005-2006 school year. Thereafter, the school closely and consciously followed the procedures as outlined in the laws of the State of Mississippi in the non-renewal. Appellant is incorrect in her assertion that she has been denied due process. She was timely and properly notified that she would not be offered a contract as assistant principal for the next school year and that the statute does not entitle her to a hearing. Non-renewal without a hearing prior to the end of the second year is allowable since the Appellant had not yet been employed for a full two (2) years. Therefore, under the EEPL, the school was not required to give reasons for non-reemployment nor were they required to provide a hearing.

The policy manual of the school district reflects the clear intent of the school district to mirror state statute. Ample notice is given that state law ultimately governs any issue that may

arise and the current state law is, and the Chancellor has held, that the Appellant is not covered under the EEPL. Because there is no statutory provision allowing the Appellant a hearing on the non-renewal, there is no requirement that the school board take any action whatsoever on the issue. When the board does not vote, there is no legal act to be recorded in the minutes.

The Chancellor acted properly in interpreting the plain meaning of the EEPL and Mrs. Hodgins makes no argument requiring a reversal of the Chancellor's reasoning in finding no ambiguity in the statute. The school district has met every requirement in the non-renewal and the Appellant is not entitled to any relief whatsoever.

RESPECTFULLY SUBMITTED, this the 4th day of April, 2007.

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CERTIFICATE OF SERVICE

I do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing Appellate Brief to the following:

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