

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CAUSE NO. 2006-TS-01919

BOBBIE HODGINS
APPELLANT

V.

PHILADELPHIA PUBLIC SCHOOL DISTRICT
APPELLEE

ON APPEAL FROM THE CHANCERY COURT
OF NESHABA COUNTY, MISSISSIPPI
CIVIL ACTION NO. 2005-280
HONORABLE J. MAX KILPATRICK

BRIEF OF APPELLANT
BOBBIE HODGINS

ORAL AGRUMENT REQUESTED

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APPELLEE

CERTIFICATE OF INTERESTED PERSONS

Pursuant to *Miss. R. App. P. 28(a)(1)*, the undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations 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 (Defendant/Appellee);
2. Bobbie Hodgins (Plaintiff/Appellant);
3. D. Joseph Kilgore of Alford, Thomas & Kilgore (counsel for Philadelphia Public School District);
4. Honorable J. Max Kilpatrick, Chancellor, Neshoba County, Mississippi;
5. Terry L. Jordan of Jordan & White Attorneys, PLLC, (counsel for Appellant); and
6. Bill T. May and Tanya L. Phillips of Logan & May, P.A. (counsel for Appellant).

RESPECTFULLY SUBMITTED,

BOBBIE HODGINS

BY:



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TANYA L. PHILLIPS (MSB # [REDACTED])
TERRY L. JORDAN (MSB # [REDACTED])
ATTORNEYS FOR APPELLANT

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STATEMENT OF ISSUES

- I. Bobbie Hodgins was continuously employed for two (2) years by the Philadelphia Public School District, which entitled her to a due process hearing as governed by *Miss. Code Ann.* § 37-9-109.
- II. The Philadelphia Public School District failed to comply with the notice requirements of *Miss. Code Ann.* § 37-9-105, which warranted automatic renewal of Bobbie Hodgins' contract.
- III. The Philadelphia Public School District, after acting in executive session to deny Bobby Hodgins a due process hearing on the issue of non-renewal of her contract, unlawfully refused to record its decision on its minutes.

STATEMENT OF THE CASE

A. Nature of the Case

Bobbie Hodgins (“Hodgins”), Appellant, seeks relief from the decision of the Chancery Court of Neshoba County, Mississippi, which upheld the decision of the Appellee, the Philadelphia Public School District (“District”), not to grant Hodgins’ request for a due process hearing on the issue of non-renewal of her employment contract as an assistant principal for the 2005-2006 school year.

B. Course of Proceedings and Disposition in the Lower Court

Hodgins was provided statutory notice of the non-renewal of her contract on or about April 8, 2005. (Rec. Exc. P. 28). She timely requested a due process hearing pursuant to *Miss. Code Ann.* § 37-9-109, which was denied. Hodgins was subsequently suspended with pay by the District on or about April 25, 2005. (Rec. Exc. P. 29). Hodgins timely requested a due process hearing concerning the suspension on or about May 2, 2005, which was not granted until August 3, 2005. At that hearing, the District’s school board was willing to hear Hodgins on the issue of the suspension, but reiterated its refusal to hear her on the non-renewal. (Rec. Exc. Pgs. 15-26). On or about August 23, 2005, Hodgins petitioned the Neshoba County Chancery Court for judicial review of the District’s decision to deny her a due process hearing. (Rec. Pgs. 1-3). Hodgins requested by written motion that the Chancellor issue findings of fact and conclusions of law pursuant to *Miss. R. Civ. P.* 52. (Rec. P. 7). The lower court handed down its order on or about October 3, 2006, affirming the District’s decision not to grant Hodgins a due process hearing concerning the non-renewal issue. (Rec. Exc. Pgs. 7-14). Hodgins filed her *Notice of Appeal* on or about November 2, 2006, seeking this Court’s review and reversal of the lower court’s October 3, 2006, order. (Rec. P. 135).

C. Statement of Facts

Bobbie Hodgins was employed as an assistant principal at Philadelphia Elementary School in the Philadelphia Public School District. She was in the second year of her employment contract when she was notified of the administration's decision of non-renewal on April 8, 2005. Hodgins is a long-time educator and holds a Masters of Elementary Education (1977) and a Bachelor of Science in Elementary Education (1971) from Mississippi State University. She also earned additional certifications in elementary education, handicapped education, administration, principal and supervision, which are valid through 2008. Hodgins' career has included employment in the Choctaw Tribal School System over the course of 25 years. Within that period, Hodgins also taught 6th grade remedial math at Philadelphia Elementary School in the 1980-1981 school year. (Rec. Pgs. 29-34).

The Philadelphia Public School District did not provide Hodgins any grounds in its non-renewal notice as is required by law. Her job performance was evaluated in the 2003-2004 school year, but she was not evaluated in the 2004-2005 school year as is also required by law. (Rec. Pgs. 35-36). Hodgins was suspended with pay on or about April 25, 2005, for the remainder of the school year for what the District cited as her conduct and behavior being too disruptive to the school environment.

SUMMARY OF THE ARGUMENTS

The Appellant's case turns on three issues: (1) the Philadelphia Public School District wrongfully and unlawfully denied the Appellant her right to a due process hearing concerning the non-renewal of her contract, which was contrary to the District's own policies and to the processes outlined in the *Education Employment Procedures Law of 2001* (hereinafter "EEPL"); (2) the District failed to comply with the notice requirements of *Miss. Code Ann.* § 37-9-105; and

(3) the District wrongfully and unlawfully refused to dutifully record its decision on the minutes wherein on August 3, 2005, in executive session, the school board voted not to grant Hodgins a due process hearing on the issue of non-renewal.

Hodgins was first prejudiced by the District's failure to provide her a due process hearing as provided by law and by the District's own personnel policies. Section 37-9-109 provides the employee-teacher methods for obtaining a due process hearing and pertinent information supporting a school district's decision for non-renewal. This section states:

An employee who has received notice under Section 37-9-105, upon written request from the employee received by the district within ten (10) days of receipt of the notice by the employee, shall be entitled to: (a) Written notice of the specific reasons for nonreemployment, together with a summary of the factual basis therefore, a list of witnesses and a copy of documentary evidence substantiating the reasons intended to be presented at the hearing, which notice shall be given at least fourteen (14) days prior to any hearing; if the district fails to provide this information to the employee, then the recommendation for nonreemployment shall be null and void, and the board shall order the execution of a contract with the employee for an additional period of one (1) year; (b) An opportunity for a hearing at which to present matters relevant to the reasons given for the proposed nonreemployment, including any reasons alleged by the employee to be the reason for nonreemployment; (c) Receive a fair and impartial hearing before the board or hearing officer; (d) Be represented by legal counsel, at his own expense. Any employee requesting a hearing shall provide the district, not less than five (5) days before the scheduled date for the hearing, a response to the specific reasons for nonreemployment, a list of witnesses and a copy of documentary evidence in support of the response intended to be presented at the hearing. If the employee fails to provide this information, then the recommendation of nonreemployment shall be final without the necessity of a hearing. If the employee does not request a hearing, the recommendation regarding the nonreemployment of the employee shall be final.

The District's own personnel policies, dated January 1999, provided that administrative personnel shall be entitled to written reasons for non-renewal decisions and an opportunity for a fair and impartial hearing. (Rec. Exc. P. 27). Although the EEPL provides that a teacher is deemed an "employee" if she has been employed in the local school district for a "continuous

period of two (2) years”, or has completed two (2) years in a qualifying Mississippi school district and one (1) year in the current school district, the policy of the Philadelphia Public School District does not contain a qualifying clause that Hodgins must have been employed by the school district for two (2) years in order to receive a due process hearing. Yet the District declined to provide a hearing by invoking the “two continuous years” rule. Further, under the EEPL, the Philadelphia Public School District should have granted Hodgins’ request for a hearing as she was in the second year of continuous employment with the District, and further the District was obligated by its own policies to grant her a fair and impartial hearing on the issue of non-renewal.

Secondly, *Miss. Code Ann.* § 37-9-105 provides that the employee-teacher receive written notice of the proposed non-reemployment “*stating the reasons for the proposed nonreemployment*”. (emphasis added). The notice of nonrenewal failed to comply with the basic statutory requirements of the section, as well as those outlined in the District’s personnel policies, in that the letter is void of reasons for the District’s decision of nonrenewal. (Rec. Exc. P. 28). The District’s failure to comply with notice requirements entitled Hodgins to automatic renewal of her contract.

Hodgins final grievance is that the District’s school board acted unlawfully when, after meeting in executive session on August 3, 2005, it failed and refused to record on its minutes their decision to deny Hodgins a due process hearing. (Rec. Exc. Pgs. 15-26). The District’s school board is a political body, and as such, must act and speak on its minutes, with their actions being evidenced by entries on their minutes. When the school board refused to enter its actions on its minutes, Hodgins was further deprived due process as her right to appeal the school board’s decision to the Chancery Court was unjustly compromised.

ARGUMENTS AND AUTHORITIES

I. BOBBIE HODGINS WAS ENTITLED TO A DUE PROCESS HEARING BASED UPON THE DISTRICT'S PERSONNEL POLICIES AND UPON TWO YEARS OF CONTINUOUS EMPLOYMENT.

Contract renewal issues are governed by the *Education Employment Procedures Law of 2001*. *Miss. Code Ann. §37-9-101, et seq.* Bobbie Hodgins executed a contract for employment with the District on or about June 23, 2004, for her second year of employment as an assistant principal. (Rec. P. 52). The contract was a document provided by the District in its normal course of business to employ licensed teachers, principals and superintendents. Hodgins' contract provided that she "shall be available to perform her duties as assistant principal beginning July 12, 2004, and ending June 24, 2005, or otherwise, as may be amended by the employer due to an emergency or *other good cause in accordance with the policies of the employer.*" (emphasis added). The contract further provided that it "shall be subject to all applicable *policies, resolutions, rules and regulations of the employer* and the laws of the State of Mississippi." (emphasis added). "When a contract is clear and unambiguous on its face, its construction is a matter of law, and not fact, and must be construed and enforced as written." *Griffin v. Tall Timbers Dev., Inc.*, 681 So.2d 546, 551 (Miss. 1996). However, "to the extent that a contract is susceptible of two constructions by reason of doubt or uncertainty as to the meaning of ambiguous language, it is to be construed most strongly against the party by whom, or whose behalf, the contract was prepared." *Baton Rouge Contracting Co. v. West Hatchie Drainage Dist. Of Tippah County*, 304 F.Supp. 580, 589 (N.D. Miss. 1969).

Hodgins performed under the guidelines of the District's employment contract, wherein the school district clearly incorporated its policies and procedures within that employment contract. The policies, dated January 1999, provided that administrative personnel shall be

entitled to written reasons for non-renewal decisions and an opportunity for a fair and impartial hearing. (Rec. Pgs. 55-57). The Mississippi Supreme Court held in 1992 that an employer should be held to its word when it furnished an employee a detailed manual stating its rules of employment and setting forth procedures that would be followed in the event of infraction of its rules when the infraction was specifically covered by the manual. *Bobbitt v. The Orchard Ltd.*, 603 So.2d 356 (Miss. 1992). While Bobbitt was an at-will employee, the employer had provided all of its employees handbooks upon hire setting forth proceedings for disciplinary actions which its employees relied upon when accepting employment. In an earlier case, the Court found that an employee's handbook and manual were part of the contract of employment when the one-page contract executed by the parties specifically referenced policies, rules and regulations of the Board of Trustees. *Robinson v. Board of Trustees of East Central Junior College*, 477 So.2d 1352 (Miss. 1985). The Court found that the Board was obligated to the terms and provisions contained in the manual as they had used and disseminated the information among its employees as well as referencing it in the terms of the contract. *Id.* The Court went further in *Perry v. Sears, Roebuck & Co.*, 508 So.2d 1086 (Miss. 1987), to find that a personnel manual can create contractual obligations, even in the absence of a written agreement - even though the Court ultimately upheld the employer's right to discharge. In the matter at hand, the District's policies were clearly referenced and intended to be integrated in the contract of employment, which is a document the District provided and continues to provide for execution between itself and its licensed employees or potential employees. The EEPL provides that a teacher is deemed an "employee" if she has been employed in the local school district for a continuous period of two (2) years, or has completed two (2) years in a qualifying Mississippi school district and one (1) year in the current school district. *Miss. Code Ann.* § 37-9-103(b). Unlike the EEPL, the policy of the Philadelphia Public School District does not contain a qualifying clause that Hodgins must

have been employed by the school district for two (2) years in order to receive a due process hearing. Hodgins contends that the District violated its own personnel policies when she was denied a due process hearing, on the issue of non-renewal. The EEPL set a *minimum* standard, which was created to protect licensed teachers and administrators from arbitrary and capricious non-reemployment decisions and to provide licensed educators an opportunity to be heard in a fair and impartial forum. The Philadelphia Public School District created a standard higher than the EEPL and simultaneously eased the burden upon which a non-renewed teacher may seek due process. By her reliance upon the terms of her contract and the published policies of the school district, Bobbie Hodgins was entitled to a due process hearing, or she was, alternatively, entitled to a hearing under the standards and protections of the *Education Employment Procedures Law of 2001*.

II. THE DISTRICT'S FAILURE TO COMPLY WITH NOTICE REQUIREMENTS ENTITLED BOBBIE HODGINS TO AUTOMATIC RENEWAL OF HER CONTRACT.

Section 37-9-105 of the EEPL provides that the employee-teacher receive written notice of the proposed non-reemployment "*stating the reasons for the proposed nonreemployment*". (emphasis added). In reviewing a school district's decision not to renew an employee's contract, the Supreme Court's inquiry concerns whether the non-renewal decision was (1) made for a reason not specifically prohibited by law; (2) made in accordance with the applicable procedural requirements; (3) supported by substantial evidence; and (4) arbitrary and capricious. *Harris v. Canton Separate Pub. Sch. Bd.*, 655 So.2d 898 (Miss. 1995). The employee/teacher bears the burden to present affirmative evidence that a board's decision to non-renew a contract lacks a factual basis. The teacher must assert more than mere allegations that the basis for non-renewal is untrue. *Buck v. Lowndes County Sch. Dist.*, 761 So.2d 144 (Miss. 2000). In *Burks v. Amite Co. School Dist.*, 708 So.2d 1366, 1370 (Miss. 1998), the Court, in discussing the protections

provided by the EEPL, stated that “written notice must include reasons for non-renewal and a summary of the factual basis for the decision”. “Failure of a school board to comply with notice requirements of § 37-9-105 results in **automatic** renewal of the teacher’s contract for the ensuing school year.” *Id.* (citing *Noxubee Co. School Bd. V. Cannon*, 485 So.2d 302 (Miss. 1986)) (emphasis added). The notice of non-renewal received by Hodgins was dated April 8, 2005, and signed by Dr. Britt Dickens, superintendent of the school district. Dr. Dickens wholly failed to comply with the basic statutory requirement of § 37-9-105 as no grounds were cited for the District’s decision not to renew Hodgins’ contract. Bobbie Hodgins was entitled to automatic renewal of her contract based on the District’s failure to comply with the notice requirements set out in the *Education Employment Procedures Law of 2001*.

III. BOBBIE HODGINS DUE PROCESS RIGHTS WERE PREJUDICED BY THE SCHOOL BOARD’S UNLAWFUL REFUSAL TO RECORD ITS ACTIONS ON ITS MINUTES.

The Mississippi Supreme Court has held that public boards act and speak only through their minutes and their actions are evidenced solely by entries on the minutes. *Miss. AG Op. No. 2002-0180* (citing *Thompson v. Jones Co. Comm. Hospital*, 352 So. 2d 795, 796 (Miss. 1977)). On August 3, 2005, Joe Jordan, president for the Board of Trustees of the Philadelphia School District, stated twice on the Board’s record that the Board had collectively voted to deny the Appellant a due process hearing. (Rec. Exc. P. 17, Lines 6-10; P. 18, Lines 24-25.) Without the Board’s decision officially recorded on its minutes, Bobbie Hodgins was denied her due process rights as the omission hindered her right to an appeal. The Board wholly failed to act and unlawfully failed to record its vote as a public body. Bobbie Hodgins was unduly prejudiced by the Board’s failure to act dutifully in accordance with the laws of the State of Mississippi.


CONCLUSION

The *Education Employment Procedures Law of 2001* was created to provide our hard working educators, such as Appellant Bobbie Hodgins, the right to due process. As a teacher whose contract was not renewed for the 2005-2006 school year, she was denied due process from the minute the clock started ticking. The District, despite its own personnel policy to provide due process hearings upon request, arbitrarily and unjustly refused Bobbie Hodgins' request. The District's personnel policy exceeded the protections of the EEPL and gave Bobbie Hodgins a false sense of security that the District would follow its own rules and procedures. The District further complicated matters when the notice of non-renewal failed to provide their grounds for non-renewal. In following the minimum standards of the EEPL, Bobbie Hodgins was entitled to automatic renewal of her contract when the District failed to elaborate its reasons for the non-renewal decision. Finally, upon Bobbie Hodgins being provided an opportunity to appear before the school board, she was unjustly prejudiced by the Board's decision not to record its vote on their minutes to reflect they denied her request to be heard. This final action by the school board was unlawful. Bobbie Hodgins timely and rightfully complied with the requirements of the *Education Employment Procedures Law of 2001* and the school district's policies. Bobbie Hodgins prays this Honorable Court will consider the totality of the record and surrounding circumstances to find that she was wrongfully denied due process and that the school board was derelict in its duty to record its denial of due process on the school board's minutes. Based on the above arguments and law, Bobbie Hodgins respectfully requests the Philadelphia Public School District be ordered to reinstate her to her position or one of similar grade or seniority, to renew her contract as provided by law, to award her back pay and to reinstate her benefits, and that she also be awarded attorney's fees and costs, and any other relief deemed necessary by this Honorable Court.

RESPECTFULLY SUBMITTED, this the 2nd day of February, 2007.

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APPELLANT**

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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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