

Commonwealth Court Orders Teacher Reinstated When The School Board Fails To Strictly Comply With Statutory Procedures For Dismissing The Tenured Teacher

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Vladimirsky v. School District of Philadelphia, 144 A.3d 986 (Pa. Commw. Ct. 2016). The Commonwealth Court held that a tenured teacher has a constitutionally protected interest in his (or her) employment and can only be terminated in strict accordance with the procedural requirements for dismissal in the School Code. Failure to strictly comply with the termination procedures may result in a violation of the teacher's due process rights and lead to the teacher's reinstatement.

Summary and Factual Background:

On September 1, 1997, the School District of Philadelphia ("District") hired Serge Vladimirsky ("Vladimirsky") as a social studies teacher at Overbrook High School ("Overbrook"). In 2011, the District attempted to terminate Vladimirsky's employment based on two incidents that occurred that year. The first incident involved Vladimirsky yelling at Overbrook's principal. The other involved Vladimirsky shouting obscenities at students in his classroom and grabbing another student's arm in an attempt to take his phone.

After an investigatory conference, Vladimirsky received an unsatisfactory rating based on these incidents. After another, second-level conference, the District's Talent Acquisition Office Deputy Chief recommended that Vladimirsky's employment be terminated.

On July 20, 2011, the District mailed Vladimirsky a letter signed by the School Board Chairman and the District Superintendent stating that: (1) they recommend the Board terminate his employment immediately, (2) the District payroll department would make the necessary salary adjustments, and (3) the charges against him constituted just cause under the collective bargaining agreement and violation of the School Laws of the Commonwealth. The letter further informed Vladimirsky that he had a right to a hearing before the Board.

Vladimirsky requested a hearing before the Board. After the hearing, the Hearing Officer recommended that Vladimirsky's employment be terminated for intemperance and willful violation of the School Laws. On March 15, 2012, the Board resolved to adopt the Hearing Officer's recommendations, terminated Vladimirsky and declared that the termination was effective July 20, 2011—the date of the Board Chairman and the District Superintendent's letter.

Vladimirsky appealed the Board's decision to the Acting Secretary of the Department of Education ("Acting Secretary"), who after a hearing ordered that Vladimirsky be reinstated to his position as a teacher as of July 20, 2011, but upheld the Board's decision to terminate Vladimirsky on March 15, 2012.

Vladimirsky and the District appealed the Acting Secretary's decision to the Commonwealth Court.

Discussion:

Section 1127 of the School Code requires that **before** a tenured teacher is dismissed the School Board—not a school administrator—must provide a tenured teacher with a written statement of the charges for his (or her) dismissal and conduct a hearing. The Court interpreted Section 1127 as requiring the Board to determine that evidence exists that, if

true, justifies employment termination, before issuing a written statement of charges.

Further, the Court stated that Section 1127 of the School Code requires that a written statement of charges: (1) be signed by the Board President and attested by the Board Secretary; (2) be mailed to the teacher on behalf of the Board by registered mail; and (3) set a time, place and location for a hearing before the Board no later than fifteen days from the date of the written notice.

The Court concluded that the Board Chairman and the District Superintendent's July 20, 2011 letter was not sent on behalf of the Board; therefore, it violated the requirements of Section 1127 of the School Code. Moreover, since Vladimirsky was not paid after the date of the letter, he was essentially terminated without any Board action and prior to a hearing. Therefore, the Court concluded that Vladimirsky's termination by the July 20, 2011 letter was a "dismissal by administrative action" in violation of the School Code.

Dismissals by administrative actions are not permitted under the School Code. Instead, Section 1129 of the School Code requires that for a teacher's dismissal to be effective, the Board must vote by roll-call, and there must be a two-thirds vote in favor of the dismissal. In this case, the Board failed to comply with Section 1129 of the School Code because the Board's March 15, 2012 resolution occurred after Vladimirsky was effectively terminated on July 20, 2011 and because the resolution made Vladimirsky's termination retroactive to July 20, 2011. The Court noted that "in no case can the effective date of the dismissal be earlier than the date of the school board's resolution . . . a deviation from these procedures constitutes a denial of due process."

The District's failure to strictly comply with Sections 1127 and 1129 of the School Code was a violation of Vladimirsky's due process rights. A tenured teacher has a constitutionally protected interest in his (or her) employment and the procedures set forth in the School Code must be followed. The Court noted that "deviations from the statutory procedures constitute fatal defects making the school board's dismissal an illegal act." The Court rejected the District's request that the case be remanded, noting that "a remand cannot cure the egregious failure of the District to comply with [the procedural safeguards] in the School Code."

The Court ordered the Board to reinstate Vladimirsky to his position and remanded the case to the Acting Secretary to determine what compensation, if any, the District owed Vladimirsky.

Practical Advice:

Because tenured teachers have a constitutionally protected interest in their employment, School Administrators who plan to terminate a tenured teacher should work with their solicitors to ensure that they strictly comply with all the procedures for dismissals, charges, notices, and hearings in Section 1127 of the School Code to avoid violating the teacher's constitutional rights.

As this case illustrates, efforts to fix a defect in a dismissal proceeding may be ineffective because once a procedural requirement for dismissal is missed or ignored, such action (or inaction) is considered a fatal defect.

For additional information contact Daniel Conlon.