

Commonwealth Court Grants Over Four Years of Additional Back Pay to A Teacher, Overturning Pennsylvania Secretary of Education on Mitigation of Damages Issue

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Vladimirsky v. School Dist. of Phila., 206 A. 3d 1224 (Pa. Commw. Ct. 2019). The Pennsylvania Commonwealth Court overturned a finding of the Pennsylvania Department of Education that teacher did not exercise reasonable due diligence to seek new employment.

BACKGROUND AND DISCUSSION

On July 20, 2011 the School District of Philadelphia's School Reform Commission ("SRC") terminated social studies teacher Serge Vladimirsky for "aggressive and agitated classroom behavior." The teacher appealed the termination to the Pennsylvania Secretary of Education ("Secretary") and to the Pennsylvania Commonwealth Court ("Commonwealth Court"). Five years later, on August 3, 2016, the Commonwealth Court determined that the District failed to comply with the mandatory termination provisions under the Pennsylvania School Code, and ordered the teacher be reinstated with back pay.

The District offered to reinstate the teacher on November 4, 2016, and the parties proceeded before the Secretary to determine the amount of back pay due to the teacher. After hearing evidence and argument from the parties, the Secretary found that between July, 2011 and March, 2012 Vladimirsky made an "honest, good faith effort" to find new employment as a teacher, and awarded back pay during this time period only. On appeal, the Commonwealth Court held that because Vladimirsky had made a reasonable effort to mitigate his damages, Vladimirsky was entitled to back pay for the entirety of the time between his termination in July, 2011 and the offer of reinstatement on November 4, 2016.

The dispute centered around whether the teacher adequately mitigated the amount of back pay he was due, by searching for new employment. Vladimirsky testified that he searched for a new job as a teacher from the date of his termination in July, 2011 until the end of 2012, but was unable to secure employment as a teacher. Toward the end of 2012 Mr. Vladimirsky took a job as a security guard, at a lower rate of pay than he had enjoyed as a teacher. The District argued that it was unreasonable for Vladimirsky to abandon his search for employment as a teacher, citing thousands of jobs available to him throughout the Commonwealth of Pennsylvania. Vladimirsky argued that his search for a teaching job had become futile, and that he took the job as a security guard in order to support his family.

Vladimirsky testified that between July, 2011 and the end of 2012 he applied for teaching jobs at between 24 and 36 different school districts, but received no job offers and no interviews for teacher positions. Vladimirsky testified that he believed his termination from the Philadelphia School District "polluted" his ability to secure a new teaching position. During the proceedings before the Secretary, Vladimirsky offered an expert witness, who had served on hiring committees within the Philadelphia School District, who testified that a teacher who had been terminated for cause at a prior school district would have "zero" chance at securing a new teaching position.

In an attempt to show that Vladimirsky had not made an adequate effort to secure a new teaching position, the District provided a 1400-page list of advertisements for social studies teacher positions, and other related non-teaching positions, within the Commonwealth of Pennsylvania. The District also testified that, based on information gained through Right-to-

Know Law requests to Pennsylvania school districts, there were “between 100 and 250 openings per year within [subjects that a social studies teacher could teach].” The Secretary accepted this testimony and job opening information in support of its decision to limit back pay. However, on appeal the Commonwealth Court rejected this testimony, and characterized it as “misleading.” The Commonwealth Court pointed out that the list of positions compiled by the District “pertained to jobs across the Commonwealth and to jobs outside the relevant time period. Vladimirsky was not required to relocate for employment in order to mitigate back pay damages.”

In ordering that back pay be extended to November 4, 2016, the Commonwealth Court pointed out that the District had the burden to prove that Vladimirsky had failed to mitigate his damages, but did not meet this burden. The Commonwealth Court explained, “The District failed to show that Vladimirsky’s decision to accept the security guard position and cease searching for a teaching job given the aforementioned circumstances was unreasonable.”

CONCLUSION

When attempting to show that a reinstated employee did not mitigate his or her damages during the period of termination, school districts should remember that the district has the burden of proving that the employee did not exercise reasonable due diligence to seek new employment. If the employee can show that he or she made a diligent, good faith (though unsuccessful) effort to obtain a similar position, then a court will likely award back pay during the period of termination. Evidence of available positions that are outside the employee’s geographic area, or outside the relevant time period, will not support a mitigation of damages argument.

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