

NO. A11-1653

State of Minnesota
In Court of Appeals

MARIE BLUMHARDT,

Relator,

v.

INDEPENDENT SCHOOL DISTRICT NO. 361,
INTERNATIONAL FALLS, MINNESOTA,

Respondent.

RESPONDENT'S RESPONSIVE BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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ISSUE

Did the International Falls School Board err as a matter of law in determining that the Relator is not entitled to unlimited union leave pursuant to Minn.Stat. § 179A.07, Subd. 6, thereby denying Relator's request for leave under said statute.

STATEMENT OF THE CASE

The Relator, a long-time teacher in the International Falls School District, I.S.D. # 361 (hereinafter referred to as "school district."), decided to pursue, and obtained, full-time employment with Education Minnesota, a union that represents teachers and other education employees.

The Relator, wanting to keep the option of returning to the school district as a teacher at some indeterminate point in the future as a safety net, submitted two leave requests to the district. One of the Relator's leave requests was for an extended leave of absence [for a three to five year period] under Minn.Stat. § 122A.46. Said request was denied by the School Board. Such a request for an extended leave of absence can be denied by a school board with reasonable justification, which the school district provided. As a result, the denial of the Relator's request for an extended leave of absence under Minn.Stat. § 122A.46 has not been appealed by the Relator and is not at issue before this Court in this appeal.

The Relator also submitted a request for union leave pursuant to the Minnesota Public Employment Labor Relations Act (“PELRA”), specifically Minn.Stat. § 179A.07, Subd. 6. Said statute does not provide any parameters for the duration of any union leave taken under said statute, nor does it address notice procedures upon return to the district or the effect of said leave on seniority. The School Board denied the Relator’s request for seemingly unlimited union leave under Minn.Stat. § 179A.07, Subd. 6. This appeal, challenging the denial of the Relator’s request for union leave under Minn.Stat. § 179A.07, Subd. 6 followed.

STATEMENT OF THE FACTS

The Relator, Marie Blumhardt, has been a teacher in the International Falls School District [I.S.D. #361] for many years. The School Board has acknowledged that over that time period, Mrs. Blumhardt had been an “excellent educator” or a “valuable educator.” App. 4, 6.

For the past several years, the Relator has also been the President of the local union affiliate in International Falls. Relator’s Brief, pg. 1. In May of 2011 the Relator informed a school district representative that she “might be gone.” App. 7. The Relator was told that the district could not simply give her job away based on the fact that she “might be gone.” App. 7.

On July 8, 2011 the Relator submitted a written request to the school Superintendent and School Board Chair for a leave of absence under both Minn.Stat. § 122A.46, Subd. 2 and under the Minnesota Public Employment Labor Relations Act [PELRA], specifically Minn.Stat. § 179A.07, Subd. 6, contingent upon her approval of her appointment to the position of Field Staff for Education Minnesota. It appears in said letter that the Relator believed that she may not ever return her position at the school district as noted by her statement, “If I decide to return...” App. 1.

By a letter dated July 12, 2011 the Relator’s counsel informed Jeffrey Peura, the Superintendent of the International Falls School District, that the Relator “will be working for Education Minnesota, out of the Bemidji office, on behalf of unions (exclusive representatives) in fifteen Minnesota school districts.” Said letter only addressed the Relator’s request for union leave based upon Minn.Stat. § 179A.07, Subd. 6. Relator’s counsel threatened that “if the School District does not approve her [Blumhardt] leave request, we will be forced to consider our legal options.” App. 2.

At the July 18, 2011 School Board meeting, the School Board denied the Relator’s request for extended leave pursuant to Minn.Stat. § 122A.46, as well as her request for union leave pursuant to Minn.Stat. § 179A.07, Subd. 6. App. 3-9; App.12 The Relator was present at the meeting and the

School Board heard input from her at the meeting regarding her requests for leave. The Relator threatened the School Board that “legal action will come forward if it’s [her leave request] refused” and that “it [the boards decision to deny her leave request] will be contested legally.” App. 6, 7.

In denying the Relator’s extended leave request pursuant to Minn.Stat. § 122A.46 the School Board provided reasonable justification for said denial in that the district was concerned that due to the lateness and timing of the request, it would be difficult, if not impossible, to replace the Relator with a teacher of like quality, from an extremely limited pool of candidates, to staff an already depleted English department. App. 3-9; App. 25-26. In denying the Relator’s union leave request pursuant to Minn.Stat. § 179A.07, Subd. 6, the School Board stated that they do not believe that the Relator qualified for such a leave as she would not be leaving as an officer of Local Union 331, seeking leave or time off to conduct the duties of the exclusive representative, nor was she being appointed as a full-time official of an exclusive representative in another Minnesota school district. App. 4-5; App. 26.

A letter from Superintendent Peura dated July 19, 2011 to the Relator confirmed that the school board had denied the Relator’s request for a five-year leave of absence, which was the Relator’s request made pursuant to

Minn.Stat. § 122A.46. App. 15. Said letter failed to mention that Relator's request for union leave pursuant to Minn.Stat. § 179A.07, Subd. 6 had been denied by the School Board as well. However, the Relator was already aware that her request for union leave pursuant to Minn.Stat. § 179A.07, Subd. 6 had been denied, as she was at the school board meeting the previous night where her request had been denied.

Despite the Relator having knowledge that both of her requests for leave had been denied by the School Board, counsel for the Relator sent a letter dated August 9, 2011 to Superintendent Peura stating, "We want to inform you that Ms. Blumhardt will be taking a leave of absence under PELRA, commencing with the start of the 2011-2012 school year." App. 16.

Counsel for the school district once again informed the Relator that "her leave request has been denied and that the school district does not consider her to be on leave of absence status" and noted that it expected the Relator to report to work, via a letter dated August 17, 2011. App. 17-18.

Counsel for the Relator drafted a letter to counsel for the school district indicating that they would be filing a Writ of Certiorari with the Minnesota Court of Appeals, challenging the school boards denial of the Respondent's leave request under Minn.Stat. § 179A.07, Subd. 6. App. 19.

By letter dated that same day, August 29, 2011, counsel for the school district indicated that if the Relator failed to return to teach that it is “reasonable for the board to take her action as a tacit resignation.” App. 20. The Relator turned in her work keys and failed to appear for work on August 31, 2011 and the school district recognized said actions as a resignation of Relator’s employment, as memorialized in a letter to the Relator from Superintendent Peura dated August 31, 2011. App. 21; App. 26.

On September 19, 2011 the School Board passed and adopted a resolution accepting the resignation of the Relator. App. 22-28. The Relator has since appealed.

STANDARD OF REVIEW

A school board determination will be reversed if it is fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on error of law. Dokmo v. Independent School Dist. No. 11, Anoka Hennepin, 459 N.W.2d 671 (Minn.App. 1993). The Relator seeks review based on an “error of law.” See Relator’s Brief, pg. 3.

ARGUMENT

- I. THE RULES OF STATUTORY CONSTRUCTION DO NOT SUPPORT GRANTING UNLIMITED UNION LEAVE TO THE RELATOR PURSUANT TO MINN.STAT. § 179A.07, SUBD. 6.

The statutory provision that is central to this case is Minnesota Statute, § 179A.07, Subdivision 6, which reads as follows:

Subd. 6. Time Off. A public employer must afford reasonable time off to elected officers or appointed representatives of the exclusive representative to conduct the duties of the exclusive representative and must, upon request, provide for leaves of absence to elected or appointed officials of the exclusive representative or to a full-time appointed official of an exclusive representative of teachers in another Minnesota school district.

There have not been any Minnesota cases that have interpreted this statutory provision, and the issue of whether a school district must grant an unlimited leave of absence to a teacher to who takes another job with a statewide teacher's union such as Education Minnesota, is an issue of first impression in this state. Because there is no binding precedent squarely on the issue before this Court, and due to the ambiguity in the statute, one must look to the principles of statutory construction and legislative intent to determine what is meant by the language of Minn.Stat. § 179A.07, Subd. 6.

“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.” Minn.Stat. §

645.16. In interpreting statutes, the legislative intent controls. State v. Turnbull, 766 N.W.2d 78 (Minn.App. 2009). If a statute is not clear, and is ambiguous, the Court of Appeals applies the canons of construction. State v. Zais, 790 N.W.2d 853 (Minn.App. 2010), review granted.

Minnesota Statute § 179A.07, Subd. 6 is ambiguous, if it were not the parties would not disagree on its meaning and application. The August 29, 2011 letter from Relator's counsel even indicates, "As you know we have differing interpretations of Minn.Stat. § 179A.07." App. 19. The language of a statute is ambiguous only if it is subject to more than one reasonable interpretation. Staab v. Diocese of St. Cloud, 780 N.W.2d 392 (Minn.App. 2010).

There are questions as to whether the Relator is entitled to leave under Minn.Stat. § 179A.07, Subd. 6, how much leave the Relator is entitled to, and whether the leave authorized by said statute conflicts with other relevant statutory provisions.

To ascertain the intention of the legislature we must first examine other relevant statutory provisions, which would help some light on what is meant by the language found in Minn.Stat. § 179A.07, Subd. 6.

Minnesota Statute § 122A.46 sets forth the parameters for extended leaves of absence for teachers. In doing so said statute sets forth the duration

of extended leaves of absence for teachers at no more than five years.

Minnesota Statute § 122A.46 Subdivision 2 as follows:

The duration of an extended leave of absence under this section must be determined by mutual agreement of the board and the teacher at the time the leave is granted and shall be at least three but no more than five years.

The leave sought by the Relator under Minn.Stat. § 179A.07, Subd. 6 is seemingly indefinite. The Relator seeks to have the school district hold her position open for her for an indeterminate amount of time, which certainly cannot qualify as a “reasonable time off” pursuant to said statute. For instance, if the Relator seeks to work for Education Minnesota for a period of ten years, she believes that she should be able to return to teach at the district when she sees fit and that the district must immediately put her back to work in a position for which she is licensed. In this particular case, it does not appear that the Relator even has any intention of returning to teach at the school district as noted in her initial request for leave when she stated, “If I decide to return...” as opposed to “when I decide to return.” App. 1

Because the extended leave of absence statute for teachers found at Minn.Stat. § 122A.46 caps the amount of maximum amount of teacher leave at five years, there is no reason to believe that the legislature intended to allow teachers, such as the Relator, to exercise an indefinite amount of union leave pursuant to Minn.Stat. § 179A.07, Subd. 6.

Minnesota Statute § 122A.46, Subd. 3 also provides provide that teachers who exercise an extended leave of absence must notify the district of their intent to be reinstated to their position before February 1 of the school year preceding the school year in which the teacher wishes to return or by February 1 in the calendar year in which the leave is scheduled to terminate. Ostensibly, this statutory provision contemplates that school districts should be afforded some time to be able to make responsible staffing/personnel decisions when a teacher has been out on an extended leave and is seeking to return. The lack of this notice affording the district time to hire an excellent candidate was one of the reasons why Relator was denied extended leave pursuant to Minn.Stat. § 122A.46. By contrast, the statutory provision that the Relator relies upon, Minn.Stat. § 179A.07, Subd. 6, does not contemplate that any notice needs to be given when the teacher seeks to return to the school district following their union leave. Because Minn.Stat. § 179A.07, Subd. 6 lacks any sort of notice provision to allow school districts to make responsible staffing/personnel decisions it is reasonable to infer that said statute did not contemplate an indefinite leave of absence and certainly not a leave of absence beyond five years, but rather a relatively short term of leave. School districts should not be made to scramble at the whim of a teacher regarding their desire to be immediately

reinstated, that is why for a leave of absence between three to five years, notice of intent to be reinstated is required. For Minn.Stat. § 179A.07, Subd. 6 to not require any notice when a teacher has been out on leave for even longer than three to five years and then seeks to be reinstated, makes no sense at all. It only makes sense that Minn.Stat. § 179A.07, Subd. 6 contemplates union leave less than 3 years, so as not to trigger the notice requirement.

The same reasoning applies regarding seniority. It appears that the Relator believes that if she exercises indefinite leave pursuant to Minn.Stat. § 179A.07, Subd. 6, that she is entitled to retain her seniority with the school district upon a return to the district. However, Minn.Stat. § 122A.46, Subd. 4, only contemplates a teacher retaining their seniority rights following a leave of absence of three to five years, not indefinitely as proposed by the Relator. This Court in Berger v. Independent School District No. 706, 362 N.W.2d 369 (Minn.App. 1985) held that where a teacher who had been granted a five-year leave of absence pursuant to the teacher mobility incentives statute (now codified in Chapter 122A of Minnesota Statutes) and was additionally granted a one-year leave, the teacher did not retain seniority rights with respect to the one-year leave. Therefore, if the Relator were to be given more leave than Minn.Stat. § 122A.46 provides for, the Relator would

not retain her seniority beyond the five years of leave. If the leave contemplated by § 179A.07, Subd. 6 was intended to last indefinitely, the legislature would have provided for items such as what type of notice is required for reinstatement or whether seniority continues to accrue, as it did in Minn.Stat. § 122A.46.

We are therefore left with one statute, § 122A.46, that contemplates the maximum amount of leave for a teacher being five years, with provisions regarding providing notice upon return from leave and the loss of seniority beyond five years and another statute, § 179A.07, Sub. 6, that if the Relator's position is adopted, contemplates an unlimited leave of absence for teachers that may not ever return to teaching, with no notice requirements upon return and no loss of seniority during the indefinite leave. When two statutes conflict, the court must initially attempt to reconcile the statutes by construing them, if possible, so that effect may be given to both provisions. Ford v. Emerson Elect. Co., 430 N.W.2d 198; Minn.Stat. § 645.26, Subd. 1. This could be accomplished if the Court reconciles the time limitations (three to five year leave), notice requirements upon return, and loss of seniority requirements found in § 122A.46 with union leave pursuant to Minn.Stat. § 179A.07, Subd. 6.

One must also consider the practical effect of a teacher being allowed to take an indefinite leave of absence, as the Relator asserts Minn.Stat. § 179A.07, Subd. 6 allows her to do. As noted by the School Board of the International Falls School District, their job and concern “is to put the highest quality educator in the classroom for the students of International Falls.” App. 7. Though the Relator is currently an “excellent educator,” that may not be the case if the Relator exercises leave of ten years (or more) and is not refining her teaching skills in the classroom. It is in the best interests of the students of the International Falls School District to have a teacher that has remained in the classroom and has adapted and refined their craft of educating students, as opposed to a teacher whose focus has become conducting union business.

The following scenario must also be considered. Lets say that the Relator takes union leave pursuant to Minn.Stat. § 179A.07, Subd. 6, which according to the Relator allows for an indefinite leave of absence. The school district, not knowing when, or if, the Relator will ever return to her teaching position at the school district, goes out and hires a new teacher to fill the Relator’s position while she is on leave. After three years the new teacher obtains tenured status. Four years into her leave the Relator then decides she wants to be reinstated to her position immediately. Because

Minn.Stat. § 179A.07, Subd. 6 does not contemplate any advanced notice for reinstatement of the Relator, the district must now immediately put the now tenured teacher, who has been effectively teaching in the classroom, on unrequested leave of absence [ULA] because the Relator wants her position back. It is hard to believe that Education Minnesota, who would also represent the tenured teacher put on ULA, would advocate for such a result, but that is precisely what they are doing in this matter. The Relator's argument for union leave is based upon Minn.Stat. § 179A.07 of PELRA. Ironically, it is the very same statutory provision that defines "selection of personnel and direction and the number of personnel" as matters of inherent managerial policy. The International Falls School District cannot appropriately exercise their managerial rights or managerial policy in this case if they are being held hostage by the threat that the Relator may seek to return from her union leave at any given time, potentially ten, fifteen, or even twenty years down the road.

Even the language of Minn.Stat. § 179A.07, Subd. 6 does not support the view of the Relator that she is entitled to indefinite leave under said statute. The statute calls for "reasonable time off." It is the position of the International Falls School District that "reasonable time off" does not encompass more leave time to teachers than the extended leave statute

contemplates, which is three to five years, and “reasonable time off” certainly cannot be construed to mean unlimited or indefinite leave as the Relator suggests. If the legislature intended that Minn.Stat. § 179A.07, Subd. 6, provide an indefinite leave of absence for teachers, it would have said so. Instead, the legislature called for “reasonable time off.”

The construction of a statute should be sensible. State ex rel. Olson v. Shultz, 274 N.W. 401 (Minn. 1937). When ascertaining the legislature’s intent, courts must assume that the legislature does not intend absurd or unreasonable results. State v. Basal, 763 N.W.2d 328 (Minn.App. 2009); Minn.Stat. § 645.17. Allowing Minn.Stat. § 179A.07, Subd. 6, to stand for the proposition that a teacher can taken an unlimited amount of union leave to work for a statewide teachers union such as Education Minnesota, then come back to the school district without notice at a point in time that they choose, potentially bumping another tenured union member out of that position, all the while retaining seniority, is clearly absurd or unreasonable. Not to mention that doing so would be at the expense of students in the school district who would be losing a high quality teacher and at the expense of the school district who may have to hire a new teacher to fill the position when leave is taken, only to then have their personnel decisions be held hostage by the teacher on unlimited union leave.

II. THE UNION LEAVE PROVISION IN § 179A.07, SUBD. 6. IS NOT INTENDED TO APPLY TO A TEACHER TAKING A FULL TIME POSITION WITH EDUCATION MINNESOTA.

The Relator argues that because the teacher's union for the State of Minnesota [Education Minnesota] represents teachers in different school districts throughout the state, that Minn.Stat. § 179A.07, Subd. 6. affords her mandatory leave as a full-time appointed official of an exclusive representative. Being an employee of Education Minnesota, the Relator is not a full-time appointed official of an exclusive representative "in another Minnesota school district" nor was the Relator leaving as an officer of the Local 331 seeking reasonable time off to conduct the duties of the exclusive representative. App. 26. It appears that the statutory language at issue only applies to local unions. If the legislature had intended for leave to pursue employment with Education Minnesota, it would have clearly stated such. Even the example provided by the Relator involves a Spring Lake Park teacher being put on leave to go work for a local union. See Relator's Brief, pg. 7. Undoubtedly, the legislature intended for teachers to be able to take a reasonable leave to engage in union activities on behalf of their district, not to leave the district entirely to work for an outfit that is not even a school district.

If this Court buys into the Relator's argument that by working for Education Minnesota that she is working in another Minnesota school district, then the Court must also consider that the legislature contemplated that if a teacher takes different teaching job in another district while on an extended leave of absence pursuant to Minn.Stat. §122A.46, Subd. 7, the school board does not have an obligation to reinstate the teacher. With that being the case, the school district, would have no obligation to reinstate the Relator.

III. PUBLIC POLICY SUPPORTS SCHOOL DISTRICTS BEING ABLE TO MAKE FLEXIBLE AND RESPONSIBLE STAFFING DECISIONS TO PROVIDE AN OUTSTANDING EDUCATION TO THE STUDENTS OF THE DISTRICT.

The Relator argues that there are strong public policy considerations that support the granting of union leave. The School District agrees that it is important for teachers to be involved in union business. However, public policy does not seem to support the notion that teachers are entitled to an unlimited amount of union leave or that they can come and go whenever they please, especially when said leave prevents schools from making effective and responsible staffing decisions. It must be noted that there are perhaps even stronger public policy considerations in providing a quality education to students by employing quality and experienced educators than the public policy consideration related to providing for union leave. This

consideration was weighed heavily on by the School Board during their July 18, 2011 meeting where they referred to the Relator as “excellent educator” and a “valuable educator.” App. 4, 6. In denying extended leave to the Relator under Minn.Stat. § 122A.46 the school board stated the following:

In reference to the two statutes, 122A.46, is going to be real difficult for us at this late state of the school year or the summer, and Ms. Blumhardt is an excellent educator. We’ve already lost an English teacher from that department. We’re looking at losing the continuity of education within the English department, and it’s going to be real tough to fill this position. We do have an opening English position right now with the resignation. We have one applicant. So we’re looking at possibly not having an applicant for this position this late in the school year, or the summer hiring process. App. 4

And this late in the summer for us to get a high-quality candidate... App. 6.

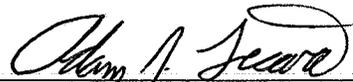
So at this time with the situation we have where we have an open English position from a resignation, we have one applicant; our job is to put the highest quality educator in the classroom for the students of International Falls. That’s our concern. App. 7.

Apparently, these concerns constitute “reasonable justification” for the school board to deny the Relator extended leave under Minn.Stat. § 122A.46, as the Relator is not appealing the school board’s decision to deny her leave under said statute. See Relator’s Brief, pg. 1. The same concerns are present in granting unlimited union leave under § 179A.07, Subd. 6, as would be in granting an extended leave of absence under § 122A.46 which are based on the aforementioned public policy grounds.

CONCLUSION

For the reasons set forth above, because the school district did not err as a matter of law when it denied the Relator unlimited union leave under Minn.Stat. § 179A.07, Subd. 6 and the decision of the International Falls School Board must stand.

Dated: December 9, 2011



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