COURT OF APPEALS
DECISION
DATED AND FILED

May 16, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-2577 **Cir. Ct. No. 00-CV-172**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

CLYDE SUKANEN,

PLAINTIFF-APPELLANT,

V.

SCHOOL DISTRICT OF MONROE AND BOARD OF EDUCATION FOR THE SCHOOL DISTRICT OF MONROE,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Green County: JAMES R. BEER, Judge. *Affirmed*.

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Clyde Sukanen appeals an order granting the School District of Monroe summary judgment in this employment dispute. The District did not renew Sukanen's contract. Sukanen claims the nonrenewal was

unlawful because it violated district policy. We disagree and affirm the circuit court's grant of summary judgment in favor of the District.

¶2 The facts are not in dispute.[1] The District administers the schools in Monroe, including Abraham Lincoln Elementary School. On August 11, 1997, Sukanen and the District entered into a two-year employment contract with an expiration date of June 30, 1999, under which Sukanen served as principal of Abraham Lincoln Elementary. During the 1997-98 school year, Sukanen experienced difficulties as principal. The district superintendent, Edward A. Van Ravenstein, worked with Sukanen in an attempt to help Sukanen develop as an administrator. Despite Sukanen's problems, the District modified Sukanen's contract on July 24, 1998, extending it through the 1999-2000 school year. Sukanen signed the new contract. On August 30, 1999, the parties again agreed to modify the contract to increase Sukanen's salary. This contract retained the June 30, 2000, expiration date established in the 1998 contract. Sukanen signed this new contract also. Both parties performed under the contract until its expiration.

¶3 Sukanen continued to display problems in his administration of Abraham Lincoln Elementary during the 1998-99 school year. As a result, Van Ravenstein sent Sukanen a Preliminary Letter of Nonrenewal of Contract, informing Sukanen that the Board of Education intended to consider nonrenewal of Sukanen's contract. Van Ravenstein and the Board then followed the notice

[1] Sukanen claims there is a factual dispute as to whether the District's written policy requires formal notification of probationary status before nonrenewal. We disagree. The interpretation of the District's written policies is a question of law. *See* ***infra*** ¶5.

and hearing procedures required by WIS. STAT. § 118.24 (1999-2000),[2] and ultimately decided not to renew Sukanen's contract. The Board notified Sukanen of its decision on April 14, 2000.

¶4 Sukanen brought a complaint in Green County Circuit Court alleging that the nonrenewal of his contract was unlawful because it violated district policy. First, the contract did not expire in an odd-numbered year, as allegedly required by district policy. Second, the District had not put Sukanen on probation prior to nonrenewing his contract, as allegedly required by district policy. The District moved for summary judgment, and the circuit court granted the District's motion.

¶5 We review the trial court's grant of summary judgment *de novo*, applying the same methodology as the trial court. ***Tower Ins. Co. v. Chang***, 230 Wis. 2d 667, 672, 601 N.W.2d 848 (Ct. App. 1999). The interpretation of a school district's written policy is also a question of law subject to *de novo* review. *See* ***Neis v. Bd. of Educ.***, 128 Wis. 2d 309, 314, 381 N.W.2d 614 (Ct. App. 1985) (when exercising its statutory powers, a school district is an administrative agency); ***Law Enforcement Standards Bd. v. Village of Lyndon Station***, 101 Wis. 2d 472, 489, 305 N.W.2d 89 (1981) (interpretation of an administrative rule is subject to the same rules of construction as a statute).

¶6 Sukanen first argues that the 1998 and 1999 contracts violated district policy because those contracts ended in an even-numbered year (ending in the year 2000). Sukanen's argument is based on "Policy CBC—Administrator Contracts," which reads, in part: "Administrative contracts shall be issued

[2] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

according to the following statutory provisions.… The term of each employment contract shall expire on June 30 of an odd-numbered year and may not exceed two years."[3] In support of his argument that violation of this policy is unlawful, Sukanen cites several cases that stand for the proposition that an agency must follow its own procedural rules. For example, he relies on ***State ex rel. Meeks v. Gagnon***, 95 Wis. 2d 115, 119, 289 N.W.2d 357 (Ct. App. 1980), a decision holding that a prison disciplinary committee must follow its own rules when conducting hearings. Sukanen argues that because his latter two contracts ended in an even-numbered year, they violate district policy and are therefore unlawful.

¶7 In response, the District puts forth several reasons why Sukanen's theory fails. First, Sukanen cannot enter into a contract, reap its benefits, and then seek to declare it void. Second, the contract itself contains a clause allowing modification by agreement of the parties. Third, the District's policy requires only that the contract comply with the governing state statute, and Sukanen's contract did comply. Fourth, even if Sukanen's contract were unlawful, Sukanen would not be entitled to relief because the contract would be void and neither party would have rights under it.

¶8 We agree with the District that Sukanen is not entitled to relief because the contract complied with district policy. Policy CBC, quoted above, applies to all administrators. However, a different district policy, "Policy CDE—Elementary Principal," applies specifically to elementary school principals. To the extent there is a conflict between the two district policies, the more specific

[3] WISCONSIN STAT. § 118.24 formerly contained the requirement that contracts end in odd-numbered years. *See* WIS. STAT. § 118.24(1) and (6) (1993-94). The statute was amended in 1995 to remove the odd-numbered years requirement. 1995 Wis. Act 27, §§ 3957, 3959.

policy—Policy CDE—governs. *See* ***Kapischke v. County of Walworth***, 226 Wis. 2d 320, 327, 595 N.W.2d 42 (Ct. App. 1999) (specific statute takes precedence over more general statute). Policy CDE provides that the length of elementary principal contracts be "in accordance with Wisconsin Statute 118.24." At the time Sukanen signed the two contracts at issue, WIS. STAT. § 118.24 did not contain the provision requiring contracts to end in odd-numbered years.[4] Therefore, Sukanen's contracts were not contrary to district policy.

¶9 Sukanen's second argument is that the District violated its policy by not renewing his contract without first putting him on probation. "Policy CBGA—Probationary Administrators" defines a probationary administrator as one "whose job performance is below an acceptable level … as judged by the board and/or the district administrator. Administrators who are placed on probation will be given formal notification." The policy goes on to state that if a probationary administrator's job performance is still not satisfactory at the end of the probationary period, the process of contract nonrenewal will begin. Sukanen argues that this policy mandates formal probation prior to nonrenewal. Because he had been given notice that his job performance was below an acceptable level, Sukanen asserts he fell within the definition of probationary administrator. Therefore, Sukanen argues, the District violated Policy CBGA by not renewing his contract without providing formal notice of probation, waiting for the probation period to end, and then assessing his performance.

¶10 The District responds that Policy CBGA does not require probation as a prerequisite to nonrenewal, but rather leaves the decision whether to place an

[4] *See* note 3.

administrator on probation with the board and district administrator. In Sukanen's case, neither the board nor the district administrator exercised that power, and therefore no probationary period was required prior to nonrenewal.

¶11 We agree with the District. Nowhere in Policy CBGA or in WIS. STAT. § 118.24 does it say that the District must place an administrator on probation before it can nonrenew his or her contract. We will not read language into a district policy that is not there. *See* ***Meyer v. Meyer***, 2000 WI 132, ¶29, 239 Wis. 2d 731, 620 N.W.2d 382 (refusing to read language into the plain language of a statute). The District followed all of the nonrenewal procedures required by § 118.24: Sukanen was given notice and the District held a hearing regarding the nonrenewal of Sukanen's contract.

¶12 Finally, we note that in both of his arguments, Sukanen cites cases dealing with an agency's failure to follow its own policies. Sukanen's procedural cases would help him only if we were to conclude that district policy did not allow the 1998 and 1999 contracts, or if we were to conclude that district policy required probation prior to nonrenewal. But, we reach neither conclusion.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.