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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2012-2013

2110252

Huntsville City Board of Education

v.

James Stranahan

(FMCS No. 11-02934)

2110286

Huntsville City Board of Education

v.

Dwight Holmes

(FMCS No. 11-02929)

THOMPSON, Presiding Judge.

On April 25, 2011, the superintendent for the Huntsville City Board of Education ("the Board"), Dr. Ann Roy Moore ("the

superintendent"), notified James Stranahan and Dwight Holmes, among others, of her intention to seek the termination of their employment with the Board. Stranahan and Holmes were employed as mechanics for the Board. As the basis for the terminations, the superintendent stated in the notices that, because of adverse financial conditions, the Board was required to terminate the employment of some of its employees and that the Board had implemented a Reduction in Force ("RIF") policy to accomplish that task. Stranahan and Holmes each contested the proposed termination of his employment pursuant to the RIF policy. We note that these actions are governed by the former Fair Dismissal Act ("the former FDA"), § 36-26-100 et seq., Ala. Code 1975, which has been repealed and replaced by the Students First Act ("the SFA"), § 16-24C-1 et seq., Ala. Code 1975, effective July 1, 2011. See also Board of Sch. Comm'rs of Mobile Cnty. v. Christopher, [Ms. 2101029, May 18, 2012] ___ So. 3d ___, ___ (Ala. Civ. App. 2012) (holding that portions of the SFA that provide that the SFA is effective upon its passage were substantive in nature and, therefore, that the SFA could not have retrospective

application). It is undisputed that Stranahan and Holmes were nonprobationary employees under the former FDA.

On May 17, 2011, the Board approved the termination of the employment of Stranahan and Holmes, among others, and Stranahan and Holmes each sought review of that decision pursuant to former § 36-26-105, Ala. Code 1975. On September 14, 2011, a hearing officer received ore tenus evidence in Stranahan's action, and on November 19, 2011, the hearing officer entered a decision reversing the decision of the Board. On October 7, 2011, a hearing officer conducted a hearing in Holmes's appeal of the Board's action, and on December 1, 2011, the hearing officer entered a decision reversing the decision of the Board.

The Board filed timely requests for an appeal in both actions. See former § 36-26-104(b), Ala. Code 1975. This court accepted the appeals. Stranahan's appeal was assigned appeal number 2110252, and Holmes's appeal was assigned appeal number 2110286. This court ordered, ex mero motu, that the two appeals be consolidated.[1]

[1]The parties to these appeals were invited to submit briefs as amicus curiae on a jurisdictional issue to be addressed in Board of School Commissioners of Mobile County v.

On appeal, the Board first argues that the hearing officers each erred in determining that the Board did not provide Stranahan and Holmes proper notice of the intended termination of their employment. The former FDA provided that a notice of termination to a nonprobationary employee "shall state the reasons for the proposed termination, shall contain a short and plain statement of the facts showing that the termination is taken for one or more of the reasons listed in Section 36-26-102, and shall state the time and place for the board's meeting on the proposed termination ..." Former § 36-26-103(a).

The former FDA provided that the employment of nonprobationary employees such as Stranahan and Holmes may be terminated "for failure to perform his or her duties in a satisfactory manner, incompetency, neglect of duty, insubordination, immorality, justifiable decrease in jobs in the system, or other good and just causes." Former § 36-26-102, Ala. Code 1975. The termination notices sent by the

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Christopher, supra. Briefing in these appeals was stayed pending the decision in that case.

superintendent to Stranahan and Holmes stated, in pertinent part:

> "You are hereby given notice of my intention to recommend termination of the employment of [your employment as] a Mechanic for Huntsville City Board of Education as provided in § 36-26-102, Ala. Code 1975. The reason for the proposed termination is as follows: justifiable decrease in jobs in the system or other good and just causes.
>
> "The facts showing that the termination is taken for one or more of the reasons listed in § 36-26-102, Ala. Code 1975, are as follows:
>
> > "1) Due to financial circumstances, the Board must reduce the number of its employees. To accomplish this, the Board had adopted a Reduction in Force plan. The selection of the employees to be terminated is based upon the job classifications affected by the Reduction in Force plan and years of service within the Huntsville School System (those with fewer years of service in each specifically identified area are to be terminated before those with greater seniority)."

The hearing officer reviewing Stranahan's action found that the notice quoted above was "very vague and [did] not provide sufficient information to an employee to mount a defense." The hearing officer in Holmes's action found the notice vague and ambiguous and stated that it "provide[d] no factual rationale relative to the Board's decision to terminate." In reaching their decisions, both hearing

officers concluded that the notices did not sufficiently apprise Stranahan and Holmes that the reason for the termination of their employment, or that the termination of employment of other mechanics, was a cost-savings measure.

The Board contends that its statement of the basis for the proposed terminations of Stranahan's and Holmes's employment was a sufficient "short and plain statement of the facts" under former § 36-26-103(a). The Board argues that the former FDA did not require that it include in its "short and plain statement of the facts" a detailed explanation of proration, the funding of school boards, and the Fiscal Accountability Act, § 16-13A-1 et seq., Ala. Code 1975.

In Bishop State Community College v. Archible, 33 So. 3d 588 (Ala. Civ. App. 2009), this court addressed whether a notice of termination under the former FDA was sufficient under § 36-26-103. In that case, two employees were notified of the intent to terminate their employment with Bishop State, a community college subject to the former FDA. The notices that the employees received stated an identical factual basis for each employee's termination, specifically "'You committed financial improprieties in relation to the receiving of

financial aid and scholarships.'" Archible, 33 So. 3d at 590. This court originally held that, considering the notice and the surrounding circumstances, that notice was sufficient under the former FDA. Bishop State Cmty. Coll. v. Archible, 33 So. 3d 577, 584 (Ala. Civ. App. 2008). On certiorari review, our supreme court held that this court had erred in considering the "surrounding circumstances" in determining whether the notice provided to the employees by Bishop State was sufficient, and it reversed this court's judgment. Ex parte Soleyn, 33 So. 3d 584, 587 (Ala. 2009). On remand, this court stated:

> "This court has held that, in order to afford minimal due process to an employee under the [Fair Dismissal] Act, the notice of proposed termination must advise the employee '"of the cause or causes for his [or her] termination in sufficient detail to fairly enable him [or her] to show any error that may exist."' State Tenure Comm'n v. Page, 777 So. 2d 126, 131 (Ala. Civ. App. 2000) (quoting James v. Board of School Comm'rs of Mobile County, 484 F. Supp. 705, 715 (S.D. Ala. 1979), quoting in turn Stewart v. Bailey, 556 F.2d 281, 285 (5th Cir. 1977)); see also State Tenure Comm'n v. Jackson, 881 So. 2d 445, 449 (Ala. Civ. App. 2003) (stating that the notice of proposed termination should be 'sufficiently detailed to provide an adequate opportunity for [the employee] to prepare a defense to those charges'). In the present cases, the notices of proposed termination do not meet the requirement of setting forth a 'short and plain statement of the facts.' Neither notice set forth

> what 'financial improprieties' had been committed so as 'to provide an adequate opportunity for [the employees] to prepare a defense to those charges.' Jackson, 881 So. 2d at 449. The language used is so vague as to fall below the minimum due process that must be afforded an employee under the Act."

Archible, 33 So. 3d at 590-91.

In the present case, the Board cited financial circumstances that necessitated the imposition of the RIF policy as the basis for the terminations, and it explained the manner in which the employees whose employment was to be terminated under the RIF policy would be selected. As the Board points out, in Archible, supra, the terminations at issue were proposed because of a specific set of allegations of misconduct, and this court determined that more information was required. It seems axiomatic that a more detailed statement of allegations of misconduct would be necessary to allow an accused employee to defend against those allegations. In this case, however, there are no adverse allegations for Stranahan or Holmes to defend against. The basis for the proposed terminations was that the Board was experiencing financial difficulties necessitating the implementation of the RIF policy.

Neither Stranahan nor Holmes disputed the necessity of the implementation of the RIF policy. Rather, each argued before their hearing officer that, as to him, the decision to terminate was erroneous. Stranahan and Holmes argue on appeal, as each did before the respective hearing officers, that the notice they received from the superintendent did not afford them sufficient information to defend against the specific selection of them as employees whose employment was to be terminated. However, this court has held that, once it is established that financial circumstances warrant the implementation of a RIF policy, a hearing officer has no discretion to determine whether a particular employee's employment should be terminated pursuant to that RIF policy; rather, in the absence of an allegation that the termination was made for an improper motive, such determinations are within the province of the employing board. Board of Sch. Comm'rs of Mobile Cnty. v. Christopher, ___ So. 3d at ___. The determination of which employees are to be dismissed pursuant to a RIF policy is left to the Board, and the Board was not required to present evidence justifying its decision to terminate the employment of a particular employee pursuant

to the RIF policy. Christopher, supra; see also Walker v. Montgomery Cnty. Bd. of Educ., 85 So. 3d 1008, 1015-16 (Ala. Civ. App. 2011) ("The Board was entitled to make the decision regarding which contract principals would be nonrenewed or would have their contracts canceled. Courts are not permitted to usurp the role of the school board and cannot determine that another course of action other than the one taken by the school board might have been wiser or more equitable."). Therefore, because the Board had no burden of justifying its termination decisions made pursuant to the RIF policy, we conclude that it was not required to include in its "short and plain" statement of facts a justification of its decision to terminate the employment of Stranahan or Holmes in particular.

We conclude that the hearing officers erred in determining that the superintendent's notices to Stranahan and Holmes were insufficient under former § 36-26-103, Ala. Code 1975. The hearing officer in Holmes's action concluded that the notice Holmes received was insufficient and pretermitted consideration of the other issues raised. Accordingly, we reverse the decision entered with regard to Holmes, and we

remand the cause in appeal number 2110286 to the hearing officer for further proceedings consistent with this opinion.

In appeal number 2110252 pertaining to Stranahan, the hearing officer also determined that the Board had not met its burden in presenting evidence in support of the termination of Stranahan's employment. The hearing officer determined that the Board had not demonstrated a proper basis for determining that terminating Stranahan's employment would result in a cost savings to the Board. However, as previously mentioned, this court held in Christopher, supra, that, when it has been determined that a teacher's employment was terminated because of a "justifiable decrease in jobs in the system," see former § 36-26-102, the hearing officer lacks the authority to determine whether the termination of the employment of a particular employee was justifiable. ___ So. 3d at ___. In that case, the hearing officer, although recognizing the validity of the implementation of the RIF policy, found that Christopher was an excellent employee and an asset to the school system and, thus, reversed the termination decision. This court reversed the decision of the hearing officer, concluding that termination decisions under a RIF policy were

within the discretion of the employing board. The court explained, in part:

> "In the case of a termination pursuant to a RIF policy, ... the conduct of the employee is not at issue. The purpose of a termination pursuant to a RIF policy is cost savings to the employing board. Where a termination of employment is made because of a justifiable decrease in the jobs in the system, see former § 36-26-102, the selection of any other form of discipline or sanction under former § 36-26-104(a) would not achieve the long-term cost-savings goal of the termination pursuant to a RIF policy."[2]

Christopher, ___ So. 3d at ___.

In Stranahan's case, the validity of the Board's decision to implement the RIF policy was not at issue. Rather, the parties argued, and the hearing officer considered, only the issue whether the Board's decision to terminate the employment of Stranahan and other mechanics achieved the cost-savings goal of the RIF policy. Under the holding in Christopher, supra, the merits of the Board's decisions made pursuant to a RIF policy, so long as those decisions are not made with an improper motive, are not within the scope of review of the

[2]Under former § 36-26-104(a), the hearing officer could select any of the following actions to be taken with regard to the employee: "Termination of the employee, a suspension of the employee, with or without pay, a reprimand, other disciplinary action, or no action against the employee."

hearing officer. Accordingly, "[w]e agree with the Board that the responsibility for making the difficult decisions regarding which positions to eliminate pursuant to a justified implementation of a RIF policy rests with the Board and that hearing officers and the courts 'are not permitted to usurp the role of the school board.'" Christopher, ___ So. 3d at __ (quoting Walker v. Montgomery Cnty. Bd. of Educ., 85 So. 3d at 1016). Accordingly, we reverse the decision of the hearing officer in Stranahan's appeal number 2110252, and we remand the cause to the hearing officer for further proceedings consistent with this opinion.

2110252--REVERSED AND REMANDED.

2110286--REVERSED AND REMANDED.

Pittman, Bryan, Thomas, and Moore, JJ., concur.