

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD LEWANDOWSKI,

Appellant,

v

YPSILANTI SCHOOL DISTRICT BOARD
OF EDUCATION,

Appellee.

UNPUBLISHED

December 19, 1997

No. 200109

State Tenure Commission

LC No. 96-000008

Before: Young, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Appellant Richard Lewandowski, a tenured science teacher with the Ypsilanti School District, appeals as of right the State Tenure Commission's order suspending him for one semester for using physical force to prevent a student from leaving appellant's classroom. While we acknowledge the difficulties that our teachers face in maintaining order in their classrooms, and, although we may not have made the same decision as the Tenure Commission, we must affirm the commission's decision because it was based upon factual findings that we conclude are supported by competent, material, and substantial evidence on the whole record.

This case arose from a December 20, 1995, incident in appellant's classroom at West Middle School. In order to facilitate the cleaning of his room, appellant customarily asked the students in his sixth-hour science class to place their chairs on top of the classroom tables at the end of class. On the day at issue, some students apparently began intentionally knocking down some of the chairs as class was letting out. Appellant noticed the falling chairs and, after a portion of the class had left, demanded that the remaining students stay and pick them up. One of the students responsible for knocking down some of the chairs attempted to leave despite appellant's instruction. Several students testified that appellant grabbed the student and pulled him back into the room. The student attempted to strike appellant with a chair and, after appellant took the chair away from him, a scuffle ensued, during which the student tried to kick and punch appellant. Appellant and the assistant principal, Dennis Goodall, eventually restrained the student. Appellant's suspension resulted from this confrontation.

At the time of the December 1995 incident, appellant was operating under a directive issued to him by his principal, Robert Wilkinson, after appellant had, on a previous occasion, used minor physical force in restraining several students. Wilkinson advised appellant that, while his actions were within the law, his physical handling of the students served mostly to escalate tensions. Appellant resisted this advice, insisting that he had done nothing wrong. As a result, Wilkinson issued a formal reprimand, which included the following directive: "I am directing you not to touch students unless faced with a situation where not touching them would clearly result in harm to you or another person."

Wilkinson investigated the December 20, 1995, incident and concluded that appellant had forcefully pulled the student back into the classroom, and that this action was in clear violation of the directive. John Fulton, Executive Director of Human Resources, filed charges with the Ypsilanti School District Board of Education recommending appellant's dismissal. Appellant contested the board's decision to proceed upon the charges before the State Tenure Commission. See MCL 38.104(1); MSA 15.2004. The Tenure Commission, essentially adopting the preliminary decision and order of the administrative law judge, found that appellant had used force against the student in violation of the directive, but that discharge was too harsh a sanction under the circumstances. The commission ordered that appellant be suspended without pay from September 18, 1996, until the beginning of the winter semester of the 1996-1997 school year and be fully reinstated to his position thereafter.

This Court's review of the Tenure Commission's findings is limited to a determination whether they are supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; MCL 24.306(1)(d); MSA 3.560(206)(1)(d); *Tomczik v State Tenure Comm*, 175 Mich App 495, 499; 438 NW2d 642 (1989). "Substantial evidence" is evidence that a reasonable person would accept as sufficient to support a conclusion. While this requires more than a scintilla of evidence, it may be substantially less than a preponderance. *Tomczik, supra*. This Court gives due deference to the expertise of an administrative agency, and we will not "'invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views.'" *Widdoes v Detroit Public Schools*, 218 Mich App 282, 286; 553 NW2d 688 (1996), quoting *Michigan Employment Relations Comm v Detroit Symphony Orchestra, Inc*, 393 Mich 116, 124; 223 NW2d 283 (1974).

In the instant case, the Tenure Commission found that appellant employed physical force to prevent the student from leaving the classroom, and that these actions violated principal Wilkinson's directive because the student did not pose a danger to appellant or anyone else at the point he was restrained from leaving the classroom. These findings were supported by substantial evidence. Several witnesses testified before the commission that appellant grabbed the student and pulled him back into the classroom. The record also supports the commission's finding that there was no imminent danger consistent with the principal's directive which justified appellant's actions at the doorway. We can discern no basis for disturbing the Tenure Commission's findings that appellant used physical force and that those actions were in contravention of Wilkinson's directive. The Tenure Commission's findings were supported by competent, material, and substantial evidence on the whole record. *Tomczik, supra*.

Appellant also contends that his one-semester suspension was unduly severe. However, because we have already concluded that the factual findings upon which the Tenure Commission's decision was based were supported by substantial evidence, we may not substitute our judgment with respect to appellant's discipline for that of the commission. *Comstock Public Schools v Wildfong*, 92 Mich App 279, 285; 284 NW2d 527 (1979).

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Stephen J. Markman

/s/ Michael R. Smolenski