IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Janet Frankenfield	:	
	:	
v.	:	No. 324 C.D. 2009
	:	Argued: May 18, 2010
Saucon Valley School District,	:	
Appellant	:	

BEFORE: HONORABLE ROBERT SIMPSON, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: June 30, 2010

Following reargument,[1] we again consider the Saucon Valley School District's (District) appeal from the January 26, 2009, order of the Northampton County Court of Common Pleas (trial court) denying the District's motion for post-trial relief following a jury trial and verdict in favor of Janet Frankenfield (Frankenfield). We now reverse.

Frankenfield worked for the District as either a part-time or full-time employee since 1997.[2] From 1998 to 2005, Frankenfield held a position as one of

[1] We denied the District's application for reargument *en banc*.

[2] The following recitation of facts and history relating to this case is largely taken from the facts as stated in then Senior Judge Joseph F. McCloskey's opinion in *Frankenfield v. Saucon Valley School District* (*Frankenfield I*) (Pa. Cmwlth., No. 324 C.D. 2009, filed December 16, 2009).

three proctors at the District's high school. Over the course of this employment, Frankenfield gradually began handling attendance and clerical work; neither of the two other proctors performed attendance duties. In March or April 2004, Karen Beyer, a member and past president of the District's Board of School Directors (Board), introduced the idea of reclassifying the proctor positions as non-instructional aides under an employee contract.

On June 6, 2005, the Board held a meeting advertised to the public as: "A meeting of the Board of Directors of the Saucon Valley School District will be held on Monday, June 6, 2005 at 7:30PM for discussion of the 2005-2006 Preliminary Budget." (R.R. at 7a.) At this meeting, the Board also discussed reclassifying the proctor positions and how much of the budget would be allocated to the newly classified positions. There were no minutes taken at this meeting.

Frankenfield nonetheless asserts that, at the June 6, 2005, meeting, a majority of the Board hired her in the newly formed position of high school clerk for attendance/discipline (referred to by the parties as the "Greeter" position). Frankenfield alleges that Beyer and the District's then Superintendent congratulated her after the meeting. Beyer testified to this fact as well.

However, minutes taken at an August 22, 2005, Board meeting reflect that the Board voted at that time to approve a job description for the Greeter position and to authorize the advertisement of this twelve-month position. Upon her return to work in Fall 2005, Frankenfield learned that the Greeter position had been posted. The District received twenty-two applications, including Frankenfield's, and

conducted seven interviews and five second interviews. All applicants participated in various tests, including speed typing, a personality test, an e-mail memo test and an EXCEL spreadsheet test. Frankenfield qualified for a second interview, but, ultimately, was not offered the Greeter position. Instead, the District offered the position to Nancy Zapotocki, who accepted it.

At an October 10, 2005, Board meeting, during which minutes were taken, a majority of the Board voted to hire Zapotocki for the Greeter position. At this same meeting, the Board voted to move Frankenfield to the District's middle school and place her in the non-instructional aide position that previously had been filled by Zapotocki. Frankenfield's new position at the middle school was changed from part-time to full-time, and she received a raise of $2,202.48 per year. However, the high school Greeter position salary was $24,791.00 annually, which was almost $9,000.00 more than Frankenfield's salary at the middle school.

On April 13, 2006, Frankenfield filed a complaint against the District alleging a breach of contract. Frankenfield claimed that the Board had promised her the newly created high school Greeter position but then breached its agreement by hiring Zapotocki for the position. Frankenfield amended her complaint in October 2006 after the District filed preliminary objections. A three-day jury trial was scheduled and held before the trial court from October 20, 2008, to October 22, 2008.

At trial, Frankenfield testified on her own behalf, the pertinent points of which are described above. Over the objection of the District, however, Frankenfield also testified to why she believed she was not picked for the Greeter position,

including her filing of complaints with the District regarding allocation of District monies, conflicts with the District's administration regarding conduct of other employees, as well as an alleged conversation she had with a student regarding a teacher who was fired due to inappropriate conduct with students.

Frankenfield also presented the testimony of several other witnesses, including past Board president Beyer. Beyer testified that a quorum of the Board was present at the June 6, 2005, public meeting at which reclassification of the proctor positions was discussed. Beyer testified that the intention at that meeting was never to hire someone else into the positions; instead, the intent was simply to reclassify the existing positions for the benefit of the people then holding them. Both Frankenfield and Beyer testified that a vote was taken at this meeting regarding reclassification and allocation of funds to the newly created non-instructional aide positions. Beyer also testified that she believed this meeting was recorded and that notes were taken, but she could not remember seeing any minutes from that meeting.[3]

The District presented the testimony of several witnesses, including Dr. Curtis Dietrich, principal of the high school during the relevant time period. Dietrich testified that he was present at the June 6, 2005, Board meeting and, while he acknowledged that reclassification of the proctor positions was discussed at that meeting, he did not recall a formal vote on the matter and he specifically denied that Frankenfield was ever offered the newly created Greeter position. Dietrich instead noted that he was part of the team conducting interviews and testing for the position,

[3] After this meeting, during a special election held on July 19, 2005, Beyer was elected as a state representative and thereafter resigned from the Board.

that Zapotocki was better qualified than Frankenfield and that Zapotocki was offered the job. Dietrich further denied any ill motive underlying the decision to post the Greeter position and hire Zapotocki.

The District also presented the testimony of Todd Gombos, current high school principal and assistant principal during the relevant period. Gombos indicated that he also was present at the Board's June 6, 2005, meeting. He denied observing Beyer and the Superintendent congratulating Frankenfield after the meeting. Gombos testified that, upon her return to school in Fall 2005, Frankenfield asked if she had the new position, and he told Frankenfield that it had to be posted. Gombos also was part of the interview committee, and he noted that the committee felt Zapotocki was better qualified that Frankenfield. Gombos acknowledged that Frankenfield had complained regarding the allocation of District funds and he had referred those complaints to Dietrich.

At the conclusion of the trial, the jury returned a verdict in favor of Frankenfield, awarding her $36,500.00 in back pay and $24,479.21 in front pay.[4] The District filed a motion for post-trial relief raising numerous issues, including that the verdict was against the weight of the evidence or unsustainable by the evidence, that erroneous rulings were made on the evidence presented at trial and that the trial court improperly instructed the jury that there were no minutes of Board action when minutes from the August 22, 2005, and October 10, 2005, meetings, during which the

[4] The trial court eventually entered judgment in Frankenfield's favor in the amount of $60,979.21.

Board voted to post and then hire someone into the Greeter position, were produced. After the trial court denied the District's motion for post-trial relief and entered judgment in Frankenfield's favor, the District appealed to this court, reiterating the arguments made before the trial court.

On December 16, 2009, this court affirmed the trial court's order, recognizing and adopting the trial court's opinion. Thereafter, we granted the District's application for reargument/reconsideration and issued an order directing the matter be listed on the May 2010 argument list. The matter is again ripe for disposition.

We first consider the District's argument that, because the jury's verdict was unsupported by substantial evidence, the trial court erred in denying the District's post-trial motion.[5] In this regard, the District asserts that there are no minutes of the June 6, 2005, meeting to show that the Board awarded the Greeter position to Frankenfield as required by section 508 of the Public School Code of 1949

[5] Our scope of review of a trial court order denying a motion for post-trial relief is limited to determining whether the trial court abused its discretion or committed an error of law. *Pikur Enterprises, Inc. v. Department of Transportation*, 641 A.2d 11 (Pa. Cmwlth.), *appeal denied*, 539 Pa. 657, 651 A.2d 543 (1994). We explained in *Cummings v. State System of Higher Education*, 860 A.2d 650, 654 (Pa. Cmwlth. 2004), *appeal denied*, 582 Pa. 703, 871 A.2d 193 (2005), that one who seeks to reverse a trial court's order denying a request for judgment notwithstanding the verdict [judgment n.o.v.] has a high burden. Judgment n.o.v. is proper where the evidence, and all ensuing inferences, viewed in the light most favorable to the verdict winner, is not sufficient to sustain the verdict. *Id.* Judgment n.o.v. "may be entered where (1) the moving party is entitled to judgment as a matter of law or (2) the evidence is such that no two reasonable minds could disagree that judgment was due to the moving party." *Id.*, n.8.

(Code),[6] and the alternative evidence Frankenfield submitted is not otherwise sufficient to support such a finding.[7] We agree.

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[6] Act of March 10, 1949, P.L. 30, *as amended*, 24 P.S. §5-508. Section 508 provides in pertinent part:

> The affirmative vote of a majority of all the members of the board of school directors in every school district, duly recorded, showing how each member voted, shall be required in order to take action on the following subjects:-
>
> ….
>
> Entering into contracts of any kind, including contracts for the purchase of fuel or any supplies, where the amount involved exceeds one hundred dollars ($100).
>
> ….
>
> Failure to comply with the provisions of this section shall render such acts of the board of school directors void and unenforcible.

24 P.S. §5-508.

[7] The District also raises the following issues: (1) whether the trial court erred in submitting the matter to the jury because Frankenfield did not set forth the requisite elements for a prima facie case of implied contract and/or breach of implied contract under Pennsylvania law; (2) whether the trial court erred in allowing oral evidence of Board action in the absence of any evidence that individual Board members have the authority to bind the District; (3) whether the trial court made erroneous evidentiary rulings that were material to the outcome of this case; and (4) whether the trial court erred in instructing the jury that no minutes of Board action existed, despite uncontroverted evidence demonstrating that Board meeting minutes did in fact exist with respect to the Greeter position. Given our determination, we do not reach these remaining issues.

To support its argument, the District relies on our supreme court's decision in *Mullen v. Board of School Directors*, 436 Pa. 211, 259 A.2d 877 (1969),[8] in which the court stated:

> We are aware that there is a line of cases giving [section 508 of the Code] a very strict construction. To the extent that they interpret the requirement that there be a formal vote recorded in the minutes as being mandatory we overrule them. . . .
>
> Neither are we inclined to eviscerate the force of the statute. However, it is clear beyond doubt that the expression of the board members' approval required by the statute can be evidenced in ways other than by a formal vote recorded in the minutes. To allow this does no violence to the purpose of the statute. . . . We hold the requirement of a formal recorded vote to be directory only, *although with the caveat that the proof from which Board approval can be inferred must be solid.*

Id. at 215-16, 259 A.2d at 880 (footnote omitted; emphasis added).

We interpret our supreme court's use of the word "solid" in defining proof sufficient to obviate the need for a formal recorded vote under section 508 to

[8] Specifically, in *Mullen*, the Board suddenly dismissed William Mullen, a temporary professional employee, for unsatisfactory job performance, an issue that only arose after Mullen became a union representative, who had voiced complaints to the principal and Superintendent. In response to Mullen's contention that he had been arbitrarily dismissed, the Board took the position that no valid and enforceable contract covered Mullen's employment because there was no recorded vote of the Board with respect to his contract, as required by section 508. However, based on the "overwhelming bulk of evidence" indicating the Board did approve Mullen's employment, the court held that the absence of a formal vote recorded in the minutes would not render the contract null and void. *Id.* at 216, 259 A.2d at 880.

mean proof that amounts to something more than the mere subjective belief of one party to an alleged contract that a contract was actually formed.[9] Accordingly, we hold that solid proof must include evidence that is objective and irrefutable. Frankenfield did not offer evidence meeting this standard.

Here, the only testimony that a majority of the Board voted Frankenfield into the Greeter position on June 6, 2005, came from Frankenfield herself. Beyer's testimony reflects merely that, at the June 6, 2005, meeting, a quorum of the Board was present; the three high school proctor positions were reclassified to non-instructional aide positions; money needed to fund the non-instructional aide positions was approved; and Beyer and the then Superintendent congratulated Frankenfield at that meeting. Beyer did not specifically testify that a quorum of the Board voted to hire Frankenfield as a Greeter at the June 6, 2005, meeting. Even more compelling, on cross-examination, Beyer acknowledged that the Board would not have engaged in such a vote at that meeting.[10]

To this extent, this case differs from our opinion in *Cadchost, Inc. v. Mid Valley School District*, 512 A.2d 1343 (Pa. Cmwlth. 1986). There, a school district contended that appellees did not present solid proof that a majority of school board

[9] We note that the numerous dictionary definitions of the word "solid" can be synthesized into something that is hard and fast, with several dimensions, but allowing no room for movement. *See, e.g.*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2169 (1986).

[10] Beyer testified in this regard: "Did we take any official action other than move the preliminary budget to the committee meeting? No. We wouldn't have, you are right." (N.T., October 20, 2008, at 73.)

members had approved a certain contract for the sale of land to the school district. Rejecting this argument, we held that the unequivocal testimony of the school district's solicitor established that a majority of the school board had authorized the solicitor to enter into the contract in question and, therefore, amounted to the type of solid proof set forth in *Mullen*. *Cadchost*, 512 A.2d at 1345-46. However, in *Cadchost*, there existed a contract signed by the solicitor and the appellees' attorney, and the school district paid the purchase price for sale of the land in accordance with that contract. No such objective proof of a contract between Frankenfield and the District exists here.[11]

In fact, the Board in this matter has submitted minutes from the August 22, 2005, and October 10, 2005, meetings directly countering Frankenfield's testimony that the Board ever hired her into the newly created Greeter position. Further, unlike the teacher in *Mullen*, who actually performed the job from which he was abruptly fired, Frankenfield never worked in the Greeter position that she now seeks.

[11] This case likewise differs from *Harborcreek School District v. Harborcreek Education Association*, 441 A.2d 807 (Pa. Cmwlth. 1982), in which a professional employee purchased additional years of creditable nonschool service from the Public School Employees' Retirement Board, so that he could receive credit for his military time and be advanced on the teachers' salary scale. After the school district refused to advance him, he filed a grievance, and this court ultimately held that testimony establishing certain teachers employed by the district had been advanced on the salary scale when they purchased years of military credit, along with proof that the district had agreed to the inclusion of such past practices in the relevant collective bargaining agreement, satisfied *Mullen* and the directory requirements of section 508.

The evidence that Frankenfield presented in this case is not the "solid" proof required by *Mullen*. Thus, we conclude that the testimony presented by Frankenfield, absent evidence of a more incontrovertible nature, is legally insufficient to support the jury's finding that a quorum of the Board voted Frankenfield into the Greeter position in accordance with section 508 of the Code, such that the District could have breached a contract with her thereunder.

Accordingly, we reverse.

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ROCHELLE S. FRIEDMAN, Senior Judge

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O R D E R

AND NOW, this 30th day of June, 2010, the order of the Court of Common Pleas of Northampton County, dated January 26, 2009, is hereby reversed.

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ROCHELLE S. FRIEDMAN, Senior Judge