IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALICE BRENDA SQUIRE,	§	
	§	No. 77, 2006
Plaintiff Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
BOARD OF EDUCATION OF THE	§	C.A. No. 04A-11-001
RED CLAY CONSOLIDATED	§	
SCHOOL DISTRICT,	§	
	§	
Defendant Below,	§	
Appellee.	§	

Submitted: October 4, 2006
Decided: November 6, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

O R D E R

This 6th day of November 2006, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Alice Brenda Squire ("Squire"), plaintiff below, appeals from an order of the Superior Court, affirming the Board of Education's ("Board") decision to terminate Squire's job at Red Clay Consolidated School District ("School District"). Squire contends that the hearing officer appointed by the Board erred by: (a) upholding the School District's use of the Lesson Analysis Form to evaluate her performance; and (b) giving effect to the allegedly untimely notice of termination. Because the Superior Court correctly held that the hearing officer's

decision was supported by substantial evidence and there was no error of law, we affirm.

2. Squire originally worked as a librarian for the School District at Baltz Elementary School. Over the years, her position changed to that of a library/media specialist, which included teaching reading to elementary school children. Between November 2000 and Squire's May 2004 discharge, five observers formally evaluated her classroom performance eight times under the Delaware Performance Appraisal Standards ("DPAS I"). Those observations and evaluations generated three Individual Improvement Plans ("IIP"),[1] including the original IIP's modification:

(a) On November 17, 2000, Dorothy Johnson, Assistant Principal at Baltz Elementary School, observed Squire during a class. The observation was announced.[2] Using the Lesson Analysis Form, Johnson evaluated Squire's work and found Squire's performance unsatisfactory. In particular, Johnson found that Squire's lesson plan was not suitable for the grade level, and that Squire did not have the students' undivided attention and her students were not wearing name

[1] An IIP is a DPAS remedial tool, which "shall be developed when an individual's performance in any category has been appraised as Needs Improvement or Unsatisfactory on a Performance Appraisal or if a Lesson/Job Analysis is identified with the statement 'Performance is Unsatisfactory.'"

[2] An "announced observation" is an announced visit by the appraiser to the classroom/worksite to observe a lesson or specialist work from beginning to end; it must be preceded by a pre-observation report/conference.

tags. On December 1 and December 4, 2000, Johnson met with Squire to review Johnson's concerns. During these post-observation conferences, Johnson developed the first IIP.

(b) On January 24, 2001, Johnson returned for a second unannounced observation.[3] Johnson again found Squire's instructional planning and instructional strategies unsatisfactory. Johnson held a second post-observation meeting with Squire, in which Squire did not dispute Johnson's observations.

(c) On January 29, 2001, Johnson returned for a third announced observation. Johnson testified that Squire's classroom organization, classroom management and teacher-student interaction remained unsatisfactory. Again, Johnson met with Squire following the January 2001, announced observation and produced a modified IIP.

(d) On October 30, 2002, then Baltz Principal, Edward Tackett, conducted an announced lesson analysis in Squire's class. Tackett did not rate Squire's work unsatisfactory.

(e) On October 1, 2003, Jill Compello, Baltz Assistant Principal, observed Squire's class, unannounced. Although the lesson was not

[3] An "unannounced observation" shall consist of an observation by the evaluator at a date and time that has not been previously arranged and without any associated formative conferences/reports. The observation shall be of sufficient length, at least twenty (20) minutes, to analyze the lesson and assess performance.

"unsatisfactory," Compello testified that she did not consider it to be satisfactory either.

(f) On November 13, 2003, Compello returned to Squire's class and conducted an announced lesson analysis. Compello found that Squire's instructional planning, instructional strategies, classroom management and organization were unsatisfactory. Later, on December 3, 2003, Compello developed a new final IIP for Squire.

(g) On February 12, 2004, Suzanne Curry, the Board's Manager of Elementary Education and Supervisor of its library/media specialists, conducted an unannounced lesson analysis of Squire, and found that the lesson was unsatisfactory.

(h) On March 19, 2004, Deborah Hooper, the Principal of Baltz Elementary School, performed an unannounced evaluation. Hopper also found that Squire's performance was unsatisfactory. After their observations, Curry and Hooper held post-evaluation conferences. They did not generate a new IIP, however.

(3) On May 14, 2004, the School District sent a letter to Squire notifying her that her employment would be terminated effective at the end of the 2003-2004 school year, without mentioning the grounds for termination. An initial hearing

under 14 *Del. C.* § 1413 was held on July 9, 2004,[4] at which Squire protested that the May 14, 2004 notice was legally deficient under the Teacher Tenure Act for failure to give reasons for the termination.[5] In response, the School District withdrew the May 14, 2004 notice of termination and issued a new notice of termination on August 5, 2004. The August 5 notice stated that Squire was being fired for incompetence and neglect of duty, effective September 10, 2004. After an administrative hearing, Squire's termination was upheld by a hearing officer and accepted by the Board. Squire then appealed the decision of the Board to the Superior Court.

4. On appeal, the Superior Court held that the Board's decision to terminate Squire was supported by substantial evidence and affirmed the Board's decision. The Superior Court specifically determined that: (a) the decision to evaluate Squire using the Lesson Analysis Form based on DPAS I standards was

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[4] 14 *Del. C.* § 1413 provides in pertinent part:

> In the event that a teacher so notified shall within 10 days after the receipt of written notice of intention to terminate services request in writing an opportunity to be heard by the terminating board, the board shall set a time for such hearing to be held within 21 days after the date of receipt of said written request, and the board shall give the teacher at least 15 days' notice in writing of the time and place of such hearing. The hearing shall be conducted by a majority of the members of the board and shall be confined to the aforementioned written reasons as stated in the board's written notice of the board's intention to terminate the teacher's services.

14 *Del. C.* § 1413 (1999).

[5] 14 *Del. C.* §§ 1401-20 (1999).

proper; (b) the evaluations were properly conducted during the requisite appraisal periods; (c) Squire had the opportunity to suggest changes to her IIP, but she chose not to; (d) despite Squire's claims of superficially complying with her IIP, she remained uncooperative; (e) Squire waived her claims to any procedural defects in the School District's May 14, 2004 notice of termination; and (f) the School District properly re-noticed Squire's termination on August 5, 2004 under 14 *Del. C.* § 1420. Squire appeals from that ruling. The Superior Court's first and fifth holdings are the focus of the Squire's appeal.

5. The Superior Court must uphold the decision of the hearing officer if the officer's finding and conclusion is based on substantial evidence.[6] This Court reviews the Superior Court's findings under the same standard used by the Superior Court when reviewing the hearing officer's findings.[7] Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[8] "[A]s a matter of public policy, findings of [a hearing officer] after a public hearing should not be set aside unless

[6] 14 *Del. C.* § 1414 (1999).

[7] *Board of Educ. v. Shockley*, 155 A.2d 323, 327 (Del. 1959).

[8] *Id.*

the record clearly contains no substantial evidence supporting [a hearing officer's] findings."[9]

6. Delaware's Department of Education has adopted and implemented the DPAS I, which provides model forms for evaluating teachers and specialists. The Lesson Analysis Form must be utilized when evaluating teachers, whereas the Job Analysis Form is to be utilized when evaluating specialists. Squire was evaluated as a "teacher" under the Lesson Analysis Form.

7. Squire claims that because the DPAS I defines a specialist as "a certified employee whose primary responsibility is not that of a classroom teacher, such as a nurse, guidance counselor, educational diagnostian, or *librarian*," she should not have been evaluated as a "teacher." It is not unusual, however, for a person having one profession to undertake different responsibilities at the same time. Librarians carry out two responsibilities under the "library/media specialist" designation: they maintain their traditional librarian duties, but also are required to teach reading to students. The DPAS I establishes separate criteria for evaluating the performance of these two responsibilities.

8. According to the Library Media Specialist Manual adopted by the School District in March 2002, the librarian functions changed from an emphasis on cataloging to providing complementary teaching of reading and language skills.

[9] *Leach v. Board of Educ*., 295 A.2d 582, 583 (Del. Super. 1972).

In other words, the School District has required its librarians to teach. Therefore, it was reasonable for the District to evaluate Squire in instructional situations where Squire actually teaches skills to students.

9. As noted, Squire claims that the DPAS I requires that "specialists" be evaluated under different criteria than those used for "teachers." Squire emphasizes that because the "instructional" portions of the Lesson Analysis has no counterpart in the Job Analysis, the School District evaluated her performance under an incorrect, heightened standard. This argument ignores the fact that Squire serves a dual role at Baltz—as a specialist while maintaining the library's collection, and as a teacher while instructing a classroom of students on reading, language arts, and library information skills. It therefore was not inappropriate to evaluate Squire under the Lesson Analysis Form while serving as a teacher.

10. Lastly, Squire relies on the Delaware Performance Appraisal System II (DPAS II), which is the revised version of the Delaware Performance Appraisal System (DPAS I), as a basis to argue that "librarian" still falls within the definition of a "specialist" under the DPAS II. Because Squire did not raise this issue in the trial court, Squire's claim is procedurally barred under Delaware Supreme Court Rule 8.[10] Therefore, we need not address Squire's DPAS II claim.

[10] Rule 8 provides that "only questions fairly presented to the trial court may be presented for review; however, that when the interests of justice so require, the Court may consider and determine any questions not so presented." Del. Supr. Ct. Rule 8.

11. The Superior Court found that the School District's May 14, 2004 "notice of termination was defective because it did not state the reason why Appellant was fired."[11] At the original hearing on July 9, 2004, the parties agreed that if the School District issued a new letter stating the reason for the termination, and rescheduled the hearing in a timely manner, Squire would waive any procedural objections. Thereafter, the School District withdrew its May 14, 2004 notice and issued a new notice on August 5, 2004. On appeal, Squire continues to rely on the original defective May 14, 2004 notice, but without advancing any reasons why the School District should be precluded from relying upon the new notice under 14 *Del. C.* § 1420, issued after the parties had reached a compromise. Therefore, this argument is without merit.

12. Alternatively, Squire claims that that the August 5, 2004 notice of termination was defective. Squire relies on 14 *Del. C.* § 1414 for the proposition that proper notice must be given to the employee that the School District seeks to

[11] *Squire v. Bd. of Educ. of the Red Clay Consol. Dist*., 2006 Del. LEXIS 20, at *25 (Del. Super. Jan. 18, 2006).

terminate by May 15 of the year in which it intends to terminate the employee.[12] Squire contends that because the new notice was sent by the School District on August 5, 2004—almost 3 months after the May 15 deadline—the new notice should be deemed ineffective. Squire's argument is incorrect because it is based on the mistaken premise that the August 5, 2004 notice was issued pursuant to 14 *Del. C.* § 1410(a). In fact, the August 5, 2004 notice informed Squire that "[a]t the meeting of the School Board on August 4, 2004, the Board voted to terminate your services in accordance with *section 1420* for incompetence and neglect of duty." (emphasis added).[13] Under 14 *Del. C.* § 1420, an employee may be fired during the

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[12] Squire mistakenly cited 14 *Del. C.* § 1414 to support her argument. Actually the pertinent language is contained in 14 *Del C.* § 1410(a), which provides in pertinent part that:

> In the event that any board desires to dispense with the services of any teacher, such board shall give notice in writing to such teacher on or before the 15th day of May of any year of its intention to terminate said teacher's services at the end of such school year.

14 *Del. C.* § 1410(a) (1999).

[13] 14 *Del. C.* § 1420 provides that:

> Termination of any teacher's services during the school year shall be for 1 or more of the following reasons: Immorality, misconduct in office, incompetency, disloyalty, neglect of duty or willful and persistent insubordination. Such teacher shall be given the same opportunity to be heard and right of appeal as provided in §§1412, 1413 and 1414 of this title, and the board shall give notice in writing to such teacher of its intention to terminate the services of such teacher at least 30 days prior to the effective date of termination. Such written notice shall state the reasons for such termination of services. The board shall have the power to suspend any teacher pending a hearing if the situation warrants such action.

14 *Del. C.* § 1420 (1999).

school year upon 30 days notice. Because the August 5, 2004 notice of termination informed Squire that she would be terminated effective September 10, 2004, Squire was given the requisite 30 days notice of her termination. Further, the School District stated the reasons for Squire's termination and duly observed Squire's right to a hearing. Therefore, the School District's August 5, 2004 notice of termination complied with 14 *Del. C.* § 1420. Lastly, Squire's counsel explicitly stated, with respect to the August 5, 2004 notice of termination, "[t]he letter is technically still deficient, but we are going to waive those objections." Based on these facts, this claim must be rejected.

13. Because the Superior Court correctly affirmed the hearing officer's decision which is supported by substantial evidence, we also affirm.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice