

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SHERRIE ADIS,

Plaintiff-Appellant,

v

DEARBORN HEIGHTS SCHOOL DISTRICT NO.  
7 BOARD OF EDUCATION,

Defendant-Appellee.

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UNPUBLISHED

August 2, 1996

No. 183953

LC No. 94-000015

Before: Griffin, P.J., and Bandstra and M. Warshawsky,\* JJ.

PER CURIAM.

Plaintiff appeals as of right an order and opinion of the State Tenure Commission. We affirm.

Based on allegations that plaintiff harassed, assaulted, and battered a fellow teacher, Beverly DeShetler, on school property, plaintiff's employer, defendant Dearborn Heights School Board, suspended plaintiff and charged her with misconduct. After defendant sought to discharge plaintiff for her misconduct, plaintiff appealed defendant's decision to the State Tenure Commission. See MCL 38.104(1); MSA 15.2004(1). Following a hearing, a hearing referee found that plaintiff intentionally bumped or elbowed DeShetler in the teachers' lounge of the school, then yelled at, shouted obscenities to, and threatened DeShetler as plaintiff followed DeShetler down the hall and into the school parking lot. The hearing referee proposed that plaintiff be suspended for one semester. Both parties appealed the hearing referee's decision to the Tenure Commission. The Tenure Commission adopted the hearing referee's factual findings but increased plaintiff's suspension to a year and a half. See MCL 38.104(7); MSA 15.2004(7).

On appeal, plaintiff contends that the Tenure Commission's final order is unsupported by competent, material, and substantial evidence on the whole record. We disagree. Our review of the Tenure Commission's findings is "limited to a determination of whether there was competent, material and substantial evidence to support the Commission's finding." Const, art 6, § 28; MCL 24.306(1)(d);

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\* Circuit judge, sitting on the Court of Appeals by assignment.

MSA 2.560(206)(1)(d); *Beebee v Haslett Public Schools (After Remand)*, 406 Mich 224, 231; 278 NW2d 37 (1979); *Birmingham School Dist v Buck*, 211 Mich App 523, 524; 536 NW2d 297 (1995). “Substantial evidence” means “the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion. While it consists of more than a scintilla of evidence, it may be substantially less than a preponderance.” *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994); *MERC v Detroit Symphony Orchestra*, 393 Mich 116, 122; 223 NW2d 283 (1974); *Tomczik v State Tenure Comm*, 175 Mich App 495, 499; 438 NW2d 642 (1989).

First, plaintiff claims the record is devoid of competent evidence to support the Tenure Commission’s factual finding that plaintiff bumped DeShetler intentionally. We disagree. DeShetler, testified that, after she backed away from a door to allow plaintiff to enter the teachers’ lounge, plaintiff positioned her arms in a blocking position and, with a “tremendous blow,” intentionally elbowed DeShetler’s upper arm. According to DeShetler, this contact inspired plaintiff to say “Oh, pardon me, Mrs. DeShetler” in an exaggerated, sarcastic tone. Although plaintiff testified that the contact was accidental, the veracity of her testimony is impeached by the fact that her description of events preceding the incident conflicted with the testimony of several other witnesses. In light of DeShetler’s testimony, the fact that the two other teachers in the lounge heard but did not see the blow, the record evidence that plaintiff developed an escalating hostility against DeShetler prior to the incident and the large bruise DeShetler sustained because of the contact, we find competent, material, and substantial evidence in support the Tenure Commission’s finding that plaintiff intentionally battered DeShetler.

Second, plaintiff contends that the Tenure Commission’s determination that reasonable and just cause existed to suspend plaintiff for a year and a half without pay is unsupported by fact and reason. We disagree. Particularly where, as here, the Tenure Commission accepts the hearing referee’s assessments of credibility and disagrees only with the conclusion to be drawn from the facts, we reject plaintiff’s claim that the Tenure Commission erred by disagreeing with the length of the hearing referee’s proposed suspension. The Tenure Commission is under no obligation to afford special weight to the findings of the hearing referee. Instead, the Tenure Commission has the express power to “adopt, modify, or reverse the preliminary decision and order” of the hearing referee. MCL 38.104(5)(m); MSA 15.2004(5)(m); see *Lakeshore Bd of Ed v Grindstaff (After Second Remand)*, 436 Mich 339, 353-354; 461 NW2d 651 (1990); *Birmingham School Dist*, *supra* at 524. In the present case, plaintiff intentionally battered, threatened, and hurled epithets at a fellow teacher on school property during working hours. Plaintiff’s assault and battery closely followed an escalating series of events whereby plaintiff evidenced her animus against DeShetler by, among other things, swearing at and impeaching DeShetler’s honesty in front of a class of first graders. Though plaintiff’s assaultive behavior is, in itself, highly inappropriate conduct, particularly for an elementary school teacher, her conduct is especially troublesome when viewed in connection with the escalating, uncontrolled hostility that preceded the battery. Therefore, with due deference to the expertise of the Tenure Commission and in accordance with our standard of review, we find material, competent, and substantial evidence on the record that the year and a half suspension was a reasonable and just reaction to plaintiff’s misconduct. See MCL 38.101; MSA 15.2001; *Hagerty v State Tenure Comm*, 179 Mich App 109, 116; 445

NW2d 178 (1989). The lengthy suspension will help assure the safety of the school community and send a message that violent, assaultive behavior will not be tolerated in a school environment.

Affirmed.<sup>1</sup>

/s/ Richard Allen Griffin

/s/ Richard A. Bandstra

/s/ Meyer Warshawsky

<sup>1</sup> In supplemental briefs, the parties have brought to our attention a May 7, 1996, arbitration award that conflicts with the Tenure Commission order. We question, but do not decide, the decision by the arbitrator not to be bound by the Tenure Commission order and opinion. The issue whether the arbitrator exceeded his legal authority is not before us in the instant appeal.