IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ellen E. Kozlosky, John F. Larkin, Gabriel H. Petorak and Joan F. Smith	:	
v.	:	No. 1948 C.D. 2007
Lakeland School District and Margaret Billings-Jones, Superintendent, Appellants	:	Submitted: March 25, 2008

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: April 18, 2008

The Lakeland School District and Margaret Billings-Jones, Superintendent, (hereinafter collectively referred to as "School District") appeal from an order of the Court of Common Pleas of Lackawanna County (trial court) granting the motion for preliminary injunction filed by John F. Larkin and Gabriel H. Petorak.[1] The trial court directed the School District to reinstate Larkin and Petorak to their positions as full-time maintenance employees with all benefits and entitlements thereof. The trial court further ordered that the ruling shall remain in

[1] The trial court denied the motion for preliminary injunction with respect to Ellen E. Kozlosky and Joan F. Smith. Review of that denial is not before this Court.

effect until final disposition of their statutory and constitutional claims concerning their employment by a tribunal or court of competent jurisdiction.

This matter began on August 9, 2007 when Larkin and Petorak filed a complaint in equity and a motion for preliminary injunction. In the complaint, Larkin and Petorak allege that they are full-time maintenance workers who were employed by the School District for approximately eighteen years each. They allege that they were members in and officers of the Lakeland Education Support Professionals, an employee organization pursuant to the Public Employe Relations Act[2] (PERA) that was decertified on May 22, 2007.

Larkin and Petorak allege that the Lakeland Education Support Professionals filed on February 6, 2006 an unfair labor practice charge against the School District alleging that the superintendent was harassing its officers, particularly Larkin. On June 29, 2007, Larkin and Petorak were informed by the School District that their employment with the School District was not being renewed. Larkin and Petorak allege that: (1) they were not informed as to why they were not being renewed; (2) they did not have a prior disciplinary record; (3) they were not provided with a Loudermill hearing prior to their dismissal; and (4) they were not provided with a post deprivation hearing as required by the Pennsylvania Public School Code of 1949.[3] Larkin and Petorak allege further that they filed unfair labor practice charges pursuant to the PERA against the School District alleging they were terminated as retaliation for union activity.

[2] Act of July 23, 1970, P.L. 563, as amended, 43 P.S. §§1101.101 - 1101.2301.

[3] Act of March 10, 1949, P.L. 30, as amended, 24 P.S. §§1-101 - 27-2702.

Larkin and Petorak requested prohibitory injunctive relief based on the foregoing. Specifically, they requested that the School District be enjoined from non-renewing/dismissing them without cause.

On August 9, 2007, Larkin and Petorak appeared before the trial court seeking the issuance of a special preliminary injunction without an evidentiary hearing. The trial court recognized that although Larkin and Petorak indicated that they were seeking prohibitory injunctive relief by requesting that the School District be enjoined from terminating their employment, what they were actually requesting was the issuance of a mandatory injunction requiring the School District to reinstate them as employees since they were previously terminated effective July 1, 2007 and were not currently employed by the School District. Upon consideration, the trial court denied the request for injunctive relief without prejudice to Larkin's and Petorak's right to request the issuance of a mandatory preliminary injunction directing the School District to reinstate their employment pending the outcome of their administrative proceedings before the Pennsylvania Labor Relations Board (PLRB) following the completion of an evidentiary hearing in the matter.

An evidentiary hearing on the request for mandatory injunctive relief was held before the trial court on August 22, 2007. The trial court, relying on Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985), determined that a public employee with a reasonable expectation of continued employment has a property right which cannot be terminated without constitutional due process. The trial court determined further that Section 514 of the Public School Code[4] provides

[4] 24 P.S. §5-514. Section 514, which is entitled "Removal of officers, employes, etc.", provides as follows:

(Continued....)

a mechanism for notice and hearing to meet constitutional muster; therefore, since Larkin and Petorak were not afforded a notice or hearing, they were entitled to injunctive relief only if they had a reasonable expectation of continued employment.

Based on the evidence presented, the trial court found that both Larkin and Petorak had a reasonable expectation of continued employment with the School District because they each had been employed as full-time maintenance workers for approximately eighteen years, they each had received full health benefits and they each had accumulated leave from year to year. Therefore, the trial court determined that the School District had violated their constitutional and statutory rights by terminating their property right without due process. Accordingly, the trial court held that Larkin and Petorak were entitled to reinstatement pending further proceedings. With regard to Larkin's and Petorak's request that the trial court make factual findings concerning the merits of their unfair labor practice charges, the trial court declined as the courts have consistently deferred to the expertise of the PLRB in such matters.

> The board of school directors in any school district, except as herein otherwise provided, shall after due notice, giving the reasons therefore, and after hearing if demanded, have the right at any time to remove any of its officers, employes, or appointees for incompetence, intemperance, neglect of duty, violation of any of the school laws of this Commonwealth, or other improper conduct.
>
> On the removal by the board of school directors of any officer, employe, or appointee, such officer, employe, or appointee shall surrender and deliver to the secretary, or other person designated by the board, any and all papers, property, and effects of the school district in his hands at the time of such removal.

By order entered August 25, 2007, the trial court directed the School District to reinstate Larkin and Petorak to their positions as full-time maintenance employees with all benefits and entitlements thereof. The trial court further ordered that the ruling shall remain in effect until final disposition of their statutory and constitutional claims concerning their employment by a tribunal or court of competent jurisdiction. Finally, the trial court ordered that Larkin and Petorak each post a bond in the amount of $100.00 in compliance with Pa. R.C.P. No. 1531. This appeal by the School District followed.

Herein, the School District contends that the trial court erred in granting a preliminary injunction to Larkin and Petorak because the elements required for granting a preliminary injunction have been not been established. We agree.

The Supreme Court of Pennsylvania has set forth the criteria that must be satisfied in order for a court to lawfully enter a preliminary injunction.

> There are six essential prerequisites that a party must establish prior to obtaining preliminary injunctive relief. The party must show: 1) that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; 2) that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that the issuance of an injunction will not substantially harm other interested parties in the proceedings; 3) that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; 4) that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits; 5) that the injunction it seeks is reasonably suited to abate the offending activity, and 6) that a preliminary injunction will not adversely affect the public interest. The burden is on the party who requested preliminary injunctive relief.

Warehime v. Warehime, 580 Pa. 201, 860 A.2d 41, 46-47 (2004) (internal quotation marks omitted). Accord, Reed v. Harrisburg City Council, 927 A.2d 698, 702-03 (Pa. Cmwlth.) (en banc), petition for allowance of appeal denied, ___ Pa. ___, 931 A.2d 629 (2007). It is important to recognize that "[f]or a preliminary injunction to issue, every one of the prerequisites must be established; if the petitioner fails to establish any one of them, there is no need to address the others." Summit Towne Center, Inc. v. Snow Shoe, 573 Pa. 637, 828 A.2d 995 (2003).

This Court's general standard of review on appeal from the grant or denial of a preliminary injunction is not to inquire into the merits of the controversy but to only examine the record to determine if there were any apparently reasonable grounds for the action of the court below. Mazzie v. Commonwealth, 495 Pa. 128, 432 A.2d 985 (1981). Only if it is plain that no grounds exist to support the decree or that the rule of law relied upon was palpably erroneous or misapplied will this Court interfere with the decision of the chancellor. Id. With regard to our standard of review when reviewing the grant of a mandatory preliminary injunction, the Pennsylvania Supreme Court in Mazzie stated that:

> We have deviated from this standard only in those cases where we were required to review the grant of a mandatory preliminary injunction. Generally, preliminary injunctions are preventive in nature and are designed to maintain the status quo until the rights of the parties are finally determined. There is, however, a distinction between mandatory injunctions, which command the performance of some positive act to preserve the status quo, and prohibitory injunctions, which enjoin the doing of an act that will change the status quo. This Court has engaged in greater scrutiny of mandatory injunctions and has often stated that they should be issued more sparingly than injunctions that are merely prohibitory. Thus, in reviewing

> the grant of a mandatory injunction, we have insisted that a clear right to relief in the plaintiff be established.

Id. at 134, 432 A.2d at 988 (citations omitted).

With the foregoing in mind, we turn to the trial court's grant of the mandatory preliminary injunction directing the School District to reinstate Larkin and Petorak to their positions as full-time maintenance employees with all the benefits and entitlements thereof pending the final disposition of their statutory and constitutional claims concerning their employment by a tribunal or court of competent jurisdiction. As stated previously herein, the trial court granted injunctive relief on the basis that both Larkin and Petorak, as public employees, had a continued expectation of employment; therefore, they were entitled to notice and a hearing in accordance with Section 514 of the Public School Code prior to their property rights being terminated.

Upon review, we conclude that the trial court erred in granting the mandatory preliminary injunction as the record does not establish that Larkin and Petorak have a clear right to relief. Larkin and Petorak correctly state that this Court has held that nonprofessional public school employees have a property right in their expectation of continued employment, as defined in Section 514 of the Public School Code, and a school board must comply with procedural due process safeguards when dismissing them for cause. Lewis v. School District of Philadelphia, 690 A.2d 814 (Pa. Cmwlth. 1997). However, this Court has also held that Section 514 provides only limited statutory protection for nonprofessional employees and that it does not protect against terminations for economic reasons. Sergi v. The School District of the City of Pittsburgh, 368 A.2d 1359 (Pa. Cmwlth. 1977). As such, Section 514 does not provide a statutory guarantee that would give rise to a property interest that

would require notice and a hearing if a nonprofessional school employee is terminated, dismissed, or not reappointed due to budgetary or economic reasons.

The record shows that Larkin and Petorak were reappointed by the School District each year as nonprofessional maintenance employees and that they were not reappointed for the 2007-2008 school year. The record shows further that the alleged reason for the School District's decision not to reappoint them was based on economic reasons. While Larkin and Petorak contend that they were "terminated" as opposed to not being "re-appointed", such distinction is irrelevant. Section 514 of the Public School Code does not apply where a nonprofessional employee is removed from employment due to budgetary or economic reasons. Therefore, Larkin and Petorak have failed to establish a clear right to relief.

We recognize that Larkin and Petorak allege that they were terminated due to their involvement with the union. However, in granting the mandatory preliminary injunction, the trial court based its decision on the theory that Larkin and Petorak were entitled to due process pursuant to Section 514 of the Public School Code because they had a reasonable expectation of continued employment and deferred any issues regarding their unfair labor practice charges to the PLRB. Such deferral was proper. If Larkin and Petorak prevail in the proceedings on the unfair labor practice charges before the PLRB, they can be reinstated with full back pay and benefits pursuant to the PERA.[5] Thus, they will not suffer any immediate and irreparable harm that cannot be compensated by damages.

[5] See Section 1303 of the PERA, 43 P.S. §1101.1303. Section 1303 vests the PLRB with broad remedial power to effectuate the policies of the PERA including ordering the reinstatement of employees, with or without back pay. In other words, the PLRB is empowered to order that the School District reimburse or make whole both Larkin and Petorak if the PLRB determines that the School District committed an unfair labor practice by not reappointing them as nonprofessional maintenance employees for the 2007-08 school year.

Accordingly, the trial court's order granting the mandatory preliminary injunction is reversed. As stated previously herein, every one of the prerequisites for preliminary injunctive relief must be established. If the petitioner fails to establish any one of them, there is no need to address the others. Summit Towne Center, Inc. As such, we will not address whether Larkin and Petorak established the remaining prerequisites.

JAMES R. KELLEY, Senior Judge

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O R D E R

AND NOW, this 18th day of April, 2008, the order of the Court of Common Pleas of Lackawanna County dated August 28, 2007, at 07 CV 4375, is reversed.

JAMES R. KELLEY, Senior Judge