

Joyce Cook v. Chambersburg Area School District and Shippensburg School District
Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch
Civil Action No. 2007-4133

HEADNOTES

Summary Judgment; Transfer of Entities Act;

1. The Transfer of Entities Act, 24 Pa. Con. Stat. § 11-1113(a), provides employment protection for an educator who is suspended from her position due to a program or class being transferred from one institution to another.

2. Where a school has a pre-existing program or class, and does not expand or modify that program in order to absorb students from a similar program at another school which has cancelled that particular program, no transfer has occurred within the meaning of the Transfer of Entities Act.

3. Where no transfer has occurred, the Transfer of Entities Act does not provide protection to the educator.

Appearances:

Michael O'Connor, Esq., Attorney for Plaintiff

Christopher Conrad, Esq., Attorney for CASD

Aimee Willett, Esq., Attorney for SASD

OPINION

Before Herman, J.

Procedural History

This matter was commenced by a Complaint filed by Plaintiff, Joyce Cook, seeking declaratory judgment under the Transfer of Entities Act (Act), 24 Pa. Con. Stat. § 11-1113(a). Plaintiff brought this action against the Chambersburg Area School District (CASD) and the Shippensburg Area School District (SASD) as a result of not being hired for a business department teaching position after losing her position at the Franklin County Career and Technology Center (FCCTC) due to the FCCTC's business program being eliminated. CASD filed an answer on December 12, 2007. SASD filed an answer on December 31, 2007. The case remained in the discovery stage until CASD filed a Motion for Summary Judgment on September 18, 2012. Plaintiff's answer was filed on October 18, 2012. SASD followed with its own Motion for Summary Judgment October 29, 2012. Plaintiff's answer was filed on November 27, 2012. All parties filed briefs and oral argument was held on January 3, 2012.

Factual Background

Plaintiff taught Business Data Processing at FCCTC for 29 years. The FCCTC business program consisted of students from local high schools who enrolled in this program in lieu of somewhat more traditional curriculum taught at the high schools. Due to decreasing student enrollment in the FCCTC program over a period of several years, Defendants CASD and SASD ended this relationship with FCCTC and stopped sending students to the program. As a result, FCCTC ended the business program and Ms. Cook was placed on furlough on June 30, 2006. Ms. Cook applied for and was approved for a medical sabbatical for the 2006/2007 school year.

For a significant period of time prior to the defendants' decision to stop sending students to FCCTC's business program, both CASD and SASD's high school operated their own business department with a wide selection of courses. Prior to the 2007/2008 school year, CASD had three positions open in its business department. SASD had one position open. Plaintiff submitted an employment application to each school, however was not hired.

Discussion

Chambersburg Area School District

Defendant CASD argues that Plaintiff is not entitled to the protection of the Transfer of Entities Act because Plaintiff failed to demonstrate that the business data processing program was "transferred" to CASD.

When a program or class is *transferred* as a unit from one or more school entities to another school entity or entities, professional employees who were assigned to the class or program immediately prior to the transfer and are classified as teachers as defined in section 1141(1) and are suspended as a result of the transfer and who are properly certificated shall be offered employment in the program or class by the receiving entity or entities when services of a professional employee are needed to sustain the program or class transferred, as long as there is no suspended professional employee in the receiving entity who is properly certificated to fill the position in the transferred class or program.

24 Pa. Con. Stat. § 11-1113(a) (emphasis added).

In Hahn v. Marple Newtown School Dist., math classes at an affiliated vocational school were eliminated due to dwindling enrollment in those classes. Students in the program fulfilled their math requirement at the high school. The math teachers who taught at the vocational school notified the district of their intent to invoke protection under the Act. When a math teacher at the high school retired, the school hired an individual other than the three math teachers, prompting the three to sue the school district under the Act. The Commonwealth Court held that because the high school had the same number of math courses prior to and after the elimination of the math courses at the vocational school, and because the types of math courses were the same as the ones that were eliminated, no transfer occurred. The Commonwealth Court stated that "[c]learly, the Act was meant to protect professional employees whose positions were eliminated in one school entity and recreated in another which is not what occurred here. Thus to invoke the Act in this situation would render an unreasonable result." Hahn v. Marple Newtown School Dist., 571 A.2d 1115, 1118 (Pa. Cmwlth. 1990).

CASD likens itself to the school district in Hahn, arguing that lack of interest in the FCCTC business courses led to their elimination. The lack of interest was due to CASD's preexisting and more comprehensive business program. The program already existed, no new teachers were hired to compensate for the increase in enrollment, and no new courses were created in order to effectively replace the FCCTC program. ^[1]

There is one additional bit of evidence presented by Plaintiff that should be addressed regarding whether or not a transfer occurred. Plaintiff notes that after the FCCTC program was ended, CASD offered a Cooperative Education class which it did not previously have. Here we must differentiate between whether the program was transferred or the class was transferred as the Act allows for both. We find that this new class is not evidence that the program was transferred as there does not seem to be a dispute as to all of the other evidence which establishes that CASD had a pre-existing business education department offering a wide array of courses. This new Cooperative Education class would merely be a modification to the pre-existing program. The Act also provides protection for transferred classes. This new Cooperative Education class could possibly be considered evidence of a transfer of this particular class from FCCTC to CASD, however, the record reflects, and Plaintiff concedes, that she is not certified to teach a Cooperative Education class. (CASD Exhibit C., Cook Dep. at 24-25). Her teaching certificates are in the areas of Accounting, Typewriting, and Data Processing. Therefore, even if this class was transferred, no evidence exists to show that Ms. Cook was properly certified to teach it.

It does not appear that the Act is applicable here because there was no transfer of the FCCTC business program to CASD. Rather, the business program was phased out and students who wished to pursue business courses had the option of doing so at CASD which had a preexisting business education department. The distinction between a "transfer" and what happened in this case is clear when we compare the matter before us to other cases in which a program was dissolved at one school and restarted at another school which previously had no such program. See Allegheny Intermediate Unit # 3 Educ. Ass'n v. North Hills Sch. Dist., 624 A.2d 802 (Pa. Cmwlth. 1993); Luzerne Intermediate Unit # 18 Educ. Ass'n v. Pittston Area Sch. Dist., 650 A.2d 1112 (Pa. Cmwlth. 1994). In those cases, we see that the true meaning of the word "transfer" within the context of the Act is the ending of a program or class at one school and restarting of that same program in another school.

Therefore, we find that no transfer of the business program occurred. Further, while there is some evidence that the Cooperative Education class may have been transferred, Ms. Cook's undisputed lack of certification would exclude her from the Act's protection because she was not "properly certified" as required by the statute. Because CASD is entitled to judgment as a matter of law on this issue, we need not address CASD's additional arguments seeking the same relief.

Shippensburg Area School District

Defendant SASD also raises the same argument that no transfer occurred. The discussion for this defendant is the same as for CASD, therefore, we need not restate the same analysis. We find for the same reasons as we did for CASD, that no transfer of the business program or class occurred. SASD had a preexisting business program with a wide variety of courses. It is undisputed that SASD already had a business program in place prior to ending this arrangement with FCCTC's business program. (CASD Exhibit C., Cook Dep. at 62-63). A position in the SASD business department became available due to a retirement and not the addition of a class. There was no expansion of the business department to accommodate any additional courses or programs. (Plaintiff Exhibit T, Lesney Dep. at 14-15, 24). Therefore, we find that there is no evidence in the record supporting the Plaintiff's argument that the discontinued classes or programs at FCCTC were transferred to SASD. Because SASD is entitled to judgment as a matter of law, we need not address the SASD's additional arguments seeking the same relief.

Conclusion

We find that no transfer of FCCTC's business program occurred in either defendants' school district. The FCCTC program was phased out because each school already had its own preexisting business program and the students' interest in the FCCTC program was declining at a considerable rate. The Transfer of Entities Act does not apply to the plaintiff. The defendants' motions seeking summary judgment will be granted.

ORDER

NOW THIS 29th day of May 2013, upon review and consideration of the Defendants' Motions for Summary Judgment and briefs in support, the Plaintiff's response and brief in opposition, the record, applicable law, and the arguments presented at oral argument,

THE COURT HEREBY ORDERS that the Defendants' Motions for Summary Judgment are GRANTED pursuant to the attached Opinion. Judgment is entered in favor of the Defendants.

Pursuant to the requirements of Pa. R. Civ. P. 236 (a)(2),(b) and (d), the Prothonotary shall give written notice of the entry of this Order of Court, including a copy of this Opinion and Order of Court, to each party's attorney of record and shall note in the docket the giving of such notice and the time and manner thereof.

^[1] Defendant argues that Hahn has been abrogated due to a 1991 amendment of the Act. We find no case law overruling Hahn and see no changes to the statute which would deem the old meaning of "transfer" under Hahn contradictory with the use of the word "transfer" in the amended statute. The statute remained substantively similar in regards to its use of the word "transfer." Therefore, it appears that Hahn is still good law.