Labor History: Rogers v. New Haven Board of Ed

By Ed Leavy

As State workers, there are things we take for granted. Some of these things we don't want to contemplate, including the idea that if we are unjustly terminated and the arbitrator agrees that the termination did not meet the requirement of "just cause," we get our jobs back. If we win the arbitration, we go back to work; it seems logical. That construct is true for us because we are State workers; it is not true for teachers in municipalities. The tortured logic of the CT. Supreme Court's "Rogers vs. New Haven" means that even winning is losing, and due process for tenured municipal teachers is a sham.

The facts of the case are not in doubt. In March of 1997, Gloria Rogers was a tenured teacher serving in the role of assistant principal at Jackie Robinson Middle School. She had no discipline history whatsoever, One Friday Marie Young, a physical education teacher, asked for Griffin to report to her 5th and 6th grade class. One of the students in her class reported a theft of $91 (what a 5th grader needs with $91 remains a mystery). Griffin was aware that there were a number of neighborhood issues within the class, and wanted to have the issue resolved before the weekend. While Griffin searched the locker room, Young and a security guard searched the students in Young's office, which adjoined the locker room. Students leaving Young's office were heard complaining about the search; one student said, "It's nasty; they made me pull down my pants…" Young had announced that she was planning to strip search the girls, but Griffin never entered the room where the searches were being conducted.

The New Haven board's administrative manual stated, "School officials have the duty to protect the health, safety, and welfare of all students under their authority. At no time should school officials conduct a search which requires a student to remove more clothing than his/her shoes or jacket. Strip searches of students by employees of this school district are prohibited." Though Griffin herself did not conduct the searches, she did not investigate how the searches were being conducted nor stop them. The New Haven superintendent terminated Griffin's employment, and she requested a hearing as described in General Statute 10-151 (d), commonly called the teacher tenure act.

When the SVFT brings a case to arbitration, we have one arbitrator whom has been mutually agreed upon by both the union and the State. In municipalities, where teachers' rights are covered under 10-151, there is a three-person panel; one arbitrator appointed by the union, one by the Board, and one agreed upon by both parties. Such an arrangement makes unanimous decisions by the panel unlikely in all but the most obvious of cases. In this case, the majority of the panel concluded that Griffin "knew or should have known… that something was amiss and should have immediately checked to see what was going on in the office where the children were being searched." The majority of the panel concluded, however, that Griffin was not culpable for what happened and should therefore not be punished.

One might expect that the issue had been resolved, the termination rescinded, back pay restored, and she would return to work. One would be wrong. The board rejected the panel's recommendation, and maintained the termination of Griffin's employment. She sued, and the case ended up in the CT Supreme Court in 2000. She appealed on three counts, though the first had the most wide-ranging implications. The suit stated that "by the board's rejection of the findings of facts made by the hearing panel in favor of facts found only by the dissenter on the panel" her due process rights had been violated. The Court ruled that "the board is bound only by the factual findings of the hearing panel and may accept or reject the panels' legal conclusions and recommendations." The Court said that the board "accepts and adopts the 157 findings of the majority of the Panel and incorporates the findings of facts in its decision." The Court then ruled that while the Board had "discussed" the findings of the person who had

dissented on the final decision that Griffin should not be terminated, that discussion was "not essential to its conclusion" to terminate Griffin's employment despite the Panel's conclusion.

This decision demonstrates why teacher's tenure protection is an illusion in cities throughout Connecticut. The board of education picks one of the members on the arbitration panel. It can base its decision on the fact pattern accepted by anyone on the panel, including the Panel member they put on the Panel themselves. Then, if they don't like the decision made by the panel, they can cite their "special relationship with and responsibility to the community" and both look at facts not accepted by the panel – in this case statements made to Board members by parents – and then reject the conclusion of the panel. The truism "You can't fire a tenured teacher" is for the majority of teachers in the state ludicrous; you can fire them, and then when you lose in arbitration you can fire them anyway.

The decision also shows why the SVFT and AFT-CT are so adamant that making sure that the binding arbitration process that we have remains sacrosanct. While the State can look to the legislature or the Attorney General's office to vacate an award, the process is so difficult that it is rarely if ever used. When we win a termination case in arbitration, the member is "made whole" and returned to work. Winning in arbitration is certainly difficult, but at least the process is clear.

The information for this article comes from the Supreme Court decision, written by J. Callahan. The decision can be found at Findlaw.com, a great site for people like me who are interested in that kind of thing. Special thanks to Brian Doyle and Eric Chester (attorneys from Ferguson, Doyle, & Chester) for discussing this decision and its ramifications at the January AFT-CT Executive Committee meeting.