PERRY A. ZIRKEL

RIFfing Principals

During the current climate of economic difficulties and declining enrollments in public schools, reduction in force (RIF) has resurfaced as a major legal issue. In some cases, school principals find themselves on the job-losing, rather than the decision-making, side of the RIF process.

The following case and the accompanying question-and-answer discussion illustrate recent case law that has arisen when principals lose their position due to a purported reduction in force. The issues include the judicial interpretation of not only state RIF legislation and local employment contracts, but also federal constitutional and statutory civil rights.

The Case

Dr. M served as an elementary school principal in a small Iowa school district for 13 years. She held various teaching and administrative certifications and a doctorate in educational leadership. In July 2005, Dr. M had entered into her latest two-year contract, which is the maximum period allowed under Iowa's continuing contract law for non-superintendent administrators. In May 2006, the board sent her a notice of its intent to terminate her contract "effective at the end of the current school year" for the following reasons: (a) declining enrollment, (b) budgetary restrictions, (c) reduction of position, and (d) realignment of the district's organization.

During the previous six years, the school district's enrollment had declined by approximately 200 students, causing a notable loss in state funding. The district's resulting reduction of personnel included 15 of the 70 teachers, but none of the administrators. The superintendent, who had been with the district for nine months, sought to cut $500,000 from the district's budget. The proposed cuts included termination of Dr. M, with the superintendent proposing to subsume these duties as part of his role.

Dr. M promptly contested her proposed termination under the procedure prescribed under Iowa

statutes: a hearing before an administrative law judge (ALJ) with advisory authority to the school board. The ALJ proposed a decision in favor of Dr. M, but the school board decided to follow through with its intent to terminate her contract as of June 30, 2006. Dr. M promptly appealed the board's decision in state court, which concluded that the board did not have "just cause" for termination as required under state statute and her contract. The case ultimately proceeded to the state's highest court, which upheld the ruling in her favor, noting that the school board had not raised the issue of whether institutional (e.g., budget)—rather than individual (e.g., principal's performance)—problems was part of the requisite termination during a contract.

Meanwhile, in April 2007, the school board sent Dr. M notice of intent to terminate her employment at the end of that school year, listing the same set of reasons as it had specified in the previous notice. Under an administrative realignment, the principal for grades 7-12 was promoted to be superintendent and, as part of his duties, part-time elementary principal. The superintendent became assistant superintendent and—filling the rest of Dr. M's position—part-time elementary principal; and the board hired the brother of the new superintendent to be the 7-12 principal. The plan included the retirement of the former superintendent at the end of the following year, leaving the school district with two administrators.

Dr. M promptly challenged this second termination, and after a hearing the ALJ concluded that the school board had shown just cause for the termination, which in this case amounted to nonrenewal of the contract. The school board adopted this proposed decision, and Dr. M appealed to state court.

How do you think the state court ruled in this second case?

In *Martinek v. Belmond-Klemme Community School District* (2009), the Iowa Supreme Court upheld the trial and intermediate appellate court decisions in favor of the district. Concluding that "just cause" in the context of nonrenewal of principals' contracts in Iowa extends to institutional problems, the court examined the district's stated reasons to determine whether they had a requisite factual foundation. Dr. M acknowledged that the district, like most rural Iowa districts, had experienced significant student losses during the recent decade, but she argued that the school board was required to show such losses specific to the term of her most recent contract. The court disagreed, concluding that pertinent precedents did not limit the scope of consideration that narrowly. For budgetary problems, the court similarly relied on general fiscal data, such as the drop in the district's solvency ratio from 25 percent in 2003 to 3.5 percent in 2006 (and a projected 1.1 percent for the end of 2007), rather than Dr. M's narrow focus on the differential between her salary and that of her replacements under the immediate reorganization.

For the elimination and realignment, the court again exhibited district deference, focusing on the gradual reduction of administrators from three to two, with the absorption of the elementary principal's duties, rather than Dr. M's specific attack on the immediate interim arrangement.

Is the judicial resolution of Dr. M's case representative of the applicable case law where the legitimacy of RIF in terms of its factual foundation is at issue?

Yes, although the state laws and individual contracts for RIF vary, when the case comes down to the factual foundations for RIF, such as enrollment declines or fiscal exigencies, the courts generally accord the defendant districts' rather broad latitude in terms of the scope of the requisite evidence. This latitude exists when the RIF applies to administrators specifically, just as it does for teachers more generally. For example, in *State v. Quiring* (2001), the Minnesota Court of Appeals upheld the RIFfing of an elementary principal after the district reorganized its administrative personnel to absorb her duties in the wake of substantial decline in revenues. Apparently advised of the district's broad legal discretion in such matters, the plaintiff-principal relied on the state's public employee collective bargaining law, but the court concluded, under the provisions of that statute, that elimination of her position did not constitute subcontracting and that "reorganizing the administrative structure by discontinuing the statutorily discretionary principal positions, because of budgetary restrictions and declining enrollment, falls within the statutory and contractual rights of the school board."

If Dr. M had challenged the school board's decision based on bias, what would be the likely judicial outcome? Would your answer differ if (a) the state law had not required an ALJ and the board hired as the hearing officer an attorney selected or paid by the law firm that represented the board, and/or (b) the school board had changed in the interim, with the new members including those critical of the principal?

The odds would strongly favor the school board. First, courts generally have recognized that, as administrative bodies, school boards have multiple functions, including executive and adjudicative roles. Thus, the standards for impartiality of a school board are much broader than for a court. Second, unless state law, local policy, or a collective bargaining agreement called for an ALJ or arbitrator with binding authority, the school board's delegation to and selection of a hearing officer fits within this broad administrative discretion. Finally, the political realities of dramatic shifts in school board membership and/or—as in the original case—the suspicious ups-and-downs of administrative personnel are not sufficient to show impermissible bias.

For example, in *James v. Independent School District No. I-050* (2011), a Minnesota appellate court rejected the 14th Amendment bias claims of two principals whose positions had been eliminated in the wake of a fiscal crisis. The court pointed to the well-established presumption in favor of the school board that can only be overcome by strong and specific evidence of personal bias. Consequently, the court concluded that "board members' previous positions regarding plaintiffs' job performance does not automatically disqualify them from participating in the Board's decision on the fiscal issue." Second, the court made short shrift of the principals' contentions that the hearing was a sham. More specifically, the court concluded that any errors by the business manager in the fiscal justification for RIF and the connections between the board's attorney with the hearing officer and financial consultant did not add up to a denial of due process.

Indeed, the prevailing view is that if state law, including the collective or individual contract, does not require a hearing at least to show the requisite foundation for RIF, the individual employee does not have the requisite property or liberty right for due process. For example, in *Goden v. Machiasport School Department Board of Directors* (2012), the federal district court in Maine ruled that an elementary principal was not entitled to constitutional due process, i.e., a hearing, because the evidence showed that the loss of her position was part of a good-faith cost-cutting administrative reorganization, thus based on the institution rather than individual.

If Dr. M had claimed that the board's proffered RIF reasons were a pretext for legally impermissible grounds, such as First Amendment expression or statutory discrimination, what would be the likely judicial outcome?

If Dr. M preponderantly proved that the real reason for the elimination of her position was legally impermissible, she would have a valid basis for relief regardless of whether the board's decision was a termination, nonrenewal, or suspension. However, the case law to date shows that the odds are against the plaintiff-principal successfully proving that the board's reasons were a pretext and that the school board's decision violated her constitutional or statutory civil rights. The aforementioned *James* case serves as an example of the constitutional—specifically First Amendment expression—case law. In this case the Tenth Circuit summarily rejected the plaintiffs' First Amendment claim. The court concluded that the plaintiff-principals "did not establish the occurrence and/or the content of the speech sufficiently for the [trial] court to even begin the [requisite multi-step] analysis." This multi-step analysis, which already presented major hurdles for plaintiff public employees, became all the more difficult in *Garcetti v. Ceballos* (2006), where the Supreme Court ruled that the First Amendment does not protect expression pursuant to a public employee's duties. On the other hand, exemplifying the RIF-related case law concerning statutory discrimination, a

70-year old assistant principal who had been first transferred to an in-school suspension position and then, shortly thereafter, RIFfed for purported fiscal reasons lost his suit under the Age Discrimination in Employment Act (*Sadler v. Franklin County School District*, 2011). As public school case law generally shows, plaintiffs face a steep uphill slope in proving that the real reason for adverse action, such as involuntary transfer or dismissal, is discrimination based on race, gender, age, or other protected status.

Conclusion

RIF is reappearing in the lexicon of school litigation due to the downturn in public school enrollments and budgets. The initial legal framework represents varying procedural requirements and substantive grounds depending on state law, including local collective or individual contracts. In general, because this framework is based on the institutional dimension of the district's health rather than the individual dimension of the educator's performance, these rules and their judicial interpretation are defendant-friendly. This trend strengthens the position of the principal and other administrators who participate in RIF decisions in terms of possible litigation. Conversely, however, principals and other administrators are in a weaker position than teachers when subjected to RIFfing due to their more visible and vulnerable positions.

The legal answer for principals is to seek stronger protections in state laws, local policies, and individual contracts, rather than having unrealistic and uninformed expectations of sympathetic judges. The non-legal, and possibly better, answer is to exert their individual and collective talents and energies for effective leadership, which maximizes the fiscal and educational health of the district and the concerted support of the school and external community.

Perry A. Zirkel is university professor of education and law at Lehigh University in Bethlehem, Pennsylvania.