
RACINE EDUCATIONAL ASSISTANTS
ASSOCIATION,

Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS
COMMISSION, RACINE UNIFIED SCHOOL
DISTRICT and BOARD OF EDUCATION OF THE
RACINE UNIFIED SCHOOL DISTRICT,

Respondents.

DECISION

Case No. 99-CV-1060

[Decision No. 29254-B]

[NOTE: This document was re- keyed by WERC. Original pagination has been retained.]

Racine Educational Assistants Association seeks a judicial review, pursuant to Chapt. 227 Stats., of a decision by the Wisconsin Employment Relations Commission as relates to an incident and facts occurring on 3 February 1997.

The Petitioners submit that the Educational Assistant assigned to help high school age students that were diagnosed as cognitively disabled – severe was ordered to commit an illegal act when the Educational Assistant was ordered to provide opposite-gender bathrooming assistance to the student.

The Educational Assistant was a female, with a long history of experience and the student was a 16-year old male.

The incident occurred during a contract hiatus. The

Petitioner submits that the District failed to maintain the status quo as to conditions of employment thus violating the situation under the contract hiatus; the Petitioner submits that the situation had not been the subject after bargaining point and therefore was a unilateral alteration of the condition of employment enjoyed by the Educational Assistant.

The facts of the case are not in dispute. The female Educational Assistant was required to assist a male student in a bathroom/toilet function; the student was “CDS”.

The Commission found that the Educational Assistant, in bidding for the job, was aware of the specific “duties and responsibilities” of the job; to-wit: the job required the Educational Assistant to bathroom students (clean body fluids and waste); and the job posting was not gender specific as related to such bathroom duties.

The Commission found, and it is not disputed, that the majority of the educational assistants for the District were female; and prior to the incident female special education teachers and female educational assistants had provided bathroom assistance to the exceptionally educational need students, including the cognitively disabled severe students. The commission did note that the ratio of male to female educational assistants required female assistants to attend male students, however male educational assistants had not attended female students.

The Commission also found that the District had hired and provided gender-specific supervisors to supervise bathroom and shower rooms for non-special education students but had not provided gender-specific supervisors as related to the exceptionally educational need educational need student including the cognitively disabled – severe.

While this case involved a situation that would normally cause a person to desire gender-specific supervision, the contract and the history of the District with regard to such educational assistants and their duties do not support their position for the purpose of a judicial review of the Department's decision. The cases submitted by the Petitioner are not controlling with regard to a constitutional issue as to gender-specific supervision nor controlling with regard to the Department arriving at a conclusion contrary to the facts and law. The Department's decision is appropriate underneath the terms of the contract and the bidding process for the job; and the District's policies and prior procedures are in conformity with the order given to the Educational Assistant on the day of the event.

The Court concludes that the District did not unilaterally change its policies or practices for the event that is the subject of the action; nor was the action by the District a unilateral action contrary to the contract terms and conditions existing on the day of the event.

The Court, even if the Court disagreed with the decision of the Commission, is bound to affirm the Commission's decision.

The Petitioner's reply brief submitting that the District was driven by a cost incentive and it was the disabled students' rights that must be observed or reviewed is inappropriate in this proceeding.

The Court concludes that the actions of the District, as found by the Commission, were appropriate and the Commission's decision is supported by adequate facts and conclusions which are reasonable and appropriate upon the facts. The application and petition of the Racine Educational Assistants Association is dismissed. The attorney for the Respondent shall submit an order to this Court within 15 days of the date this decision is rendered for signature and filing.

Dated this 4th day of August, 2000.

BY THE COURT:

Allan B. Torhorst /s/

Hon. Allan B. Torhorst, Circuit Judge