[Cite as *Martin v. Bellevue City School Dist. Bd. of Edn.*, 2013-Ohio-4420.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

William D. Martin, Jr.	Court of Appeals No. H-12-002
Appellant	Trial Court No. CVH 2010 290
v.	
The Board of Education of the Bellevue City School District	**DECISION AND JUDGMENT**
Appellee	Decided: September 27, 2013

* * * * *

Dennis L. Pergram, for appellant.

Daniel D. Mason, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of the Huron County Court of Common Pleas that affirmed the administrative decision of appellee, the Board of Education of the Bellevue City School District ("Board"), to terminate the employment contract of

appellant William D. Martin, Jr. Appellant now challenges that judgment through the following assignments of error:

1. Assignment of Error No. 1:

The trial court abused its discretion in affirming the Board of Education's order of termination because the Board of Education did not consider Mr. Martin's employment record and did not give him the opportunity to correct the alleged deficiencies.

2. Assignment of Error No. 2:

The trial court abused its discretion in affirming the Board of Education's order of termination because the Board of Education's order terminating Mr. Martin's contract for alleged gross inefficiency was not supported by a preponderance of substantial, reliable and probative evidence and was not supported by, and was against, the weight of such evidence and is contrary to the law.

3. Assignment of Error No. 3:

The trial court abused its discretion in affirming the Board of Educations' [sic] order of termination because the Board of Education's order terminating Mr. Martin's contract for alleged willful and persistent violations of the reasonable rules and regulations of the Bellevue City School District Board of Education, particularly Policy ACAA and for other good and just cause, and was not supported by a preponderance of

substantial, reliable and probative evidence, was not supported by, and was against, the weight of such evidence and was contrary to law.

4. Assignment of Error No. 4:

The trial court abused its discretion in affirming the Board of Education's order of termination because the Board of Education relied on (1) alleged facts that were not introduced as evidence, (2) alleged facts that were not relevant to the specifications, (3) alleged facts that constituted private conduct and (4) because the Board of Education terminated Mr. Martin's contract because the Referee did not comment on the credibility of all witnesses and address every factual issue.

5. Assignment of Error No. 5:

The trial court abused its discretion in affirming the Board of Education's order of termination because the Board of Education's order of [sic] terminating Mr. Martin's contract did not give due deference to the Referee's findings and recommendation.

6. Assignment of Error No. 6:

The trial court abused its discretion by not awarding attorney's fees to Mr. Martin.

{¶ 2} The facts of this case are as follows. On May 1, 2008, the Board entered into a three year employment contract with appellant for his services as superintendent of schools. The contract specified that termination of appellant's employment would be

governed by R.C. 3319.01 and 3319.16, and that the Board had the right to terminate the contract for several specifically enumerated reasons, including the failure of appellant to comply with and/or follow the policies, rules and regulations of the Board, inefficiency, immorality, misfeasance, malfeasance and/or other good and just cause.

{¶ 3} In June 2009, several female employees of the school district complained to the school district's treasurer, Nancy Beier, about the behavior of appellant and his assistant, Darrell Hykes. Because Beier believed the allegations crossed the line as to sexual harassment, she took the complaints to the Board. On July 16, 2009, the board unanimously adopted a resolution to notify appellant of its intention to terminate his contract on the grounds of "gross inefficiency, willful and persistent violations of reasonable policies of the Board of Education, and other good and just cause." The notification outlined and alleged numerous instances of conduct exhibited by and statements made by appellant during the 2008-2009 school year which the board asserted warranted the termination of his contract. The notification specifically identified statements and conduct that appellant had made and exhibited in his dealings with the president of the teacher's union, numerous principals of the school district, and an administrative assistant, that were construed by those present as being of a sexual nature and creating a hostile work environment. The notification further outlined allegations regarding appellant's failure to supervise and discipline Darrell Hykes, the assistant to the superintendent, for Hykes' inappropriate behavior and actions throughout the school year. The notification asserted that appellant's failure to enforce board policies on sexual

harassment and to supervise and discipline Hykes created a hostile work environment based on sexual discrimination so as to place the school district at legal risk and had substantially undermined appellant's ability to continue to function effectively as the superintendent of schools. The board therefore suspended appellant without pay, pending final board action.

{¶ 4} Pursuant to R.C. 3319.16 and 3319.161, appellant demanded a hearing before a referee. In addition, appellant filed an application for unemployment compensation. The pre-termination hearing took place before an Ohio Board of Education hearing officer over four days during which numerous witnesses testified. On January 14, 2010, the hearing officer released his decision which included findings of fact and a recommendation. Significantly, the hearing officer's findings of fact are summarized as follows.

{¶ 5} Carrie Sanchez is the former president of the Bellevue Education Association, the teacher's union. When appellant began with the Bellevue School District in the summer of 2008, he had regular contact with Sanchez. Over the course of the 2008-2009 school year, appellant made numerous comments to Sanchez which she interpreted as being sexual in nature. While discussing her career, appellant stated: "I am committed to growing you and your career. Let me fertilize you, let me spread some fertilizer on you, and we'll go a long way." When discussing a presentation Sanchez was to give to the Board, appellant stated: "I'd like to see what your, you want to present first. In fact, I want you to do me first before you do the Board." Appellant then

laughed, smacked Sanchez' knee and said: "That's right, do me first." Appellant asked to meet Sanchez alone in her office and called her at home on a Friday night asking to talk and telling her, "I just need to hear your voice." When Sanchez asked appellant for a job reference, appellant responded: "I would tell them that you are the real deal, and that you have the most piercing brown eyes I've ever seen." On occasion, appellant would look Sanchez up and down and stare at her bustline before making eye contact with her. On one occasion, Sanchez asked appellant if he could speak to her college graduate class on the duties of a school superintendent. In discussing the weather, appellant commented at length about how attractive the women were on The Weather Channel. On another occasion, when discussing the reassignment of a heavyset female teacher, appellant commented, "I don't think the high school boys will miss seeing her."

{¶ 6} Upon reviewing the evidence, the hearing officer concluded that the Board had not proven by a preponderance of substantial, reliable and probative evidence that appellant's conduct or comments with respect to Sanchez were based on sex or that any of his conduct or comments were so severe as to affect Sanchez in her employment. The hearing officer therefore concluded that appellant's actions toward Sanchez did not amount to sexual harassment.

{¶ 7} Appellant's conduct toward and in the presence of district school principals also formed the basis for several of the charges against him. At a meeting of school principals, appellant placed his arm around Luana Coppus, an elementary school principal, and stated: "Here's my hottie honey." He was also observed by three school

principals to be looking at females' bustlines and looking at them from head to toe. At the conclusion of a meeting of school principals, appellant declared, "this meeting was as much fun as a warm enema," and at a private holiday party attended by many school district employees, appellant announced "this meeting was as much fun as the inside of a prom queen's thighs on prom night."

{¶ 8} Upon reviewing this evidence, the hearing officer concluded that while the comments and actions might have been unprofessional, rude or crass, they did not rise to the level of sexual harassment creating an objectively hostile work environment. Regarding the "prom queen" comment, the hearing officer determined that because it was not directed toward any one individual and was made at a private party, not a school function, it did not fall within the definition of sexual harassment.

{¶ 9} The hearing officer also reviewed evidence that appellant had made comments to Evelyn Woodruff, who had been an assistant to Daryl Hykes. Woodruff had testified that during a break in a meeting, appellant told her she looked nice. He then asked her to turn around so he could look at her and told her that a tattoo she had on her toe was sexy. Again, the hearing officer concluded that while the comments might be considered unprofessional or not "politically correct," they were not based on sex and were not severe and pervasive so as to affect the terms and conditions of Woodruff's employment.

{¶ 10} On the issue of sexual harassment, the hearing officer concluded that while the comments alleged to have been made by appellant were in fact made by him, they did

not amount to sexual harassment or create a hostile work environment as defined by the United States Supreme Court in *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993). As such, the hearing officer concluded that the Board had not established that appellant willfully and persistently violated reasonable regulations of the Board of Education or that appellant's contract should be terminated for good and just cause based on the allegations that he had engaged in sexual harassment or had created a sexually hostile work environment.

{¶ 11} Finally, the hearing officer addressed allegations regarding appellant's supervision of Daryl Hykes. Many of the witnesses who testified at the hearing testified to Hykes' penchant for making sexually inappropriate remarks and discussing his sex life with the administration staff. Several female witnesses testified that Hykes shared vacation photographs with them that depicted his girlfriend with a cigar in her cleavage symbolizing a penis. Other witnesses testified as to Hykes' solicitation of a waitress at a restaurant where appellant and other school employees were present, and to his regular use of vulgar and obscene language. The hearing officer found, however, that there was no evidence that appellant witnessed Hykes' behavior, heard the comments attributable to Hykes or was made aware of his actions and comments by other employees. Accordingly, the hearing officer concluded that the Board had not established that appellant was grossly inefficient so as to justify the termination of his contract or that his contract should be terminated for good and just cause. As to the charge of gross inefficiency, the hearing officer further determined that the evidence and testimony was

that appellant's job performance was above average, and therefore, that charge was not established by the evidence.

{¶ 12} The hearing officer therefore concluded that because the Board had not met its burden of proof by a preponderance of the evidence that appellant engaged in sexual harassment, gross inefficiency, willful and persistent violations of reasonable regulations of the Board, or engaged in any conduct that would justify termination of his contract for good and just cause, appellant's contract should not be terminated.

{¶ 13} On February 18, 2010, at a public meeting, the Board unanimously voted to reject the hearing officer's recommendation and terminated appellant's superintendent's contract on the grounds of gross inefficiency, willful and persistent violations of the reasonable rules and regulations of the Board, as well as other good and just cause. In passing its resolution, the Board reviewed the transcript of the termination hearing and expressly accepted the hearing officer's findings of fact, but rejected the hearing officer's recommendation. The Board determined that it had a sexual harassment policy separate and distinct from the federal law applied by courts. The Board's sexual harassment policy requires all persons associated with the school district "to conduct themselves at all times so as to provide an atmosphere free from sexual harassment." The policy's definition of "sexual harassment" includes behavior that creates "an intimidating, hostile or offensive environment." It was this policy, which the Board noted was consistent with its community standards, that the Board found the hearing officer failed to consider and that appellant had violated. Specifically, the Board found that appellant's repeated

comments and actions toward subordinates created an offensive environment. The Board rejected the hearing officer's interpretation of appellant's behavior as merely unprofessional, rude or crass, and determined that his calling a subordinate his "hottie honey," referring to subordinates' attractive eyes and sexy feet, and looking at female employees' bustlines or looking them "up and down," was not simply impolite. The Board found appellant's "prom queen" comment notably offensive and shocking, particularly coming from a school superintendent, and determined that the holiday party was sufficiently school related as to require him to follow Board policy in his demeanor. The Board therefore determined that appellant's behavior showed a persistent and willful violation of the Board's sexual harassment policy. The Board further determined that as the school superintendent, appellant was contractually and legally obligated to enforce school policy with all employees, including himself, and that his failure to do so constituted gross inefficiency. Finally, the Board determined that the totality of appellant's actions constituted good and just cause to terminate his employment contract.

{¶ 14} Appellant appealed the Board's resolution to the Huron County Court of Common Pleas pursuant to R.C. 3319.16. Subsequently, the parties filed a stipulation in that court that neither party would be submitting any additional evidence or supplementing the record and that the matter would proceed based on the administrative record, transcripts, and briefs of the parties.

{¶ 15} On December 23, 2011, the lower court issued its judgment entry affirming the termination of appellant's employment contract. The court rejected appellant's

arguments and held that the Board's decision to terminate appellant's contract was supported by the weight of the evidence.

{¶ 16} R.C. Chapter 3319 governs the employment of public school teachers, principals, superintendents, and other school officials. R.C. 3319.16[1] outlines the circumstances under which a public school employee's employment contract may be terminated. The statute reads: "The contract of any teacher * * * may not be terminated except for gross inefficiency or immorality; for willful and persistent violations of reasonable regulations of the board of education; or for other good and just cause." The use of the word "teacher" in the statute includes superintendents. R.C. 3319.09(A).

{¶ 17} Before terminating a contract, the Board must notify a teacher of its intention to terminate and state its grounds for termination. R.C. 3319.16. "Within ten days after receipt of the notice from the treasurer of the board, the teacher may file with the treasurer a written demand for a hearing before the board or before a referee." *Id.* If the teacher requests a hearing before a referee, the referee has ten days from the conclusion of the hearing to file a report. *Id.* Upon review of the report, the Board must accept the referee's findings of fact unless those findings are against the greater weight, or preponderance, of the evidence. *Aldridge v. Huntington Local School Dist. Bd. of Edn.*, 38 Ohio St.3d 154, 527 N.E.2d 291 (1988), paragraph one of the syllabus. The school board, however, has the discretion to accept or reject the referee's

[1] This statute was amended effective October 16, 2009. Because the Board instituted termination proceedings prior to the effective date of the amendment, the prior version of the statute is used throughout this decision.

recommendation, unless such acceptance or rejection is contrary to law. *Id.* at paragraph two of the syllabus.

{¶ 18} If a school board terminates a teacher's contract, the teacher may appeal that order to the common pleas court by filing a complaint against the board, alleging the facts "upon which the teacher relies for a reversal or modification of such order of termination of contract." R.C. 3319.16. "Although the common pleas court's review of a board's decision is not de novo, R.C. 3319.16 empowers the court to weigh the evidence, hold additional hearings if necessary, and render factual determinations." *Katz v. Maple Hts. City School Dist. Bd. of Edn.*, 87 Ohio App.3d 256, 260, 622 N.E.2d 1 (8th Dist.1993), citing *Graziano v. Amherst Exempted Village Bd. of Edn.*, 32 Ohio St.3d 289, 293, 513 N.E.2d 282 (1987). The common pleas court, however, may only reverse the board's order of termination if it finds that the order is not supported by or is against the weight of the evidence. *Id.* citing *Hale v. Lancaster Bd. of Edn.*, 13 Ohio St.2d 92, 234 N.E.2d 583 (1968), paragraph one of the syllabus. Accordingly, "[i]f substantial and credible evidence is presented to support the charges of the board, and a fair administrative hearing is had, the reviewing court cannot substitute its judgment for the judgment of the administrative authorities." *Strohm v. Reynoldsburg City School Dist. Bd. of Edn.*, 10th Dist. Franklin No. 97APE07-972, 1998 WL 151082 (Mar. 31, 1998); *see also Bertolini v. Whitehall City School Dist. Bd. of Edn.*, 139 Ohio App.3d 595, 604, 744 N.E.2d 1245 (10th Dist.2000).

{¶ 19} Upon appeal to this court, our standard of review is "extremely narrow" and is "'strictly limited to a determination of whether the common pleas court abused its discretion.'" *James v. Trumbull Cty. Bd. of Edn.*, 105 Ohio App.3d 392, 396, 633 N.E.2d 1361 (11th Dist.1995), citing *Graziano, supra,* at 294. An abuse of discretion is "more than an error of law or judgment." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Rather, it implies that the court's attitude in reaching its judgment was unreasonable, arbitrary or unconscionable. *Id.*

{¶ 20} In his first assignment of error, appellant asserts that the trial court abused its discretion in affirming the Board's order of termination where the Board failed to consider his employment record and failed to give him an opportunity to correct his alleged deficiencies.

{¶ 21} In support of his first argument, appellant cites to *Katz, supra,* and *Johnson v. Edgewood City School Dist. Bd. of Edn.*, 12th Dist. Butler No. CA2008-09-215, 2009-Ohio-3827. As we discussed in *Hykes v. Bellevue City School Dist. Bd. of Edn.*, 6th Dist. Huron No. H-12-003, 2012-Ohio-6059, 985 N.E.2d 218, ¶ 23, those cases "require a school board to consider a teacher's prior employment record before deciding to reject a referee's recommendations and terminate the teacher for a single, isolated incident when the teacher has held the position for a period of time sufficient to produce an employment record (i.e. at least several years)." In *Hykes,* we held that because the Board had adopted the referee's recommendation to terminate Hykes, a relatively new school district employee and the assistant to appellant herein, for a pattern of misconduct that spanned

several months and violated numerous Board policies, the Board was not required to consider Hykes' prior employment record. Similarly, in this case, appellant's contract was terminated for a pattern of misconduct that spanned nearly the entire term of appellant's employment with the school district. His contract was not terminated for a single, isolated incident, but for a pattern of behavior that was inconsistent with the behavior expected of a school district superintendent.

{¶ 22} Additionally, although there is nothing in the Board's decision to indicate it expressly considered appellant's employment record, the common pleas court's decision reveals that in its review of the record it did consider appellant's employment record. In rendering its own factual findings, the common pleas court recognized that appellant's performance evaluations had been "quite strong" and noted that the Board had been "very pleased" with appellant prior to the revelation around June 10, 2009, of the sexual harassment allegations. The court also noted that there had been testimony to the effect that appellant had been a stabilizing force in a financially troubled school district that had had problems with prior superintendents. The court, however, determined that this evidence was outweighed by evidence that appellant did in fact make the comments alleged, and engaged in rude, crass, and unprofessional behavior.

{¶ 23} Appellant further asserts that because the Board failed to give him an opportunity to correct his alleged deficiencies, the lower court abused its discretion in affirming the termination order. In support, he cites a section of his contract which reads: "If at any time, in the opinion of the majority of the Board members, the Superintendent's

services are considered unsatisfactory, he/she will be notified and shall be given an opportunity to correct the deficiencies."

{¶ 24} In *Hykes, supra,* at ¶ 27, we discussed this issue and held:

> Although providing the teacher with an opportunity to improve his behavior may be advisable in some situations involving misconduct that does not place the school community's welfare in jeopardy, it defies common sense to require such an opportunity in all cases. *See Bertolini v. Whitehall City School Dist. Bd. of Edn.*, 139 Ohio App.3d 595, 744 N.E.2d 1245 (10th Dist.2000) (reversing trial court's decision to affirm board's termination of a teacher, noting that the board never gave the teacher an opportunity to change his conduct, but that "such an opportunity may not be required in all cases.") Rather, a school board must be permitted to expeditiously remove a potentially dangerous employee from the school community where that employee creates a hostile work environment.

{¶ 25} In the present case, appellant was the school superintendent and, as the common pleas court noted, the "public face of a public entity entrusted with educating children." Throughout the year that he was employed by appellee, appellant exercised poor judgment in his interaction with school principals and other employees of the school district. Under the facts of this case, we cannot find that the Board was required to give appellant an opportunity to improve his behavior before terminating his contract.

{¶ 26} The first assignment of error is therefore not well-taken.

{¶ 27} Appellant's second, third, fourth and fifth assignments of error are related and will be discussed together. Appellant challenges the evidentiary basis of the decision and contends that the lower court's affirmance of the Board's order terminating appellant's contract was not supported by the manifest weight of the evidence. Appellant further contends that the referee's findings of fact and recommendation were not given appropriate deference

{¶ 28} We will first address appellant's argument that the referee's recommendation was not given due deference. As discussed above, while the referee or hearing officer's findings of fact are to be accepted by a school board in determining whether to terminate a contract, the board has the discretion to accept or reject the referee's recommendation. *See Aldridge, supra*. That is, "the referee's primary duty is to ascertain facts." *Id.* at 158. However, because "the ultimate responsibility for the school system lies with the school board * * * [t]he board's primary duty it to interpret the significance of the facts." *Id.* at 157-158. Upon review of the record, it is clear that the Board accepted the hearing officer's findings of fact. Significantly, the hearing officer stated: "This hearing officer, in reviewing all of the evidence and testimony, is of the opinion that the comments alleged by Mr. Martin were in fact made by Mr. Martin." The Board accepted that appellant made the statements alleged. The Board, however, interpreted the significance of those facts differently and the lower court did not abuse its discretion in affirming that interpretation. The fifth assignment of error is not well-taken.

{¶ 29} Appellant further contends that because the Board's order terminating him for gross inefficiency, willful and persistent violations of the reasonable rules and regulations of the Bellevue City School District, and for other good and just cause, was against the manifest weight of the evidence, the lower court abused its discretion in affirming the order.

{¶ 30} As stated above, "if substantial and credible evidence is presented to support the charges of the board, and a fair administrative hearing is had" the common pleas court cannot substitute its judgment for that of the Board. *See Strohm, supra.* Further, upon appeal to this court, we must affirm the common pleas court's judgment unless it abused its discretion in reaching that judgment.

{¶ 31} A school superintendent can be terminated "for gross inefficiency or immorality; for willful and persistent violations of reasonable regulations of the board of education; or for other good and just cause." Former R.C. 3319.16. "These constitute three separate, independent bases, each of which is sufficient to terminate" a superintendent's contract. *James, supra,* at 395. The hearing officer determined that none of these grounds for termination had been established because the evidence did not support a finding that appellant could be civilly liable for sexual harassment. In the civil liability context, to establish a claim of hostile-environment sexual harassment, a plaintiff must establish:

> (1) that the harassment was unwelcome, (2) that the harassment was based on sex, (3) that the harassing conduct was sufficiently severe or pervasive

> to affect the "terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment," and (4) that either (a) the harassment was committed by a supervisor, or (b) the employer, through its agents or supervisory personnel, knew or should have known of the harassment and failed to take immediate and appropriate corrective action. *Hampel v. Food Ingredients Specialties, Inc.*, 89 Ohio St.3d 169, 729 N.E.2d 726 (2000), paragraph two of the syllabus.

{¶ 32} The Bellevue School Board, however, has a sexual harassment policy, policy ACAA, which differs from the standard required for civil liability and which states:

> All persons associated with the District, including, but not limited to, the Board, the administration, the staff and the students, are expected to conduct themselves at all times so as to provide an atmosphere free from sexual harassment. Any person who engages in sexual harassment while acting as a member of the school community is in violation of this policy.

Policy ACAA's definition of "sexual harassment" includes verbal or physical conduct of a sexual nature that "has the purpose or effect of * * * creating an intimidating, hostile or offensive environment."

{¶ 33} The record reveals that appellant made numerous comments of a sexual nature and engaged in conduct that was totally inappropriate and offensive in a school setting, particularly given that he was the superintendent. The facts, *as found by the*

hearing officer, amply supported the Board's determination that appellant's conduct violated policy ACAA. In addition, the lower court, in its weighing of the evidence, found significant evidence that several district principals had a pact to not leave each other alone with appellant. This allegation had been listed in the original charges against appellant, but the hearing officer made no finding regarding it. This is clearly evidence of the environment created by appellant's conduct.

{¶ 34} Because appellant's conduct in this regard occurred at various times throughout the entire year of his employment, we cannot say that the lower court abused its discretion in affirming the Board's order of termination for appellant's willful and persistent violation of reasonable regulations of the Board. Similarly, the evidence supports the Board's conclusion that appellant was grossly inefficient in his inability to adhere to policy ACAA. Finally, viewing all of the evidence, as found by the hearing officer, in its entirety, we cannot say that the lower court abused its discretion in affirming the termination for good and just cause. The second, third, and fourth assignments of error are not well-taken.

{¶ 35} In his sixth assignment of error, appellant contends that the lower court abused its discretion by not awarding him attorney fees because the Board initiated the termination proceedings in bad faith. In the absence of statutory authorization, attorney fees cannot be awarded against a political subdivision. *Franklin v. Columbus*, 130 Ohio App.3d 53, 63, 719 N.E.2d 592 (10th Dist.1988), citing *Henry v. Akron*, 27 Ohio App.3d 369, 501 N.E.2d 659 (9th Dist.1985). R.C. 3391.16 does not provide for attorney fees in

contract termination proceedings. *See Hykes, supra* at ¶ 35. Moreover, because appellant is not the prevailing party in this matter, he has no basis for a claim for attorney fees. The sixth assignment of error is not well-taken.

{¶ 36} Finally, we are compelled to address what may seem to be an inconsistent ruling from this court. In *Bellevue City School Dist. Bd. of Edn. v. Martin*, 6th Dist. Huron No. H-12-009, 2013-Ohio-2801, we reviewed Martin's appeal from the judgment of the Huron County Court of Common Pleas regarding his claim for unemployment compensation benefits. In that case, the Unemployment Compensation Review Commission reversed an initial disallowance of benefits and determined that appellant had not been terminated for just cause. On appeal to the common pleas court, that court took judicial notice of its decision in this case finding that appellant had been terminated for just cause, and reversed the decision of the review commission. On further appeal before this court, we determined that the common pleas court abused its discretion in taking judicial notice of its decision in this case. Because the common pleas court had a very limited standard of review, and because there was competent, credible evidence in the record to support the review commission's determination, we held that the common pleas court erred in reversing the decision of the commission. Significantly, the review commission held a hearing at which appellant testified and evidence was entered. The review commission then also reviewed the full transcript from the hearing before the hearing officer in this case. Upon review of all the evidence, the review commission

found credible appellant's testimony that many of his statements had been taken out of context, no sexual intent accompanied them, and he had no idea anyone was offended.

{¶ 37} In the present case, the parties stipulated that the case was to be heard by the common pleas court only on the record that was before the hearing officer and that no additional evidence or testimony would be submitted. Accordingly, the Unemployment Compensation Review Commission considered the issues before it on a more extensive record than that which was considered in the proceedings below in this case.

{¶ 38} Moreover, the standards of review applicable to appeals from the Unemployment Compensation Review Commission and those applicable to appeals under R.C. Chapter 3319 differ. In unemployment compensation appeals, the common pleas court is limited to determining whether the judgment is unlawful, unreasonable or against the manifest weight of the evidence. Regarding factual findings, the court is limited to determining whether there is some competent, credible evidence in the record to support the hearing officer's determination. *See Tzangas, Plakas & Mannos v. Ohio Bur. of Emp. Serv.*, 73 Ohio St.3d 694, 696-697, 653 N.E.2d 1207 (1995). In addition, the Unemployment Compensation Act is to be liberally construed in favor of beneficiaries. R.C. 4141.46; *McNeil Chevrolet, Inc. v. Unemp. Comp. Review Bd.,* 187 Ohio App.3d 584, 2010-Ohio-2376, 932 N.E.2d 986, ¶ 17 (6th Dist.). In appeals under R.C. Chapter 3319, the common pleas court is permitted to weigh the evidence and render factual determinations. *See Katz, supra* and *Graziano, supra.* If, however, there exists substantial, credible evidence to support the charges of the board, and a fair

administrative hearing was held, the common pleas court must affirm the judgment of the administrative authority. *See Strohm, supra.*

{¶ 39} Accordingly, we are left with a situation in which we have two separate administrative reviews of the termination of a public school employee's contract, with two separate triers of fact and two separate outcomes, both of which are valid under the review standards applicable to those cases.

{¶ 40} On consideration whereof, the court finds that substantial justice has been done the party complaining and the judgment of the Huron County Court of Common Pleas is affirmed. Pursuant to App.R. 24, court costs of this appeal are assessed to appellant.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE