

SUPREME COURT OF NEBRASKA

Bower-Hansen v. Nebraska Dept. of Health & Human Servs.

302 Neb. 847 (2019) · No. No. S-17-1278 · Decided April 12, 2019

SUMMARY

The Nebraska Supreme Court affirmed the district court’s decision upholding the State Personnel Board’s dismissal of Betty Jane Bower-Hansen’s grievance challenging her termination from employment with the Nebraska Department of Health and Human Services. The court held that the governing collective bargaining agreement required compliance with each step of its grievance procedure and expressly provided that failure to meet the deadlines waived future appeals. The court concluded that Bower-Hansen failed to comply with those requirements.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Papik, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	April 12, 2019
DOCKET	No. S-17-1278
DISPOSITION	affirmed
PROCEDURAL POSTURE	Bower-Hansen appealed from the Lancaster County District Court's affirmance of the Nebraska State Personnel Board's dismissal of her employment grievance.
STANDARD OF REVIEW	Under the Nebraska Administrative Procedure Act, the Supreme Court reviews the district court's judgment or final order for errors appearing on the record. The inquiry is whether the decision conforms to law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable.
PRECEDENTIAL VALUE	published opinion
PARTIES	Betty Jane Bower-Hansen v. Nebraska Department of Health and Human Services, State of Nebraska

TOPICS

judicial review of agency action

administrative procedure act

exhaustion of remedies

employment contracts

contract interpretation

PRACTICE AREAS

administrative law

employment law

labor law

contracts

appellate procedure

QUESTIONS PRESENTED

1. Whether Bower-Hansen was entitled to initiate the collective bargaining agreement's grievance procedure at level two rather than level one.
2. Whether any alleged advice from a DHHS employee or DHHS's initial processing of the grievance excused noncompliance with the collective bargaining agreement.
3. Whether Bower-Hansen waived her right to continue pursuing the grievance by failing to comply with the agreement's procedural steps and deadlines.
4. Whether the district court properly affirmed the Personnel Board's dismissal under the Nebraska Administrative Procedure Act.

HOLDINGS

1. Bower-Hansen was required to submit her initial grievance at level one under the collective bargaining agreement and was not entitled to bypass that step under the Nebraska Classified System Personnel Rules.
2. Bower-Hansen failed to comply with the collective bargaining agreement because she either skipped the required level-one step or submitted the grievance to the wrong official, and she did not timely file her level-two grievance within 10 workdays after the level-one denial.
3. The collective bargaining agreement's clear language provided that failure to timely proceed through the required grievance steps constituted a waiver of the right to future appeals, and the waiver provision was enforceable.
4. The district court did not err under the Administrative Procedure Act in affirming the Personnel Board's dismissal of Bower-Hansen's grievance.

KEY QUOTATIONS

"When the terms of a contract are clear, a court may not resort to rules of construction. Instead, the terms of the contract are to be accorded their plain and ordinary meaning." (at 856)

"Courts do not, however, have the power to rewrite a contract to provide terms contrary to those that are expressed." (at 857)

"Nor is it the province of a court to rewrite a contract to reflect the court's view of a fair bargain." (at 857)

FACTUAL BACKGROUND

DHHS terminated Betty Jane Bower-Hansen, a teacher at the Youth Rehabilitation and Treatment Center in Kearney, for cause. Although the collective bargaining agreement required a level-one grievance to be submitted to the decision maker, Bower-Hansen initially sent her grievance to the agency director, allegedly based on advice given at the termination meeting. She later pursued level-two and level-three grievances, but the level-two grievance was not received within the agreement's 10-workday deadline. The Personnel Board dismissed the grievance, and the district court affirmed.

PROCEDURAL HISTORY

DHHS terminated Bower-Hansen's employment as a teacher. She initiated grievance proceedings under the collective bargaining agreement, but the Personnel Board dismissed her grievance after finding that she failed to comply with the agreement's required grievance steps and deadlines. The Lancaster County District Court affirmed, and the Nebraska Supreme Court affirmed the district court.

DISPOSITION

affirmed

CASES CITED

- J.S. v. Grand Island Public Schools, 297 Neb. 347, 899 N.W.2d 893 (2017)
- Kercher v. Board of Regents, 290 Neb. 428, 860 N.W.2d 398 (2015)
- Murphy v. City of Lincoln, 245 Neb. 707, 515 N.W.2d 413 (1994)
- Rentschler v. Missouri P. R. Co., 126 Neb. 493, 253 N.W. 694 (1934)
- Yazoo & M. V. R. Co. v. Webb, 64 F.2d 902 (5th Cir. 1933)
- Parent v. City of Bellevue Civil Serv. Comm., 17 Neb. App. 458, 763 N.W.2d 739 (2009)
- Berens & Tate v. Iron Mt. Info. Mgmt., 275 Neb. 425, 747 N.W.2d 383 (2008)