

SUPREME COURT OF NEBRASKA

Nathan Pierce v. The Douglas County Civil Service Commission and
the County of Douglas, Nebraska, 275 Neb. 722

748 N.W.2d 660 (2008) · No. S-07-252 · Decided May 16, 2008

SUMMARY

The Supreme Court of Nebraska reviewed the termination of Nathan Pierce by the Douglas County Public Properties Department and the Douglas County Civil Service Commission. The court held that the district court had jurisdiction to review Pierce’s collective bargaining agreement claims related to his termination, but reversed the termination because the evidence did not support treating his alleged work-restriction violation as a terminable second offense. The case was remanded with directions to vacate the Commission’s order.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Connolly, J.; Heavican, C.J.; Wright, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	May 16, 2008
DOCKET	S-07-252
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Pierce appealed from a district court order affirming the Douglas County Civil Service Commission's decision upholding his termination. The Nebraska Supreme Court reviewed the case on a petition in error.
STANDARD OF REVIEW	On a petition in error from an administrative agency decision, the reviewing courts determine whether the agency acted within its jurisdiction, whether sufficient relevant evidence supports the decision, and whether the agency action was arbitrary or capricious. The reviewing court is restricted to the agency record and does not reweigh evidence or make independent factual findings. Jurisdictional issues not involving factual disputes and questions of law are reviewed independently.
PRECEDENTIAL VALUE	Published opinion

PARTIES

Nathan Pierce v. The Douglas County Civil Service Commission, The County of Douglas, Nebraska

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QUESTIONS PRESENTED

1. Whether the district court had jurisdiction in a petition-in-error proceeding to consider Pierce's claims that the County violated the collective bargaining agreement in connection with his termination without requiring compliance with the county claims statute.
2. Whether sufficient evidence supported termination for a second offense of immoral, indecent, disgraceful, or inappropriate conduct.
3. Whether the agency and district court improperly placed the burden on Pierce to prove that he was accompanied in the restricted area.
4. Whether the Department violated collective bargaining agreement grievance and disciplinary procedures.
5. Whether Pierce was subjected to double jeopardy by being disciplined twice for the same conduct.

HOLDINGS

1. When an employee appeals a final order of the Douglas County Civil Service Commission through a petition in error, the district court has jurisdiction to decide collective bargaining agreement issues related to the disciplinary action; the employee need not first file a claim under the county claims statute.
2. Even assuming the County proved that Pierce was unaccompanied in the restricted area, his mere violation of a work restriction, without additional misconduct, did not constitute a second offense of immoral, indecent, disgraceful, or inappropriate conduct warranting termination under the personnel manual.

KEY QUOTATIONS

“But we decline to decide the continued vitality of Caniglia. Assuming arguendo that the County proved Pierce was in Nahriri's unit unaccompanied, we nonetheless reverse.” (668)

“Accordingly, we reverse the district court's judgment, which affirmed the decision of the Commission to uphold Pierce's termination. We remand the cause with directions to the district court to remand the case to the Commission to vacate its order.” (670)

FACTUAL BACKGROUND

Pierce, a Douglas County Public Properties Department employee, was previously suspended for verbally abusing a nurse and was subject to work restrictions concerning contact with her and access to her work area. In August 2002, Pierce walked through the nurse's assisted-living unit to clean up spilled ice; the Department alleged that he was unaccompanied and thereby violated the restrictions. Although the Department initially responded with an oral reprimand, it later charged Pierce with a second offense of immoral, indecent, disgraceful, or inappropriate conduct and terminated him. The evidence was conflicting regarding whether Pierce was accompanied, and the nurse did not testify at the termination hearing.

PROCEDURAL HISTORY

Douglas County terminated Pierce after alleging that he violated work restrictions imposed following an earlier disciplinary incident. The Civil Service Commission affirmed the termination. The district court affirmed the Commission, rejected Pierce's sufficiency-of-the-evidence and burden-of-proof arguments, and held that it lacked jurisdiction over Pierce's remaining collective-bargaining-agreement claims because he had not complied with the county claims statute. The Nebraska Supreme Court reversed and remanded with directions that the district court remand the matter to the Commission to vacate its order.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court was directed to remand the case to the Douglas County Civil Service Commission to vacate its order upholding Pierce's termination.

CASES CITED

- Caniglia v. City of Omaha, 210 Neb. 404, 315 N.W.2d 241 (1982)
- Cleveland Board of Education v. Loudermill, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985)
- Jackson v. County of Douglas, 223 Neb. 65, 388 N.W.2d 64 (1986)
- Hickey v. Civil Service Commission of Douglas County, 274 Neb. 554, 741 N.W.2d 649 (2007)
- Barnett v. City of Scottsbluff, 268 Neb. 555, 684 N.W.2d 553 (2004)
- Geringer v. City of Omaha, 237 Neb. 928, 468 N.W.2d 372 (1991)
- Hammann v. City of Omaha, 227 Neb. 285, 417 N.W.2d 323 (1987)
- Cox v. Civil Service Commission of Douglas County, 259 Neb. 1013, 614 N.W.2d 273 (2000)
- Douglas County Board of Commissioners v. Civil Service Commission, 263 Neb. 544, 641 N.W.2d 55 (2002)
- Cal. Correctional Peace Officers Ass'n v. State Personnel Board, 10 Cal. 4th 1133, 899 P.2d 79, 43 Cal. Rptr. 2d 693 (1995)
- Department of Institutions v. Kinchen, 886 P.2d 700 (Colo. 1994)
- Thompson v. New Orleans Department, 844 So. 2d 940 (La. App. 2003)
- Thurmond v. Steele, 159 W. Va. 630, 225 S.E.2d 210 (1976)

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