

BEFORE THE NEBRASKA PROFESSIONAL PRACTICES COMMISSION
STATE OF NEBRASKA



Joe E. Lutjeharms, Commissioner)
Department of Education)
301 Centennial Mall South, 6th Fl.)
P.O. Box 94933)
Lincoln, NE 68509-4933,)
)
Petitioner,)
)
vs.)
)
Lela K. Watts,)
)
)
Respondent.)

Case No. 94-03

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER OF
THE COMMISSION

I. STATEMENT OF THE CASE

This case commenced with the filing of a Petition on October 5, 1993, by Joe E. Lutjeharms, Commissioner of Education, Department of Education, State of Nebraska, hereinafter referred to as "Petitioner." The Petition was filed against Lela K. Watts, hereinafter referred to as the "Respondent." The Petition alleges certain acts of conduct by the Respondent in violation of Title 92, Nebraska Administrative Code, Chapter 27, Section 004.02D (effective date December 25, 1989); Section 004.02H (same effective date); Section 004.04F (same effective date); Section 005.05C (same effective date); Section 004.06D (same effective date); and Neb. Rev. Stat. § 79-1233(1) (Supp. 1992).

On October 5, 1993, the Petitioner gave Respondent notice of her right to submit an answer within twenty-one (21) days, which notice was received by Respondent on October 6, 1993. On October 28, 1993, the Respondent filed an Answer admitting her address, type of certificate held and previous employment as Superintendent of the Butte Public Schools, and denying all other allegations, including those alleging that she violated any of the previous-mentioned provisions of Title 92, Nebraska Administrative Code, Chapter 27, or Neb. Rev. Stat. § 79-1233(1) (Supp. 1992). The Respondent further alleged a variety of circumstances which contributed to a hostile work environment. She further prayed that the Petition be dismissed.

The Respondent also requested a prehearing conference. However, upon further discussions with counsel and the Hearing Officer, it was agreed by correspondence of the Hearing Officer dated November 12, 1993, that a prehearing conference would not be held, as the parties were cooperating and developing a factual

stipulation to be presented to the Commission at the public hearing.

On January 26, 1994, Robert Wagner, the Clerk of the above Commission, sent a notice of hearing to the Petitioner and Respondent advising that a public hearing would be held on March 12, 1994, commencing at 8:30 a.m. in the Department of Education Hearing Room, 6th Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. The notice further specified that the case would be heard by Commission members Sandy Irish as Chairperson, Janice Hinds, Van Phillips, Barbara Blackburn, Carolyn Grice, Stan Dart, Roger Rea, and John C. Nelson. Samuel Van Pelt was appointed legal counsel to advise the Chairperson in the performance of her duties.

At the above time and place, the Petition and Answer came on for hearing before the previously designated Commissioners, with the exception of Stan Dart, who is no longer a Commission member. The Petitioner was present by his attorney, Brian Halstead. The Respondent was present with her attorney, Beverly Evans Grenier. Samuel Van Pelt, the appointed legal counsel, was present, and the hearing was reported by Gloria Sapp of General Reporting Services, Lincoln, Nebraska. Evidence was received and, thereafter, the Commission members adjourned and deliberated respecting the same. Accordingly, the Commission makes the following findings of fact, conclusions of law and order:

II. FINDINGS OF FACT

1. The Petitioner is the Commissioner of Education of the State of Nebraska. The Respondent holds a Nebraska public schools certificate, -8747, Type 1, Rank A, Level 7, endorsed as Superintendent K-12, Health 7-12, and Principal PreSchool-12, with an expiration date of August 31, 2002.

2. At all times relevant herein, the Respondent was employed as the Superintendent for the Butte Public Schools, which employment commenced in July of 1992. She was suspended with pay on November 22, 1992, and her employment with the Butte Public Schools was terminated on March 30, 1993.

3. The case was submitted to the hearing panel pursuant to a stipulation of fact, received in evidence as Exhibit 4. Consequently, no detailed findings are necessary other than to find that the Respondent failed to file a Nebraska Department of Education Form 03-018 on or before November 1, 1992, and misdated the form that was filed, and further, that the Respondent knowingly employed an individual as a substitute teacher who did not hold a valid Nebraska teaching certificate while she was employed as the Superintendent of the Butte Public Schools.

III. DISCUSSION

In its Petition, the Petitioner sets forth seven allegations of misconduct as grounds for the relief requested, which will be discussed individually as follows:

A. The Respondent's failure to file a Nebraska Department of Education Form 03-018 on or before November 1, 1992, as required by Neb. Rev. Stat. § 79-451 (Reissue 1987), and the misdating of such form. The stipulation proves that this report was not properly or timely filed and that the Respondent participated in that process. However, the primary responsibility under the above statute was with the Board Secretary. If the Secretary or the Respondent did not understand the report or how the same should be completed, they should have sought help from the State Board of Education, rather than taking figures from an earlier report. Applicable provisions of the Nebraska Administration Code require the Respondent not to make fraudulent statements and to attend to her duties with reasonable diligence, which she did not do. There are mitigating circumstances affecting the Respondent's behavior, as she came into a school system with poor record keeping and without the necessary experience to complete this technical requirement and the Board's statutory responsibility for the report. Because of the mitigation circumstances, the Commission members, with one dissent, believe that the Respondent should be found guilty of a technical violation and issued a private admonishment for this violation.

B. Knowingly employing an individual as a substitute teacher who did not hold a valid Nebraska teaching certificate. Neb. Rev. Stat. § 79-1233(1) (Supp. 1992) states: "No person shall be employed to teach in any public, private, denominational, or parochial school in this state who does not hold a valid Nebraska certificate or permit issued by the Commissioner of Education legalizing him to teach the grade or subject to which elected," The various provisions of the Nebraska Administrative Code previously specified state that "the educator shall not make fraudulent statements or fail to disclose a material fact for which the educator is responsible, shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation in the performance of professional duties, shall with reasonable diligence attend to the duties of her professional position, and shall actively oppose the practice of the profession by persons known to be unqualified." All of the Commission members find that the Respondent violated the above statute and regulations in employing an individual as a substitute who did not hold a valid Nebraska teaching certificate. Due to the importance of these regulations and statute to the integrity of the public school system and teaching profession in Nebraska, the Commission members unanimously believe that the Respondent should be publicly reprimanded, rather than privately admonished, for her failure in this regard.

C. Failure to supply the Boyd County Superintendent with a list of substitute teachers as requested. The Commission believes that the Petitioner has failed to sustain its burden of proving this allegation by a preponderance of the evidence.

D. Failure to pick up the mail for the Butte Public Schools after assuming responsibility for the same from October 5 through October 14, 1992. A majority of the Commission members believe that the Petitioner has failed to sustain his burden of proving this violation, as the evidence was in conflict as to who had this responsibility and what directives were given to the Respondent. One member dissented, feeling that the evidence sustained a violation of the regulations requiring the educator to attend to the duties of her professional position with reasonable diligence, and to conduct professional business through designated procedures that have been approved by the employing agency. All Commission members felt that this was a matter more properly considered through disciplinary action by the employer, rather than through a complaint before the Professional Practices Commission.

E. Failure to apologize to the Clearwater Public Schools for an incident occurring on November 4, 1992 following a volleyball game. All Commission members felt that since there was a dispute in the evidence as to whether or not the Respondent apologized for the incident, that the Petitioner had failed to sustain his burden of proof respecting the same.

F. Conducting teachers' meetings in the morning which extended into class time and left students unattended. All Commission members believe that the Petitioner failed to sustain his burden of proving that these incidents, to the extent they may have occurred, consisted of a violation of any of the aforementioned regulations.

G. Submitting a claim on October 2, 1992 for payment from the activity fund which included an improper billing of ten dollars for parking. All the Commission members felt that the Respondent should have kept better records, but that whether ten dollars was spent for parking, or paper, any technical violation which might have taken place was di minimus. Consequently, the Petitioner has failed to sustain his burden of proving this violation.

All Commission members are concerned that the disciplinary process may have been part of a broader dispute between the Respondent and certain Butte residents growing out of a civil rights complaint, the circumstances of which were not before, nor relevant to, proceedings before the Commission.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this case and all proceedings have been in accordance with applicable constitutional, statutory, and regulatory requirements.

2. The Petitioner has proven by a preponderance of the evidence that the Respondent has violated Neb. Rev. Stat. § 79-1233(1) (Supp. 1992); Title 92, Nebraska Administrative Code, Chapter 27, Sections 004.02D, 004.02H, 004.04F, 004.05C, and 004.06D (all having an effective date of December 25, 1989); in

that she did knowingly employ an individual as a substitute teacher who did not hold a valid Nebraska teaching certificate, in the Butte Public School system while the Respondent was employed as Superintendent.

3. The Petitioner has proved by a preponderance of the evidence that the Respondent violated Title 92, Nebraska Administrative Code, Chapter 27, Section 004.02D (effective date December 25, 1989); Section 004.02H (same effective date); Section 004.04F (same effective date); Section 005.05C (same effective date); Section 004.06D (same effective date), and Neb. Rev. Stat. § 79-451 (Reissue 1987), with one member dissenting, in that she, as Superintendent of the Butte Public Schools, failed to file Nebraska Department of Education Form 03-018, on or before November 1, 1992, and misdated said form.

4. The Petitioner has failed to prove by a preponderance of the evidence, with one member dissenting, that the Respondent violated any of the aforementioned statutes or regulations, in any other particular as alleged by the Petitioner in his Petition, than specified in Paragraphs 2 and 3 above.

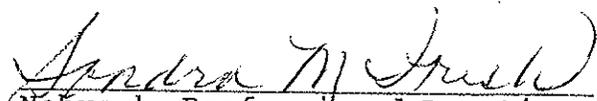
V. ORDER

It is therefore ordered by the Commission that the Respondent, Lela K. Watts, be issued a private admonishment for failing to file and misdating Nebraska Department of Education Form 03-018 in violation of the applicable statutes and regulations.

It is further ordered that the Respondent, Lela K. Watts, be issued a public reprimand for knowingly employing an individual as a substitute teacher who did not hold a valid Nebraska teaching certificate in violation of the applicable statutes and regulations.

It is further ordered that, in all other respects, the Petition filed herein by Joe E. Lutjeharms, Commissioner of Education, against Lela K. Watts be dismissed with prejudice.

Dated this 25th day of April, 1994.

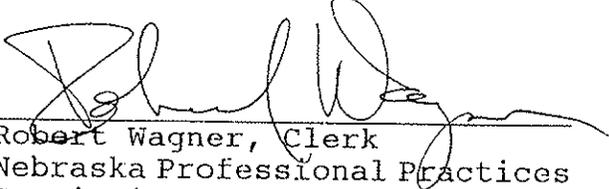

Sandra M. Smith
Nebraska Professional Practices
Commission

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, and Order of the Commission for Case 94-3 was served upon Respondent by first class mail postage prepaid, and hand delivered to Brian Halstead on this 28th day of April, 1994 at the following addresses:

Beverly Evans Grenier
Scudder Law Firm, P.C.
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Brian Halstead
Attorney for Petitioner
Nebraska Department of Education
301 Centennial Mall South
Lincoln, Nebraska 68509


Robert Wagner, Clerk
Nebraska Professional Practices
Commission

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