

IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

Deputy Clerk

ROBERT P. MORROW,

Petitioner,

vs.

DUVAL COUNTY SCHOOL BOARD,

Respondent.

CASE NO. 69,424

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DEPARTMENT OF ADMINISTRATION,  
etc.,

Petitioner,

vs.

DUVAL COUNTY SCHOOL BOARD,

Respondent.

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CASE NO. 69,430

ON APPEAL FROM THE FLORIDA FIRST DISTRICT COURT OF APPEAL

REPLY BRIEF OF PETITIONER,  
ROBERT P. MORROW

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I. Only Tenured Teachers Are "Entitled To Continued Employment" Within The Meaning Of Section 231.031 Of The Florida Statutes.

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The School Board argues that Section 231.031 of the Florida Statutes does not remove tenure rights from a teacher once he or she reaches age seventy because the term "continued employment" is not related to the term "continuing contract." The School Board concludes that section 231.031 refers only to employment in general and not tenure or continuing contract status. According to the School Board, "Thus, because the Legislature used 'continued employment' in § 23.01 and 'continuing contract' or 'professional services contract' for tenured employees in § 231.031, it must be presumed that those terms have different meanings." School Board's Answer Brief at 7-8. The School Board's construction error is due to only looking at the limited phrase "continued employment."

Section 231.031 speaks in terms of "no person shall be entitled to continued employment." The phrase at issue includes the term "entitled to." Using the same statutory guidelines that the School Board has advocated, namely the plain and ordinary sense of words of common usage, it is clear the only teachers which are "entitled to continued employment" are continuing contract or tenured teachers. A non-tenured

teacher would not be "entitled to continued employment."<sup>1</sup> The phrase "entitled to continued employment" has the same meaning as tenure or continuing contract status.

In addition, if the Legislature meant to grant the superintendent of the Duval County school system the authority to arbitrarily, capriciously, and selectively terminate any full time teacher after he or she had reached age 70, it could very easily have so provided. The statute could simply have been drafted to provide, "no person shall be continued in employment" except upon the recommendation of the superintendent. Instead, the Legislature chose to use the phrase, "no person shall be entitled to continued employment." The phrase "entitled to continued employment" means tenured or continuing contract teachers.

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1 The School Board expressly adopts this position in a latter section of its brief wherein it argues that only a teacher who has "receiv[ed] tenured status" is entitled to protection from termination without cause. With regard to non-tenured teachers "no proceedings [are] required to establish cause for non-renewal." School Board's Answer Brief at 21-22.

II. The Court Need Not Address The Troubling Constitutional Issues Presented By The School Board's Construction of Section 231.031 If It Adopts Morrow's Construction.

The School Board has not responded to Morrow's argument that there is no rational basis for allowing full time public school teachers to be terminated solely on the basis of age, while full time private school teachers and part time public school teachers may not be so terminated. Morrow submits that the School Board must answer this argument and provide the Court with a rational basis for the Legislature making this distinction before the School Board's construction of section 231.031 can be accepted as not being in violation of equal protection or due process of law.

The construction of section 231.031 asserted by Morrow, namely that the statute only removes a public school teacher's right to tenure after he or she reaches the age of 70 and does not grant a school board the unbridled discretion to terminate a teacher upon attaining the age of 70, would not require the Court to address this argument. As pointed out by Morrow in his initial brief, to the extent that the Court can adopt a construction of section 231.031 that avoids the necessity to address troubling constitutional issues, it should do so. In addition, while the hearing officer may have no right to rule upon constitutional issues, either as applied or as a facial challenge, there is no reason why the Court, the First District Court of Appeal or the hearing officer should not consider this principle of statutory construction in rendering its interpretation of section 231.031.

III. The School Board's Arbitrary, Capricious and Selective Decision To Terminate Morrow Was Based Solely On His Age.

Finally, Morrow disagrees with the factual assertions contained in the latter sections of the brief filed by the School Board with regard to the circumstances of the termination of Morrow. School Board's Answer Brief at 19-20. Apparently, the School Board is trying to make some type of argument that there was a rational basis for terminating Morrow while retaining four other teachers who had reached the age of 70 years of age. The School Board refused to answer discovery relating to the other teachers who were retained and opposed admission into evidence of material on this matter. In addition, the School Board so acted on the basis that the only issue involved was whether it had the authority to terminate an individual solely because he had reached the age of 70. The School Board also agreed that Morrow had received its highest ratings for the school year previous to his termination. Any assertion made on appeal by the School Board that there was any basis other than age for the termination of Morrow is inaccurate and should not be permitted.

Respectfully submitted,

~~MAHONEY~~ ADAMS MILAM SURFACE & GRIMSLEY

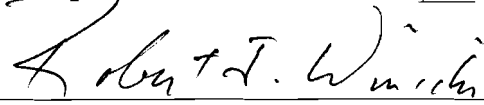
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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished to GERALD A. SCHNEIDER, General Counsel, 1300 City Hall, Jacksonville, Florida 32202; WILLIAM LEE ALLEN, GARY E. ECKSTINE, NEILL W. McARTHUR, JR., Assistant Counsel, 1300 City Hall, Jacksonville, Florida 32202; DANA BAIRD, ESQUIRE, General Counsel, Florida Commission on Human Relations, 325 John Knox Road, Suite 240 - Building F, Tallahassee, Florida 32301; THOMAS W. BROOKS, ESQUIRE, Post Office Box 1547, Tallahassee, Florida 32302; and LESLIE HOLLAND, ESQUIRE, 208 West Pensacola Street, Tallahassee, Florida 32301, by U.S. Mail this 19<sup>th</sup> day of December, 1986.



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