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Please serve upon all parties not
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FILED
LORAIN COUNTY

2022 NOV 23 P 12:06

COURT OF COMMON PLEAS
TOM ORLANDO

LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

Date Nov. 23, 2022

Case No. 22CV205243

ROGER SASACK

Appellant

Rachel Reight

Plaintiff's Attorney

VS

WELLINGTON EXEMPTED VILLAGE
SCHOOL DIST. BOARD OF EDUCATION

Appellee

Donna Andrews

Defendant's Attorney

This matter is before the Court on Appellant, Roger Sasack's ("Sasack"), appeal from the decision of the Wellington Exempted Village School District Board of Education ("The District"), filed July 27, 2022; The District's Appellee Brief, filed June 24, 2022; Sasack's Reply Brief, filed August 10, 2022; and, The District's Surreply Brief, filed August 17, 2022.

THE COURT RULES THAT:

The Wellington Exempted Village School District Board of Education's decision to terminate the supplemental Head Varsity Baseball Coaching contract of Roger Sasack, is hereby OVERRULED, vacated, and Appellant's appeal to this Court is SUSTAINED.


Accordingly, The District is hereby Ordered to:

- 1) Pay Sasack back-pay in the amount of the supplemental contract he would have earned had his supplemental contract been renewed for the 2020-2021 and 2021-2022 school years; and
- 2) Award Sasack the supplemental contract for Head Varsity Baseball Coach for the 2022-2023 school year.
- 3) Pay the costs of these proceedings.



See Judgment Entry. No Record.

IT IS SO ORDERED.



JUDGE D. Chris Cook

cc: Reight, Esq.
Andrews, Esq.



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VS

WELLINGTON EXEMPTED VILLAGE
SCHOOL DIST. BOARD OF EDUCATION
Appellee

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I. INTRODUCTION

This matter is before the Court on Appellant, Roger Sasack's, appeal from the decision of the Wellington Exempted Village School District Board of Education's decision to terminate his supplemental Head Varsity Baseball Coaching contract.

II. PROCEDURAL HISTORY

On October 18, 2019, Sasack¹ filed a grievance with the Wellington Exempted Village School District Board of Education ("The Board")² for posting the position of Head Varsity Baseball Coach for the school year 2019-2020,³ and for failing to renew his contract as Head Varsity Baseball Coach.

On May 25, 2020, a binding grievance arbitration hearing was held before Arbitrator Daniel Zeiser.

On August 25, 2020, Arbitrator Zeiser issued a decision in favor of Sasack finding, *inter alia*, that: 1) The District⁴ violated the parties collective bargaining agreement by failing to properly and timely evaluate Sasack; 2) Sasack was entitled to back-pay for the 2019-2020 supplemental baseball contract; and 3) Sasack was entitled to be awarded the supplemental baseball contract for the 2020-2021 season.

¹ And the Wellington Education Association ("WEA"), the union representing him

² The District is governed by The Board, which has general rule-making authority for the government of its pupils and employees. See: R.C. 3313.20(A).

³ The vacancy was posted on October 16, 2019.

⁴ Throughout this Decision, the Court uses the terms The District and The Board interchangeably.



On September 10, 2020, The District's Superintendent, Edward Weber ("Super Weber"), gave Sasack written notice that Super Weber was considering recommending that The Board take action to initiate the termination of his supplemental contract as head varsity baseball coach.⁵

On December 2, 2020, an informal "due process" hearing was had between Sasack and The District.

On December 29, 2020, Super Weber recommended to The Board that Sasack's supplemental coaching contract for the 2020-2021 season be terminated, which was approved by The Board.

On December 30, 2020, The District informed Sasack of The Board's action and its resolution of intent to terminate Sasack's contract.

On January 6, 2021, Sasack requested a formal hearing before a referee pursuant to R.C. 3319.16.

On May 17-19, and 24, 2021, a four-day hearing was conducted by Referee Lee Skidmore ("Referee Skidmore").⁶

On July 30, 2021, Referee Skidmore issued a Report and Recommendation favorable to Sasack and recommended that his contract be reinstated.

On January 18, 2022, The Board rejected Referee Skidmore's Recommendation and adopted a resolution to terminate Sasack's contract.

On February 15, 2022, Sasack appealed to this Court.

On October 6, 2022, the Court held a status conference with the parties and counsel, though no evidence was taken.

⁵ As a result of the binding arbitration awarding him the supplement coaching contract for the upcoming (2020-2021) season, Sasack was at this point officially the Head Varsity Baseball Coach.

⁶ Referee Skidmore was mutually selected to serve as referee by the parties.



III. STATEMENT OF PERTINENT FACTS

Based upon the Certified Record, the Complaint and attached exhibits⁷, the Resolution Terminating Supplemental Contract ("The Resolution"),⁸ the briefs of the parties, and the applicable law, the Court finds the following pertinent facts supported by the record:

- 1) Sasack is a teacher in The District where he has worked for over 21 years. His employment as a teacher is not an issue in these proceedings.
- 2) In addition to teaching, Sasack has been a baseball coach for The District⁹ for 18 years, with the last 16 years as Wellington's Head Varsity Baseball Coach.
- 3) During his 16 years as Head Coach, he had no prior discipline although he had two less than favorable evaluations, one in 2014 and another in 2017.¹⁰
- 4) These were the only two evaluations of Sasack during his terms as Head Varsity Baseball Coach.
- 5) He last served as Head Coach for Wellington during the 2018-2019 baseball season.
- 6) On April 22, 2019, during an away game against Keystone, Sasack disputed a call made by home plate umpire Doug Long ("Umpire Long").
- 7) Umpire Long determined that the Wellington third baseman obstructed a Keystone player rounding third base which resulted in the Keystone player advancing to home plate to score a run.¹¹
- 8) Seeking clarification or further explanation as to the obstructing call, Sasack left the dugout to talk to Umpire Long. ("The Incident").

⁷ This Court specifically reviewed Exhibit "A," the Opinion and Award by Daniel Zeiser ("The Arbitration Award") and Exhibit "B," the Report and Recommendation by Referee Lee Skidmore ("The Referee's Report").

⁸ January 18, 2022.

⁹ Sasack coached Wellington High School Men's Varsity Baseball team ("Wellington").

¹⁰ As will be discussed *infra*, the fact that these two evaluations were somewhat critical of Sasack is irrelevant to these proceedings.

¹¹ The Keystone player fell while rounding third base and scampered back to third where he was called safe by a second umpire.



- 9) The nature of The Incident and the interaction between Sasack and Umpire Long is disputed and will be discussed *infra*, but resulted in Sasack being ejected from the game.
- 10) It is not disputed that in his frustration and during the course of The Incident, Sasack kicked dirt onto home plate and stated that the call was "chickenshit".
- 11) Sasack and Umpire Long had at least one run-in in the past when at a game a few days earlier, Umpire Long demanded that Sasack remove his team from the field so that the other team could warm up.
- 12) After his ejection, Sasack contacted John Bowman the Athletic Director for The District ("A.D. Bowman"), to inform him that Sasack had been ejected.
- 13) A.D. Bowman subsequently reviewed Umpire Long's ejection report, spoke to Umpire Long, and spoke to Keystone's Athletic Director.
- 14) After conducting his review of The Incident, A.D. Bowman issued Sasack a one-game suspension to be served on April 29, 2019.
- 15) In addition to this sanction, the Ohio High School Athletic Association ("OHSAA"), pursuant to its guidelines, issued Sasack a two-game suspension, ordered that he pay a \$100.00 fine, and required him to complete a "Teaching and Modeling Behavior Course."
- 16) Sasack served the OHSAA two-game suspension on April 23, 2019, and April 25, 2019. He also paid the fine and completed the course.
- 17) In all, The Incident resulted in Sasack receiving a three-game suspension,¹² incurring a \$100.00 fine, and completion of the behavioral course.
- 18) Sasack coached the remainder of the 2018-2019 baseball season without any further on-field¹³ incidents.
- 19) The baseball season officially ended on May 9, 2019.
- 20) Around May 10, 2019, after the season had ended, Super Weber learned of the Incident and initiated his own investigation.

¹² Without pay.

¹³ On diamond?



- 21) Sasack's supplemental contract expired on June 30, 2019.
- 22) As a result of Super Weber's investigation, he recommended to The District that Sasack's supplemental baseball contract not be renewed and that the position of Head Varsity Baseball Coach be posted as a vacancy.
- 23) In October, 2019, The Board posted the position as a vacancy and interviewed potential candidates.
- 24) Thereafter, Dan Davison ("Coach Davison"), was selected as the new Head Varsity Baseball Coach for the 2019-2020 school year.¹⁴
- 25) In January, 2020, Sasack, who had a son on the baseball team, attended a parents' meeting hosted by Coach Davison to introduce himself as the new coach and to provide information about the upcoming season.
- 26) At the conclusion of the meeting, and after Coach Davison's comments, Sasack addressed the parents to explain why he was no longer coach.
- 27) Shortly thereafter, Sasack instituted the formal legal proceedings outlined above.

IV. STANDARD OF REVIEW

As aptly noted by Sasack, the Ohio Teacher Tenure Act, codified at R.C. 3319.16, protects a teacher from arbitrary discharge from employment and is the starting point in determining the propriety of a school board's actions. The statute reads, in pertinent part,

The contract of any teacher * * * may not be terminated **except for good and just cause.**

* * * After a hearing by a referee, the referee shall file a report within ten days after the termination of the hearing. After consideration of the referee's report, the board, by a majority vote, may accept or reject the referee's recommendation on the termination of the teacher's contract.

Any teacher affected by an order of termination of contract may appeal to the court of common pleas of the county in which the school is located within thirty days after receipt of notice of the entry of such order. The appeal shall be an original action in the court * * * The court shall examine the transcript and record

¹⁴ As of the date of this Decision, Coach Davison still retains that position.



of the hearing and shall hold such additional hearings as it considers advisable, at which it may consider other evidence in addition to the transcript and record. Upon final hearing, the court shall grant or deny the relief prayed for in the complaint as may be proper in accordance with the evidence adduced in the hearing. Such an action is a special proceeding, and either the teacher or the board may appeal from the decision of the court of common pleas pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505 of the Revised Code.

In a recent case, the Ninth District Court of Appeals laid-out the framework, based upon well-founded Ohio Supreme Court precedent, in which a trial court must proceed to adjudicate these matters,

A. Procedure for termination of a teacher's contract

R.C. 3319.16 is the statutory mechanism for the board of education to terminate a teacher's contract. That statute pronounces that "[t]he contract of any teacher employed by the board of education of any city * * * school district may not be terminated except for good and just cause."

Humphries v. Lorain City School Dist., 9th Dist., Lorain No. 18CA188922, 2019-Ohio-2263, at ¶ 6.

1. Board's consideration of the referee's report

The referee's findings of fact must be accepted unless such 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 (1988), paragraph one of the syllabus. However, a board "has the discretion to accept or reject the recommendation of the referee unless such acceptance or rejection is contrary to law." *Id.*, at paragraph two of the syllabus.

Humphries, at ¶ 7.

2. Appeal to the court of common pleas

Pursuant to R.C. 3319.16, any teacher affected by a contract termination has the right to appeal the order of termination to the court of common pleas. * * * The common pleas court may reverse a board's order terminating a teacher's contract



"where it finds that such order is not supported by or is against the weight of the evidence." *Id.*, quoting *Hale v. Bd. of Edn.*, 13 Ohio St. 2d (1968), paragraph one of the syllabus.

Humphries, at ¶ 8.

Appellate review of a trial court's decision is "... rather narrow and limited to a review for abuse of discretion." The court of appeals, "... may not engage in what amounts to a substitution of judgment of the trial court in an R.C. 3319.16 proceeding." *Humphries*, at ¶ 9.

And finally, while a board is not bound by the referee's report, it must be accorded "due deference."

C. Due deference to the referee's findings of fact

While the Board was not bound by the referee's recommendations, "**due deference must be accorded to the findings and recommendation of the referee * * * especially where there exist evidentiary conflicts, because it is the referee who is best able to observe the demeanor of the witnesses and weigh their credibility.**" *Graziano*, 32 Ohio St.3d at 293, citing *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108 (1980).

Humphries, at ¶ 12, emphasis added.

V. ANALYSIS

In support of this appeal, Sasack posits the argument that "In the instant case, the rejection of findings of fact and recommendations by Referee Skidmore were not supported by and were against the manifest weight of the evidence and the Board's rejection of Referee Skidmore's recommendations was contrary to law."¹⁵

This Court agrees.

As noted, on May 17-19, 24, 2021, jointly selected Referee Skidmore presided over a private hearing in Wellington, Ohio, relative to The Board's decision to terminate Sasack's supplemental coaching contract. At the hearing, testimony and exhibits were

¹⁵ Sasack's Brief of Appellant, Page 18.



presented to Referee Skidmore. He issued his Report and Recommendation on July 30, 2021.

The sole issue considered by Referee Skidmore was whether or not The Board had sufficient cause to terminate Sasack's contract based upon two specific grounds, to wit:

- 1) At an April 22, 2019, baseball game, Sasack was ejected after yelling and cursing at the umpire; and
- 2) On January 17, 2020, at the conclusion of a baseball parents meeting, Sasack addressed the group regarding his personal concerns and grievances against the District regarding his replacement as head coach; he made light of his ejection; and, his conduct was intended to undermine the new baseball coach.

Referee Skidmore considered the testimony of five (5) witnesses called by The District¹⁶ and five (5) witnesses called by Sasack (including his own testimony).

A) THE EVALUATIONS

Referee Skidmore's first factual finding is that in contravention of the negotiated CBA between The District and teacher's union (WEA), The District failed to provide Sasack with annual written evaluations. In fact, there were only two written evaluations completed for Sasack during his 16-year tenure as Head Baseball Coach.¹⁷

B) THE APRIL 22, 2019, EJECTION (THE INCIDENT)

The Incident is the first event cited by The Board in its decision to terminate Sasack's contract. By way of background, recall that after Sasack was sanctioned by The District and the OHSAA, he coached the balance of the season without incident. After the season ended, but before his contract expired (June 30, 2019), Sasack learned that The District planned on posting the position of Head Varsity Baseball Coach (as opposed to re-hiring him). The position was posted and The District hired Coach Davison to coach the 2019-2020 baseball season.¹⁸

Sasack thereafter filed a grievance which was heard on May 25, 2020, and on August 25, 2020, Arbitrator Zeiser found in favor of Sasack based primarily on The District's

¹⁶ One of which was a rebuttal witness.

¹⁷ This was a substantial issue during the parties' Arbitration and played a role in Arbitrator Zeiser's Opinion and Award. That issue is not, however, particularly germane to this Court's analysis.

¹⁸ Had The District properly evaluated Sasack that probably would have been the end of this matter.



failure to properly evaluate him. The decision by Arbitrator Zeiser was binding on The District so they were compelled to award the 2020-2021 supplemental Varsity Head Baseball Coach contract to Sasack.

Faced with the prospect of having Sasack coach the baseball team in the upcoming year against their wishes, The Board instituted proceedings in September, 2020, to terminate his supplemental contract.

Now, back to The Incident.

It is undisputed that during an away baseball game against Keystone High, a Keystone player rounded third base, slipped and fell, then scampered back to third.¹⁹ He beat a throw to third and was ruled safe. When the play ended, Umpire Long declared that the player scored a run due to an "obstruction" that occurred during the play.

Understandably concerned, Sasack left the dugout to speak to Umpire Long to get an explanation as to why obstruction was called that resulted in the Keystone run. "... **Umpire Long would not explain the call other than declare there was an obstruction.**" (Emphasis added.)

According to Umpire Long, Sasack, "... became irate and started yelling ..." Sasack also requested that Umpire Long check with the other umpire (who had initially called the runner safe), Umpire Board, but Umpire Long refused to do so. Umpire Long then testified that Sasack, "... became enraged and clenched his fists, teeth and jaw and began screaming, (*sic*) Umpire Long felt threatened and immediately ejected Sasack."

After the ejection, according to Umpire Long, Sasack became even more angry²⁰ and covered up home plate with dirt. Umpire Long stated that Sasack "continued to berate me, calling me shithead and asshole ... **in full earshot of the players and the fans.**" (Emphasis added.) Umpire Long concluded his testimony of The Incident by stating that Sasack was "... completely out of control ... and asked the home team to call the police."

Sasack's version of events is substantially different. According to Sasack, he testified that he did approach Umpire Long for an explanation. Sasack admitted that "through clenched teeth I tried to like yell under my breath, you know, can you ask for help." He was then ejected. Sasack denied calling Umpire Long a shithead or an asshole, but did admit to stating that Umpire Long's call was "chickenshit."

¹⁹ The following facts are gleaned from Referee Skidmore's report. Citations omitted.

²⁰ Which is a bit odd given that according to Umpire Long, Sasack was already "irate" and "enraged." Not sure how one could become "even more angry" than irate and enraged.



Sasack further testified that he never made physical contact with Umpire Long, but did kick dirt on home plate and told him to clean it up but did not use profanity. According to Sasack, The Incident lasted 2-3 minutes. Sasack concedes he was frustrated with the call and it was not his "best day" but believed he should have been given an explanation for the obstruction call.

Interestingly, this is the only testimony presented by The District regarding what actually happened during The Incident and it belies Umpire Long's statement that Sasack's comments were heard "... in full earshot of the players and the fans." In essence, the specifics of what occurred during The Incident come down to the credibility of the two people most invested in the outcome.

In evaluating credibility, we use the tests of truthfulness which we use in our daily lives. These tests include the appearance of each witness upon the stand; his or her manner of testifying; the reasonableness of the testimony; the opportunity he or she had to see, hear and know the things concerning which the witness testified; his or her accuracy of memory; frankness or lack of it; intelligence, **interest and bias**, if any; together with all of the facts and circumstances surrounding the testimony. (See: OJI 305.05, emphasis added.)

And who was in the best position to weight this testimony, Referee Skidmore or The Board? The answer is clear. Where there are evidentiary conflicts, due deference must be given to the findings and recommendation of the referee, "... **because it is the referee who is best able to observe the demeanor of the witnesses and weigh their credibility.**" *Humphries, supra*, at ¶ 12, emphasis added. See also: *Graziano v. Bd. Of Ed. of Amherst*, 32 Ohio St. 3d 289, 293 (1987), "... **it is the referee who is best able to observe the demeanor of the witnesses and weigh their credibility.**" (Emphasis added.)

It is clear from the record that Umpire Long had an interest in the outcome of the hearing. He took a substantial action (ejection) against Sasack, claimed he felt threatened, and wanted the police called. By placing Sasack in the worst possible light, Umpire Long's conduct is increasingly justified.

Moreover, there is evidence in the record that Umpire Long harbored some bias against Sasack. As noted by Referee Skidmore, "... **Umpire Long had a preconceived bias towards [Coach] Sasack . . .**" based upon previous encounters between the two. (Emphasis added.)

Sasack too, obviously, had an interest in the outcome of the hearing. After all, his coaching career and reputation were on the line. He had a clear motivation to downplay



his conduct during The Incident, to minimize his actions, and to transfer some blame back onto Umpire Long for failing to explain the obstruction call.

Nevertheless, in consideration of the above, this Court agrees with the conclusions of Referee Skidmore that "The evidence is conflicting at best and even where not conflicting, it fails to rise to the level of a fairly serious matter." As such, The Board failed to give the proper deference to Referee Skidmore and failed to properly weigh the evidence regarding the testimony of the only two witnesses to The Incident.

Even more compelling, however, is the balance of the testimony from the other witnesses to The Incident – witnesses with no dog in the fight. Referee Skidmore noted in the Referee's Report that three other witness were called (by Sasack) who were present during the Incident

Umpire Board testified that he heard a "loud discussion" but no profanity and observed no physical contact. He testified that the police "did not" need to be called, that ejections happen "maybe every five, maybe every ten games" and "in the heat of the moment things happen."

Given that Umpire Board is a colleague of Umpire Long and was closest to the action as it unfolded, his testimony is compelling.

Two other witnesses testified, both who were parents in attendance at the game. Donald Bliss ("Bliss") stated that he has three sons who played under Sasack and witnessed The Incident from the stands. Bliss testified that when Sasack approached Umpire Long he immediately became defensive. He could not hear what was being said, but did not hear any profanity. Like Umpire Board, Bliss did not feel that the police needed to be called. In fact, Bliss believes it was Umpire Long who allowed the situation to escalate and that "coaches are always questioning calls and having discussions with umpires."

Mr. Higgins ("Higgins"), the other parent at the game and third "neutral" witness testified that Sasack came out of the dugout fast and "was upset." He observed that the situation was getting heated "because [Coach] Sasack was not getting an explanation." Higgins was close enough to hear the discussion between Umpire Long and Sasack and "never heard any profanity used towards Umpire Long by [Coach] Sasack." He heard Umpire Long's request that the police be called and along with other parents present thought the request was "laughable" because "there was no reason for the police to come."

In all, Sasack served a three-game suspension (two games by OHSAA and one by The District), paid a \$100.00 fine, and completed a course titled "Teaching and Modeling



Behavior." Tellingly, A.D. Bowman never reported The Incident to Super Weber, and Sasack completed the baseball season without incident.²¹

This Court agrees *in toto* with the findings, analysis, and application of law found by Referee Skidmore on Page 15 of the Referee's Report where he makes the following significant determinations: 1) the mere fact that Sasack was ejected from a game is not grounds for termination; 2) it is not unusual for a coach to be ejected from a high school baseball game; 3) it is part of the game to question umpire's calls; 4) The District presented "no other evidence" to corroborate Umpire Long's version of events; 5) Umpire Long had a preconceived bias towards Sasack; 6) A.D. Bowman did not treat the ejection of Sasack as "a fairly serious matter" and did not report same to Super Weber;" 7) Super Weber "accepted the report of Umpire Long without considering the observations of others who attended the game."

Finally, Referee Skidmore's seminal legal analysis is 100% correct,

The evidence is conflicting at best and even where not conflicting, it fails to rise to the level of a fairly serious matter. (Emphasis added.)

C) THE JANUARY 17, 2020 PARENTS MEETING²²

The District's second grounds for termination of Sasack's contract is even less factually compelling than the first. It is stated in the Resolution to Terminate as follows:

On January 17, 2020, at the conclusion of a baseball Parents meeting, Sasack addressed the group regarding his personal concerns and grievances against the District regarding his replacement as head coach; he made light of his ejection; and, his conduct was intended to undermine the new baseball coach.

Referee Skidmore's factual findings on this issue occur at Pages 11-12 of The Referee's Report. Of significance, they include the following: Coach Davison testified at The Hearing that Sasack attended the Parents Meeting "as a parent" because his son was on the team. Coach Davison testified that some of Sasack's comments were "uncomfortable" and that some parents were uncomfortable as well "based upon their facial expressions."

²¹ Had The Incident truly been a "fairly serious matter," it stands to reason that the Athletic Director would have informed the District's Superintendent about what occurred.

²² It appears that the Parents Meeting actually occurred on January 15, 2020.



Conversely, Bliss testified that as a parent in attendance, he felt that it was good that Sasack spoke at the Parents Meeting to “bring the other parents up to speed” and that he did not feel that Sasack’s comments were “inappropriate” or “unprofessional.”

Importantly, Bliss also testified that he spoke to Coach Davison after the meeting and that Coach Davison said, “**he probably would have done the same thing if he was in [Sasack’s] shoes.**” (Emphasis added.)

Referee Skidmore’s discussion and legal analysis begins at Page 21 of The Referee’s Report. He found that Sasack “attended the meeting as a parent” and “addressed the other parents regarding the situation following his non-renewal after his ejection.”

Importantly, Referee Skidmore found that Sasack “**did not interrupt Coach Davison and neither did he undermine Coach Davison’s authority as the current coach.**” Instead, Sasack “**waited until the end of the meeting to make his statements**” and that “**parents were free to leave at any time.**” (Emphasis added.)

Also importantly, Referee Skidmore determined that Sasack “**did not speak negatively of Coach Davison nor did he interrupt him during the meeting.**” (Emphasis added.) Instead, Sasack “explained his situation and what may happen if he was successful in his grievance.”

Similar to his conclusion relative to The Incident, Referee Skidmore is correct that The District failed to meet its burden to show that Sasack’s conduct at the Parents Meeting was a fairly serious matter. Sasack had every right to be there as a parent of a player; he was not a coach in any capacity when he spoke; he did not interrupt Coach Davison and waited until he was finished before speaking; and his discussion with those parents who chose to remain was relevant and informative – after all, he had been their head baseball coach for 16 years!

Similar to its determination regarding The Incident, the Board’s conclusions regarding the Parents Meeting are against the weight of the evidence and do not rise to the level of a fairly serious matter.

In addition, this Court would point out, parenthetically, that the inclusion of the events that occurred at the Parents Meeting to justify termination of Sasack’s contract borders on bad faith. As noted, Sasack did not in any way interfere with Coach Davison’s presentation and as the former baseball coach for 16 years, Sasack had every right, including First Amendment rights, to explain his position to those parents who wished to remain.



This Court observed a similar tactic employed by The Board in its Appellee Brief. At the very beginning of the brief, starting at the top of Page 3 through the first full paragraph of Page 4, The Board discusses wholly irrelevant, derogatory information about Sasack relative to the two evaluations he received. While the evaluations are not hugely critical, they are unflattering. But more importantly, they are irrelevant and inflammatory.

The statute at issue and pertinent case law are clear that, "The termination of a contract shall state the grounds for termination." R.C. 3319.16.

Before terminating any contract, the employing board shall furnish the teacher a written notice signed by its treasurer of its intention to consider the termination of his contract *with full specification of the grounds for such consideration.* (Emphasis added.)

Moreover, "the statute requires that the hearings " * * * **shall be confined to the grounds given for the termination.**" These requirements insure that the teacher will not be surprised by the substance of the case against him, and that he will have an opportunity to prepare himself for his defense, clearly a satisfaction of a principal purpose of discovery.

Wheeler v. Mariemont Dist. B.Ed., 12 Ohio App.3d 102, 108, (1983), emphasis added.

The Board's Resolution terminating Sasack's contract, dated January 18, 2022, lists the two, and only two, reasons for termination at Section 1. Those reasons are identified above. The Board did not consider or take into account Sasack's two unflattering evaluations. Neither did Referee Skidmore for that matter, yet The Board felt compelled to include this surplusage in its brief.²³

D) CASE COMPARATORS

In reaching its conclusion that The Board's termination of Sasack's supplemental baseball contract was against the weight of the evidence and contrary to law, this Court relied upon five (5) case comparator cases. The first, *Hale*, is the seminal case on teacher contract termination cases and is referenced by both parties.

Hale is noteworthy for a number of things; first, it establishes the authority of a common pleas court to, "reverse the order of a board of education to terminate a teacher's contract, where it finds that such order is not supported by or is against the weight of the

²³ It is true that the two evaluations were admitted into evidence at The Hearing and referenced by Referee Skidmore, but the purpose of their admission was solely to establish that they were the only two evaluations ever completed by The District. As noted, this fact was important during the Grievance Hearing, but not relevant or germane to Referee Skidmore's Report and Recommendation.



evidence.” *Hale v. Board of Ed. City of Lancaster*, 13 Ohio St.2d 92, 95, (1968). Second, it provides for common pleas courts, “to weigh the evidence on an appeal from an order of a board of education terminating a teacher’s contract . . .” *Hale*, at pg. 95.

Third, the facts in *Hale* are similar to the case at bar in that both involve one substantial event.²⁴ In *Hale*, a teacher, while intoxicated, crashed into a parked car then left the scene of the accident. He was charged and convicted for the incident and the board terminated his contract. The Ohio Supreme Court didn’t buy it,

We recognize that what Hale did, in leaving the scene of the accident and in denying to the witness and the police officer his part therein, may adversely reflect upon his character and integrity. However, in our opinion, **this single isolated incident on December 6, 1964, would not represent, within the meaning of Section 3319.16, Revised Code, ‘other good and just cause’ for termination of Hale’s contract as a teacher.**

In construing the words, ‘other good and just cause,’ we note that they are used with the words ‘gross inefficiency or immorality’ and ‘willful and persistent violations’ of board regulations. **In our opinion, this indicates a legislative intention that the ‘other good and just cause’ be a fairly serious matter. Thus, where only a single crime is involved, the crime would either have to be a more serious one or involve a more serious fact situation than that here involved.**

Hale, at pg. 98-99, emphasis added.

In the case at bar, there is only one event of any substance, The Incident (specifically, the ejection.) The facts surrounding The Incident, while unfortunate, were not criminal or even “more serious,” but instead, part and parcel to a competitive high school baseball game.

Next, the Court considered the *Graziano* case. In this matter, the Ohio Supreme Court first addressed the weight to be accorded a referee’s findings by a board of education where a hearing before a referee is held pursuant to R.C. 3319.16. The court determined that,

. . . we find that the report and recommendation undertaken by the referee pursuant to R.C. 3319.16 must be considered and weighed by the board of education. We believe that **due deference must be accorded to the findings and recommendation of the referee in this type of situation, especially**

²⁴ This Court does not consider the events that occurred at the Parents Meeting to be “substantial.”



where there exist evidentiary conflicts, because it is the referee who is best able to observe the demeanor of the witnesses and weigh their credibility.

Graziano v. Board of Educ. Of Amherst, 32 Ohio St.3d 289, 293 (1987), emphasis added.

While the court further found that a board is not bound by the referee's report, it nevertheless determined that a board must give it "due deference." Next, in reliance upon *Hale*, the Supreme Court reiterated that a common pleas court "... may reverse an order of termination of a teacher's contract . . . where it finds that such order is not supported by or is against the weight of the evidence." *Graziano*, at ¶ 1.²⁵

The Supreme Court upheld the common pleas court's determination that the decision of the school board to terminate *Graziano's* teaching contract was "not supportable under the *Hale* 'preponderance of the evidence' standard."²⁶

In *Graziano*, the teacher was accused by five students of touching their backs, knee, and thigh, discussing sexual matters, and relating dreams he had of the students of a sexual nature. Despite allegations by multiple students of improper, sexually-related conduct, the trial court and Supreme Court both determined that the board's action in terminating *Graziano's* contract were inapposite.

The allegations in *Graziano* are substantially more noxious than those herein.

The next case this Court considered is the *Aldridge* matter. In that case, decided one year after *Graziano*, the Ohio Supreme Court reaffirmed a number of maxims developed by its predecessor decisions such as the fact that,

the referee is, "a better judge of the credibility of the witnesses . . . than the members of the board . . ." and that unless the findings of fact by the referee are manifestly against the weight of the evidence, "the board of education must sustain such findings of fact."

Aldridge v. Huntington Local School Dist., 38 Ohio St.3d 154, 157 (1988).

The Supreme Court in *Aldridge* also enunciated a two-step process in which a board of education is to consider termination of a teacher's contract,

²⁵ The Supreme Court also determined that a common pleas court may "weight evidence, hold additional evidentiary hearings, and render factual determinations." *Graziano*, at ¶ 2.

²⁶ In fact, the trial court stated that "the board of education's resolutions were totally insufficient . . ."



The decision to terminate a teacher's contract is comprised of two parts: (1) the factual basis for the allegations giving rise to the termination; and (2) the judgment as to whether the facts, as found, constitute gross inefficiency, immorality, or good cause as defined by statute. The distinction between these two is important in understanding the respective roles of the school board and of the statutory referee in the termination process.

Aldridge, at pg. 157.²⁷

The Supreme Court also observed, "The referee's primary duty is to ascertain facts. The board's primary duty is to interpret the significance of the facts." *Aldridge*, at pg. 158.

Finally, the *Aldridge* court reiterated that the referee's findings of fact must be accepted unless such findings are, "against the greater weight, or preponderance, of the evidence," and that the school board has the discretion to accept or reject the recommendation of the referee, "unless such acceptance or rejection is contrary to law." *Aldridge*, at pg. 294.

The facts in *Aldridge* are not developed in the decision, and ultimately, finding that the school board improperly rejected the referee's findings of fact without explanation, the Supreme Court remanded the matter to the trial court for further proceedings.

Next, this Court considered the *Humphries* case discussed at length *supra*. I will not restate the law discussed above but the facts in *Humphries* are instructional.

In *Humphries*, the facts are much more egregious than those at bar. In that case, the teacher ("Humphries") intervened in an argument between her sister and niece at a track event that resulted in Humphries getting embroiled in "a brawl." At the conclusion of the dustup, Humphries gave her niece a "bop" on the noggin.

Taking into account this incident, and some other unsavory actions by Humphries, the board moved to terminate her teaching contract. A hearing before a referee was held where he determined that based upon all of Humphries' misconduct, just cause existed to terminate her contract. Nevertheless, the referee recommended that termination of Humphries "was excessive."

The school board rejected the referee's recommendation and the common pleas court sustained the board's decision. On remand, the Ninth District affirmed.

²⁷ In its current iteration, R.C. 3319.16 does not contain the "gross inefficiency" or "immorality" language.



The upshot from this decision, in addition to the legal framework it provides discussed above, is that it takes fairly outrageous facts to constitute “good and just cause” based upon a “fairly serious matter” to terminate a teacher’s contract.

Precipitating a brawl at a high school track event, whacking a student (even if it’s your niece) on the head, and other substantial transgressions²⁸ are serious matters that provide good and just cause to terminate a teacher’s contract. Getting into a somewhat routine dustup during a high school baseball game where the employee’s worst conduct is kicking some dirt onto home plate and muttering some colorful metaphors is not.

Lastly, this Court considered the matter of *Fiedeldey v. Finneytown Local School Dist. Bd. Of Ed.*, 1st Dist., Hamilton No. C-190366, 2020-Ohio-3960. In this case, the teacher (“Fiedeldey”) dragged a kindergartener 126 feet down a hallway by the student’s arm while the student was on the floor. The board terminated her contract after a referee determined that despite Fiedeldey having the highest, distinguished ratings and many laudatory remarks about her performance, just cause existed to terminate her contract.

The trial court and court of appeals disagreed.

The appellate court reiterated the standard of review and discretion of the common pleas court to weigh evidence and determine credibility of witnesses. The court further discussed the standard for “good and just cause” and what it takes to be a “fairly serious matter.”

R.C. 3319.16 prevents a teacher’s contract from being terminated for other than “good and just cause.” Although “good and just cause” is not statutorily defined, the Supreme Court of Ohio has construed it to mean “a fairly serious matter.” *Hale*, 13 Ohio St.2d at 98-99, 234 N.E.2d 583. In *Hale*, the Supreme Court affirmed the reversal of a teacher’s termination for hitting a parked car while intoxicated and leaving the scene, holding that “where only a single crime is involved, the crime would either have to be a more serious one or involve a more serious fact situation than that here involved.” *Id.* at 99, 234 N.E.2d 583. Generally, what constitutes good and just cause “depends on the context and unique facts of each case.” *Hiss v. Perkins Local School Dist. Bd. of Edn.*, 2019-Ohio-3703, 144 N.E.3d 1093, ¶ 149 (6th Dist.).

Fiedeldey, at ¶ 26.

²⁸ Such as using profanities and an unrelated physical confrontation with a student.



The appellate court upheld the common pleas court's determination that good and just cause did not exist sufficient to terminate Fiedeldey's contract because the facts "... pose[d] an even less serious matter than the facts in *Stalder*²⁹ because Fiedeldey did not place the student in harm's way." *Fiedeldey*, at ¶ 29.

This Court finds it difficult to believe that in today's world and sensibilities dragging a kindergarten student 126 feet down a hallway on the floor by the arm is not a fire-able offense, but apparently, in Hamilton County, it is not.

Regardless, that conduct is surely more egregious than what occurred herein and accordingly, if Fiedeldey kept her job after essentially assaulting a kindergartener, so should Sasack for simply kicking some dirt onto home plate and spewing a profanity at an umpire.³⁰

VI. CONCLUSION

Based upon the Certified Record, the Complaint and attached exhibits³¹, the Resolution Terminating Supplemental Contract ("The Resolution"),³² the briefs of the parties, and the applicable law, this Court rules as follows:

The Wellington Exempted Village School District Board of Education's decision to terminate the supplemental head varsity baseball coaching contract of Roger Sasack, is hereby OVERRULED, vacated, and Appellant's appeal to this Court is SUSTAINED.

Accordingly, The District is hereby Ordered to:

- 1) Pay Sasack back-pay in the amount of the supplemental contract he would have earned had his supplemental contract been renewed for the 2020-2021 and 2021-2022 school years; and**
- 2) Award Sasack the supplemental contract for Head Varsity Baseball Coach for the 2022-2023 school year.**

²⁹ Citation omitted.

³⁰ Note again that this Court gives no weight to the actions that occurred by Sasack at the Parents Meeting.

³¹ This Court specifically reviewed Exhibit "A," the Opinion and Award by Daniel Zeiser ("The Arbitration Award") and Exhibit "B," the Report and Recommendation by Referee Lee Skidmore ("The Referee's Report").

³² January 18, 2022.



3) Pay the costs of these proceedings.

IT IS SO ORDERED. No Record.

A handwritten signature in black ink, appearing to be "D. Cook", written over a horizontal line.

JUDGE D. Chris Cook

THIS IS A FINAL APPEALABLE ORDER