

II. FINDINGS OF FACT

1. On or about August 13, 2002, the District received a letter dated August 9, 2002, from Wonderland requesting that its charter be renewed.

2. In an opinion and order dated December 16, 2002, the District denied the application and refused to renew Wonderland's charter.

3. In the District's opinion, two grounds for non-renewal were set forth: (1) restrictive covenants in teachers' contracts; and, (2) at-will employment of the teachers.

4. Wonderland's employment contract provides:

4.01 If the Employee leaves the employ of Wonderland Charter School prior to the end of the school year (normally June), the employee shall not for a period of one year immediately following the termination of his employment with the Employer, either directly or indirectly;

(1) Make known to any person, firm, or corporation the names and addresses of any of the students or families of students of the Employer or any other information pertaining to them: or

(2) Undertake employment or any other association with any public or private institution offering educational services in the geographical areas of the State College Area School District, the Bald Eagle Area School District, the Penns Valley School District, the Philipsburg/Osceola Mills School District, Bellefonte Area School District, Lock Haven School District, and the Williamsport Area School District among other schools and institutions, but does not restrict Employee from accepting employment with the Penn State University or any other public school district outside of the geographical area defined.

Stipulation, Exhibit "A."

5. Wonderland's bylaws provide: "All staff members are employees at will and may be discharged by the President without notice." Stipulation, Exhibit "B."

6. The District and Wonderland stipulated that the teacher contracts containing the restrictive covenant and the at-will language in Wonderland's Bylaws have been in place since Wonderland's creation. Stipulation, Exhibits "A" and "B".

notice rests within CAB's sound discretion and because the proffered document is not relevant to the issues in this appeal, we decline to take official notice of the document.

III. CONCLUSIONS OF LAW

1. The Charter School Law, Act of June 19, 1997, P.L. 225, No. 22, 24 P.S. §17-1701-A *et. seq.* ("CSL"), governs the application process, the approval process, the operation and revocation/renewal of charter schools in Pennsylvania.

2. Pursuant to the CSL, a charter may be nonrenewed based of any of the following:

(i) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A

(ii) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.

(iii) Failure to meet generally accepted standards of fiscal management or audit requirements.

(iv) Violations of any provisions of [the Charter School Law].

(v) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.

(vi) The charter school has been convicted of fraud.

24 P.S. §17-1729-A(a).

3. The CSL neither prohibits restrictive covenants in employment contracts between charter schools and their teachers nor the identification of teachers as at-will employees.

4. Wonderland's charter was improperly nonrenewed because the record does not support any of the failures or violations enumerated in Section 1729-A of the CSL.

IV. DISCUSSION

Once a charter is granted, it can only be terminated for cause and must be renewed at the end of its term. To nonrenew, the District must demonstrate at least one of the following failures or violations:

(i) One or more material violations of any of the conditions, standards or procedures contained in the written charter signed pursuant to section 1720-A

(ii) Failure to meet the requirements for student performance set forth in 22 Pa. Code Ch. 5 (relating to curriculum) or subsequent regulations

promulgated to replace 22 Pa. Code Ch. 5 or failure to meet any performance standard set forth in the written charter signed pursuant to section 1716-A.

(iii) Failure to meet generally accepted standards of fiscal management or audit requirements.

(iv) Violations of any provisions of [the Charter School Law].

(v) Violation of any provision of law from which the charter school has not been exempted, including Federal laws and regulations governing children with disabilities.

(vi) The charter school has been convicted of fraud.

24 P.S. §17-1729-A(a).

A. Restrictive Covenant

The first issue of this dispute concerns the following restrictive covenant contained in Wonderland's employment contracts:

4.01 If the Employee leaves the employ of Wonderland Charter School prior to the end of the school year (normally June), the employee shall not for a period of one year immediately following the termination of his employment with the Employer, either directly or indirectly;

(1) Make known to any person, firm, or corporation the names and addresses of any of the students or families of students of the Employer or any other information pertaining to them: or

(2) Undertake employment or any other association with any public or private institution offering educational services in the geographical areas of the State College Area School District, the Bald Eagle Area School District, the Penns Valley School District, the Philipsburg/Osceola Mills School District, Bellefonte Area School District, Lock Haven School District, and the Williamsport Area School District among other schools and institutions, but does not restrict Employee from accepting employment with the Penn State University or any other public school district outside of the geographical area defined.

Stipulation, Exhibit "A."

We begin with the understanding that restrictive covenants are legal and enforceable. *Hess v. Gebhart & Co., Inc.*, 808 A.2d 912, 917-918 (Pa. 2002) ("restrictive covenants are enforceable if they are incident to an employment relationship between the parties; the restrictions imposed by the covenant are reasonably necessary for the protection of the employer; and the restrictions imposed are reasonably limited in duration and geographic extent.") Consequently, the mere presence of a restrictive covenant in an employment agreement does not violate any applicable statute, rule, or regulation. In

addition, the District has acknowledged that there is no provision in the CSL that precludes a charter school from including a restrictive covenant in its teachers' contracts. District Opinion and Decision, p. 10.

Wonderland's educational program for its students is one year in length. During the summer, the teachers and parents work together to develop an individual educational program for each student. This program is implemented during the academic year. Continuity in the teacher-student relationship is very important and Wonderland strives to avoid disruption of this relationship by seeking to keep teachers from leaving during the school year. Therefore, CAB disagrees with the District's argument that Wonderland has no legitimate interests to protect. CAB believes that the restrictive covenant is reasonably necessary for the protection of this teacher-student relationship.

In addition, the restriction is reasonably limited in duration and geographic extent. Teachers hired to work at Wonderland for a school year cannot leave to take a local teaching job in any nearby school district within the same school year.² CAB sees nothing in that restriction that is inherently illegal. The District might think that the bargain is unfair to the teachers, but since it is voluntarily made, and not illegal, *per se*, CAB sees no justification to undo it through nonrenewal of the charter.

Moreover, CAB knows that an aggrieved employee can prevent overly broad application of the restrictive covenant in a court of equity. "Our law permits equitable enforcement of employee covenants not to compete only so far as reasonably necessary for the protection of the employer's protectible business interests. When, however, the covenant imposes restrictions broader than necessary to protect the employer, we have repeatedly held that a court of equity may grant enforcement limited to those portions of

² Wonderland's discussion and explanation of the restrictive covenant was that if a teacher in its employ leaves prior to the end of the school year, that teacher is restricted from working in any of the enumerated school districts for the remainder of that school year. The language of the restrictive covenant in the employment contract could be read to restrict the teacher's ability to teach in the enumerated school districts for one year after leaving Wonderland's employ, rather than just the remainder of the school year. Although one year may not constitute an unreasonable length of time, CAB suggests that Wonderland revise the language in the employment contract so that it is not misinterpreted and clarifies that the restriction is for the remainder of the school year.

the restrictions that are reasonably necessary for the protection of the employer.” *Id.* at 920. Given that the provision is not inherently illegal, and that an employee can prevent unfair enforcement, CAB cannot conclude that the restrictive covenant is illegal on its face.

CAB also disagrees with the District’s argument that the restrictive covenant is inconsistent with the CSL provisions that permit leaves of absence. Specifically, the CSL provides: “Any temporary professional employe or professional employe who leaves employment at a charter school shall have the right to return to a comparable position for which the person is properly certified in the school entity which granted the leave of absence.” 24 P.S. §1724-A(h)(1). This provision prevents a school district from which a teacher obtained a leave of absence to teach in a charter school from refusing to allow the teacher to return to the school district to teach. The CSL does not say that teachers will have an absolute right to *immediately* return to the District. The CSL does not prohibit a teacher from promising to wait until the end of the school year to return to the District in consideration for receiving employment at Wonderland.

The CSL also provides that the charter school’s Board of Trustees has “the authority to employ, discharge and contract with necessary professional and nonprofessional employes subject to the school’s charter and provisions of this article.” 24 P.S. §17-1716-A(a). In addition, the Board of Trustees “shall determine the level of compensation and all terms and conditions of employment of staff except as may otherwise be provided in this article.” 24 P.S. §17-1724-A(a). Clearly, Wonderland’s Board of Trustees has the authority to contract with its employees and nothing in the CSL or the school’s charter precludes the restrictive covenant employed by Wonderland.

CAB also disagrees with the District’s argument that the charter should be nonrenewed because the restrictive covenant makes Wonderland a poor model for other schools. The school’s suitability as a model for others is one factor that the District must consider when deciding whether to grant a charter. It is not one of the specific failures or violations for which a charter may be nonrenewed. 24 P.S. §17-1729-A(a).

CAB therefore disagrees with the District that the restrictive covenant is cause to fail to renew Wonderland's charter.

B. At-will Employment

The second issue of this dispute concerns a provision in Wonderland's bylaws that says: "All staff members are employees at will and may be discharged by the President without notice." Stipulation, Exhibit "B." The District believes that the provision denies employees due process of law.

As stated above, Wonderland's Board of Trustees has the authority to determine all terms and conditions of employment of the staff. Charter school employees may organize under the Public Employee Relations Act. 24 P.S. §17-1724-A(a). However, there was no evidence that Wonderland's teachers have organized and are covered by a collective bargaining agreement. In addition, "no temporary professional employe or professional employe shall have tenure rights as against a charter school." 24 P.S. §17-1724-A(f).

Section 1732-A of the CSL specifies the Pennsylvania laws and regulations to which charter schools shall be subjected. Pursuant to Section 1732-A of the CSL, charter schools are not subject to sections 514, 1122, 1127, 1129, 1130, 1131 and 1151 of the School Code, 24 P.S. §§5-514, 11-1122, 11-1127, 11-1129, 11-1130, 11-1131, 11-1151. Section 514 contains the due process procedures that school districts must follow when firing employees:

The board of school directors in any school district, except as herein otherwise provided, shall after due notice, giving the reasons therefor, and after hearing if demanded, have the right at any time to remove any of its officers, employes, or appointees for incompetency, intemperance, neglect of duty, violation of any of the school laws of this Commonwealth, or other improper conduct.

Sections 1122, 1127, 1129, 1130, 1131 and 1151 pertain to dismissals or demotions of professional employees and the relevant notice and hearing requirements.

Since Wonderland's Board of Trustees has the authority to set the terms and conditions of employment, and the above-noted sections of the Public School Code do not apply to charter schools, Wonderland is not precluded from recognizing its employees as at-

will employees. "The law in Pennsylvania is abundantly clear that, as a general rule, employees are at-will, absent a contract, and may be terminated at any time, for any reason or for no reason." Stumpp v. Stroudsburg Municipal Authority, 658 A.2d 333, 335 (Pa. 1995). "Absent a statutory or contractual provision to the contrary, the law has taken for granted the power of either party to terminate an employment relationship for any or no reason." Shick v. Shirey, 716 A.2d 1231, 1233 (Pa. 1998). An employer's right to dismiss an employee with or without cause is qualified only by the dictates of public policy. Id. The Pennsylvania Supreme Court continues to recognize that the exception to the at-will rule should be applied only in the narrowest of circumstances. McLaughlin v. Gastrointestinal Specialists, Inc., 750 A.2d 283, 287 (Pa. 2000).

There are no statutory provisions applicable to charter schools that change the at-will status of Wonderland's employees. There are no contractual provisions that change the at-will status of Wonderland's employees. To the contrary, Wonderland's Bylaws clearly state that all staff members are at-will employees and may be discharged by the President without notice. Stipulation, Exhibit "B." In addition, the Employment Contract provides that the employee's employment shall continue as long as the services rendered are satisfactory to Wonderland and that Wonderland is the sole judge of whether the services are satisfactory. Stipulation, Exhibit "A." There is no clearly mandated public policy that dictates against Wonderland's employees being at-will.

Further, CAB disagrees with the District's argument that Wonderland's employment contract conflicts with Section 1724-A(h)(1) of the CSL 24 P.S. §17-1724-A(h)(1). Section 1724-A(h)(1) allows the school district from which a teacher was granted leave of absence to teach at the charter school the right to access information regarding dismissal from the charter school, including the record of any hearing at any dismissal proceeding conducted by the charter school. Allowing the school district access to such information if a teacher is dismissed from employment at the charter school does not, however, mandate that the charter school conduct a dismissal proceeding.

CAB also disagrees with the District's argument that the Bylaws violate Section 553 of the Administrative Agency Law (AAL), which states: "No adjudication of a local agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard." 2 Pa.C.S. §553. An adjudication is defined as "any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made." 2 Pa. C.S. §101. A decision by a charter school to dismiss an at-will employee does not constitute an adjudication as defined in the AAL.

Since Wonderland's teachers are at-will employees, they do not have a property interest or right in continued employment with Wonderland. See, Stumpp, 658 A.2d at 334. "An individual employed by a local agency is an at-will employee and does not enjoy a property right in her employment unless she has an expectation of continued employment guaranteed by contract or statute." Id. at 335. Clearly, Wonderland employees do not have the expectation of continued employment by contract or statute. The CSL does not provide an expectation of continued employment and Wonderland's Employment Contract and Bylaws clearly state that the employee is at-will and remains employed only as long as providing satisfactory services, as determined solely by Wonderland. Wonderland's Bylaws do not violate the AAL. Therefore, CAB disagrees that Wonderland's Bylaws give rise to any cause to fail to renew Wonderland's charter.

V. CONCLUSION

For the reasons stated above, the appeal of Wonderland Charter School is granted. The District's decision is overruled and Wonderland's charter is renewed for a five-year term.

