

No Standing News

Since we have no standing, we stand with those left standing

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Rolla School Board v. Due Process

The Reed Solution? The school board voted in closed session on January 23, to “extend” the contracts of all administrators - salary and benefits to be decided later – except for the contract of suspended principal Lynne Reed. This appears to be the school board’s solution to the *alleged* multiple violations of school policy by Reed. Reed was first suspended in November with pay pending...well, pending something, the board didn’t bother to explain what they were doing. Their first version was that she was on “personal” leave but later it turned out to be administrative leave with pay. At the same time two other employees, Dennis Cook and Amy Jones, both involved in the investigation, were “encouraged” to resign or be fired. The Rolla school system (like many other employers) has gotten away with this cheap technique many times. Squeezing employees for ‘voluntary’ resignations is quick, easy and keeps unemployment claims down. With Reed, however, the customary fast shuffle didn’t work.

The leaks. In January, a copy of Personnel Director Aaron Zalis’ report on the Reed/Cook investigation appeared in several media mailboxes including NSN’s. The school district claimed the distribution was the work of a hacker. They pointed the finger at a former employee but they had seized his personal computer on November 15th – the last entry in the Zalis report was dated November 25, 2002. It didn’t figure that their alleged hacker was also the ‘leaker.’ We didn’t give our copy to the school policeman who was collecting ‘evidence.’ No one had been charged with a crime and NSN doesn’t turn over sources. After reading the Zalis investigation report it didn’t seem to produce substantial evidence of much except that Zalis can’t conduct an investigation properly and also can’t write a coherent report about it. As far as we could see it was another messy personnel issue, which the board and administration had ignored since January ’02. We were curious to see if they could handle this one properly or if they would shoot themselves in their collective feet?

The squeeze. The information last week about another change in Reed’s employment status was confusing but became a little clearer when Lynne Reed’s attorney, Kent Robinson, provided a written statement on behalf of his client, explaining her side of the events and detailing the shifting strategy of the school board from November to the present. The following is a chronological sequence of events summarized from Robinson’s letter* to us (and other media) on behalf of Lynne Reed. Some notes (*in italics*) are inserted from the Zalis report where relevant.

November 21 – Reed was called in to meet with Superintendent Adams and Zalis and questioned about her relationship with Dir. of Maintenance Dennis Cook. She asked if a complaint had been filed against her, if admissions about private, lawful conduct with another employee would **affect her employment or his** and if she needed a lawyer present for the interview? They replied in the negative to all three questions. They said she only needed a lawyer if a suit was later filed against her and that admission of a consensual relationship will only help the district defend a harassment complaint if one was later filed. Reed then admitted to an intimate relationship with Dennis Cook.

(Zalis report - 11/21 a.m. Adams and Zalis meeting with Cook and Jones: “They were encouraged by us at that point that the best interests for their employment would be to resign their positions. Resignations were expected that day (and were provided later that afternoon).” (Later in same interview) “...Dennis spoke again of policy AC-R, Investigation and Grievance. I told him again we would be launching into an investigation [of sexual harassment].”)

(Later on same day Adams and Zalis interview Reed) “On this day, she [Reed] stated she had had sexual relations with Dennis [in January and February and April]. Also during those time periods, **Dr. Leonard Westbrook** had talked with Lynne and Dennis about warnings and rumors centered around this whole issue, which at the time they also denied.”)

November 22 – Reed again met with Adams and Zalis at their request, again without counsel, and is given written notice that she was being placed on paid administrative suspension. Her resignation was demanded by November 26 or, they threatened, she would face formal charges. When she asked why they were renegeing on assurances made the day before, Adams apologized and said their attorney, **Celynda Brasher**, said they had to do it.

(Zalis report: “On this day, November 22nd, 2002, I received letters of resignation from both Dennis Cook and Amy Jones and they were accepted by the Board of Education that very evening.”)

Having placed Reed on administrative leave with pay on November 22, the board now had to follow with one of two actions if she didn't resign, reinstatement or termination. The suspension triggered her right to a due process hearing if she chose to have one. Remember that, titillating though the leaked details from the Zalis report are, there still has been no hearing to establish the facts and the board hasn't yet justified their adverse action against her employment. A due process hearing requires written notice of the charges and the opportunity to defend against those allegations before a fair and impartial hearing body. One can argue that the school board is hardly a fair or impartial panel under the circumstances but that's the way the system works at this level. Two employees had resigned easily but Reed was proving troublesome so they raised the stakes by threatening action against her teaching certificate. Unless they had a solid case for firing her, upping the ante was a risky move. If it was a bluff, it was a stupid one.

November 26 – Reed's attorney, **Kent Robinson**, contacted **Celynda Brasher**, the Board's attorney, to find out why the sudden reversal (the demand for Reed's resignation etc.) and to ask for a meeting with district officials. Brasher refused to set up a meeting and said that Reed should have no illusions about keeping her job. Brasher then volunteered that "certain benefits" would result if Reed quietly resigned. The benefits included removal of Adams letter from her personnel file, and the district would not file formal charges to have her teaching certificate revoked by the state. Brasher pointed out to Robinson that ***an action against Reed's certificate would ruin her career even if she were successful in defending herself against the charges.*** Brasher added that she knew Reed was a single parent and the Adams letter might ***hurt her in a future custody dispute if it were discovered by Reed's ex-husband.***

Robinson notes in his letter that "discussions of this nature are wholly inappropriate as a tool to extract a resignation." In our opinion calling them "inappropriate discussions" is far too polite; they are ugly threats aimed below the belt. Was the board aware that their attorney was using such tactics?

December (early) - Reed authorized Robinson to negotiate with the district's attorney. Brasher, when contacted by Robinson, said she had discussed the matter in detail with **School Board President Annie Bass** and she (Brasher) had been given full authority to speak for the full board. The settlement the lawyers then negotiated included a provision for releasing the district from all liability in the way the district had handled her personnel matter. Reed, wanting to avoid further exposure, reluctantly accepted the deal.

Release from liability is a common condition in this kind of settlement, but the agreement blew up when Brasher included in the settlement document numerous other matters (unspecified in Robinson's letter) which he says had never been discussed or agreed upon including a requirement that Reed ***"fully release Brasher and her law firm from liability, and that Reed fully release any individual District employees who may have engaged in intentionally wrongful conduct."*** The last two conditions are astonishing. The opposition's lawyer is not at risk for simply representing his client – not, that is, if he/she has adhered to the Missouri Supreme Court Rules of Professional Conduct. What was Brasher so nervous about? Why should any district employee who had engaged in "*intentionally wrongful conduct*" be released from liability? Who did they feel needed such unusual protection?

January 7 - Superintendent Adams served Reed with a five and one-half page "statement of charges" (used for action against a license) This effectively terminated negotiations. **January 17**, Reed replied with a written request for an open public hearing before the Board of Education. Hearing dates were set for February 6 and 7, 2003.

January 27 - Reed's attorney began preparing for the hearing by issuing subpoenas to compel District personnel to produce records and appear for discovery depositions.

The problem with due process. The hearing Reed requested, although called an "informal" hearing, is still a hearing "of record" taken by a court stenographer, a record that could be used to appeal the board's decision in Circuit Court. Each side calls witnesses who testify under oath and each side may produce documentary evidence. Imagine the rising panic as the board began see requests by Reed's attorney for documents, records, and depositions; as they began to realize what might be revealed in this public hearing – not just about Lynne Reed but about their own methods, practices, their history of preferential treatment. This is a board accustomed to making the rules, squelching public comment, controlling all discussion. Some will go to any lengths to get their way. But at this hearing the lawyers and their rules would be in control and the public could see it all. This was definitely not what this board was used to.

They are also accustomed to "interpreting" the meaning of their vague policies depending on the fix they're in; "case by case" they like to say. This sloppy but very convenient practice is as power delegated to administrators - particularly when dealing with student discipline. Such 'sliding scales' of judgment would be sharply disputed by an attorney accustomed to challenging ambiguous meanings and fuzzy assumptions. For instance, if Reed were charged with "inappropriate and excessive use of school resources" her attorney would demand to see the board policy defining what was "inappropriate and excessive" use. Before Ewing and the board passed out cell phones did they set limits on

their use? Were those limits ever enforced? Would examination of other administrator's phone records show similar "inappropriate and excessive use of school resources"? Was the pot calling the kettle black?

To charge Reed with "immoral conduct"- one of the six grounds for firing a teacher or administrator – was also a sticky problem. These days immoral conduct is not as easy to define as one might think. "Immoral conduct" is defined in law (but not in the board's policy) as conduct "*inimical to public welfare according to the standards of a given community.*" But what are the standards of our community and where are they defined? This is hardly the first time a district employee has had an affair. If an affair, even an extramarital affair, were a firing offense there would have been many sudden vacancies in the district ranks over the years. That said, when personal and private conduct (sexual or other) does create problems in the workplace, management must take some action to resolve the problem. Zalis reports that this opportunity first arose as early as January '02 but Westbrook and Ewing do not appear to have taken the appropriate steps in counseling these employees, setting job performance targets and providing the required personnel file documentation of the problem and the corrective actions. Brushing the problem under their very lumpy management rug only set the stage for more trouble.

The problem with the 14th Amendment. The allegations of sexual harassment (District policy AC-R) in the Zalis report and in the five-page "statement of charges" attacking her teaching certificate, could also backfire. A sexual harassment charge must be made in writing by the person claiming to have suffered the harassment or discrimination, but according to Reed's attorney the district would not or could not produce this complaint. Sexual harassment or discrimination have specific criteria that must be met and a careful process that must be followed - something Celynda Brasher, the Board's attorney should have known. In 1996, Brasher was one of three attorneys defending former Superintendent Kent King, Principal Burkbuegler and Board Member Robert McKay in the **Bolon v. Rolla School Board** sex discrimination case. Annie Bass and Dana Rapier were board members at that time and 1997 during the **Lizotte sex** discrimination case and 1999 when they lost the **Mitchell** suit for violating a student's First Amendment rights. In January, when all this was going on in closed session, in their public meetings they twice violated the First Amendment by stealing a videotape of their first televised public board meeting and then forbidding the taping and broadcast of the second. What is it about the U.S. Constitution and the First and Fourteenth amendments that Bass and Rapier - indeed the whole board and administration - just can't understand? This is their third strike in less than six years; a record no one would envy.

Not only was it not certain that the behavior (as reported by Zalis) would meet the legal test, but making the charge against Reed would produce an embarrassing rebuttal. Just last year the board officially determined that a male principal had sexually harassed a teacher. He received a slap on the wrist and was ordered to stay away from her.

Superintendent Ewing then sent him a letter pronouncing that he was "exonerated" of sexual harassment. With Ewing's papal pardon in hand the principal brazenly violated the board's order to maintain his distance. Less than two weeks later all was forgiven, the board renewed his contract, gave him a \$12,903 raise and he was allowed to accept a well-publicized state award for "excellence." When held up to the Reed case it's not the sort of gender-based discrimination they want everyone to know about is it? Certainly not when the district also receives federal grants to teach classes in... (brace yourself) ... "Gender Equity"!

Still another skeleton might jump out of their closet during Reed's hearing. In the 1996 Bolon case U.S. District Court Judge Perry found that defendants, King, McKay and Burkbuegler "*had 'implied notice' that failure to train [employees about sexual misconduct] would likely result in the violation of constitutional rights.*" Judge Perry also pointed out that the school district, in exchange for federal funds, makes express assurances to prohibit discrimination of all kinds. They are required to provide training and education (ironic isn't it?) about sexual misconduct and discrimination to all district employees. They ducked this irksome management chore by putting a brief tutorial on their web site - so much for the magical effects of education by computer. A third violation of Title IX discrimination laws might be very costly. This public hearing also would be a bad way to kick off the April bond campaign.

January 23 – The board, backed into a corner by their own heavy-handed tactics, looked for a quick way out of a messy and dangerous public hearing. In closed session they voted to rehire all administrators for next year except Lynn Reed. She would be "absent but paid" until her contract ended in June.

January 29 – A process server delivered subpoenas to several district employees to appear in the office of Reed's attorney on February 3, to be deposed and bring certain records. **January 29, after 5 p.m.** Brasher faxed letter to Robinson stating Adams was withdrawing the statement of charges against Reed and unilaterally canceling the scheduled February public hearing.

This 'solution' was unsatisfactory to Reed. They had badly overplayed their hand; too much speculation and random damage had been set loose. Nothing had been proven but nothing could now be disproved. Denied a public hearing, Reed and her attorney issued a public statement. But can the Board cancel her hearing? The law grants the right to a hearing to the employee not to the employer. They have still taken an adverse action against her employment - several in fact – don't they still owe her a hearing?

No foundation for discipline. The Board's personnel management system (in fact their whole management system) lacks substance, structure and rigor; their history of bad practices undermines the ethical pedestal they are belatedly trying to climb up on. District one-size-fits-all

policies purchased and adopted in bulk lots from MSBA are generic, out dated, and do not reflect local needs and conditions. Once passed, the board ignores them. Management spends more time tinkering with trendy programs and marketing their self-proclaimed excellence than in actually striving to become excellent. The so-called official investigation in this case was superficial and totally lacking in expertise and focus. The board's inconsistent practices and their own unethical behavior effectively prevent them from disciplining employees who follow their example and their orders. Lynne Reed was one of many employees who freely but *illegally used district money, resources, time and property* – “inappropriate use of school resources” - *to influence voters in the last two elections*. A firing offense certainly, but she and others did so, not just with the tacit approval of board members and administrators, but with their active planning and collaboration. You cannot be judge and jury if you are also a co-conspirator. When thwarted by an inconvenient law, rule or policy, one board member frequently declares, “We’re the board - we can do what we want” - the rest never protest this irresponsible attitude. When they pick and choose which laws and rules they follow they should not be surprised to find employees doing the same.

As early as November 22, the wheels were already coming off the board's case, not because some allegations may have lacked merit (without a hearing who knows?), but because of procedural screw-ups by the district which by mid-December had reached epidemic proportions. Coercion and threats had not worked on Reed as they had on Cook and Jones. Celynda Brasher, the Board's attorney - alleged to be expert in education law - appears to be less than proficient in personnel law and negotiating skills (if not worse). Robinson points out that Reed's annual evaluations had always been outstanding. He told NSN that Reed's requests for a copy of her personnel file (an employee's right by law) was denied to her twice by administration and then by Brasher. The Board,

or whoever was calling the plays, had lost control of the Reed case; their January 23rd decision to ‘un-hire’ her with pay to get out of the hearing didn't help. It seems to have accomplished little more than to put the ball in her court.

Superintendent Adams told the Rolla Daily News “the school district's issues with Lynne Reed remain unresolved.” What did that mean? They have a bigger problem now than just unresolved issues with Reed. In April, will voters go along with their complicated “payday loan” scheme for financing new buildings? Has the board shown the kind of maturity and judgment in this affair that inspires voter confidence? Has the board learned anything from this expensive management malfunction?

Conclusions. In the thundering silence from the school board, what conclusions may be drawn from the board's actions? Students will correctly conclude that grown-ups are hypocrites. All those Character Education sermons in the curriculum and the school board rules they are punished for breaking don't apply to adults - just to kids. “Zero” tolerance of bad behavior is only ‘zero tolerated’ when kids misbehave – grown-ups can violate school policies and get away with it, some even get raises and awards for excellence. How can parents explain this official double standard to their rule-testing kids?

The conclusion that non-certified staff have long since come to is that high status policy violators are at worst ‘punished’ with pay and perks while they are fired or get “resigned” for the same violations. Taxpayers can draw several conclusions: that the Board's “corporate management” and “hire the best and stand back” experiments are failures, that the district disciplinary system is fatally flawed and that we cannot afford more obtuse governance from the Rolla School Board. Their problem is not just a “failure to train” as Judge Perry said; they also suffer from a “failure to learn.”

*Complete text of Robinson letter at: <http://www.rollanet.org/~rwnash/Robinson_letter_on_Reed.PDF>

Recommended reading especially for city and school district employees:

- **The American Bar Association Guide to Workplace Law** by Barbara J. Fick, the American Bar Association
- **Every Employees Guide to the Law: What You Need to Know About Your Rights in the Workplace- And What to Do If They Are Violated** by Lewin G. Joel, III
- **Your Rights in the Workplace** (6th edition) by Barbara Kate Repa

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