

Another case that Sisney draws the Courts attention to is *Hoerman v. Western Heights Board of Education*, 1995 OK CIV APP 130, 913 P.2d 684. (case attached at Tab B) Hoerman was a superintendent who sued for breach of his employment contract. He contended that the board of education was biased and that he did not get a fair and impartial due process hearing. The appellate court held that a hearing must be before a fair and impartial tribunal but that Hoerman failed to establish bias by the board in his case. Here Sisney has presented Affidavits and evidence to demonstrate examples of the Board's preconceived desire to fire him for a bad motive and thus a due process hearing before an impartial tribunal would not have been available.

In *Hoerman* the Court determined that the Oklahoma Legislature had intended that cause for termination of an administrator must be determined upon the facts of each case. *Hoerman* at ¶24. The *Hoerman* court agreed with *Scherich* Court and stated:

“We find the Scherich rationale applies here. To find otherwise would render Hoerman’s contractual rights meaningless. While there was no statutory grounds for dismissal as there were in Scherich, the Board here was nonetheless obligated under the contract and could only dismiss Hoerman for such cause as was supported by evidence of the acts or omissions alleged. Without established cause or previous breach by Hoerman, dismissal would constitute breach of the employment contract.” Hoerman at ¶¶ 25, 26.

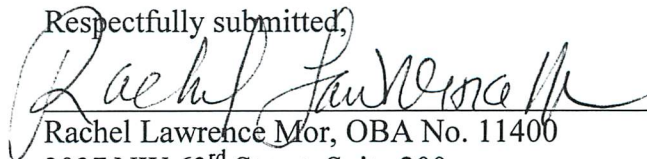
The *Scherich* Court states that in order to show breach of contract, a plaintiff must show that the school board's decision was arbitrary. An act is considered arbitrary and capricious if it is unreasonable and disregards the facts and circumstances. *Patrick v. State ex rel. State Board of Education*, 1992 PK CIV APP 153, 842 P.2d 767. Sisney chose to forego the administrative due process hearing because he believed it would be a sham. One must have a fair and impartial tribunal in order to receive adequate due

process. If a hearing officer is biased or is prejudiced before the hearing, the hearing will not be fair and the process given will be meaningless. *Miller v. City of Mission, Kansas*, 705 F.2d 368 (10th Cir. 1983); *Staton v. Mayes*, 552 F.2d 908 (10th Cir. 1977).

Sisney has submitted facts and evidence which indicates evidence of bad faith, arbitrary and capricious action from the school board and a prehearing intent to fire him. The facts presented in the affidavits and pleadings reveal defendants' pre-termination motivation for firing Sisney was to cover up the bidding violations and avoid personal liability. In *Staton*, the appellate court held that there was sufficient evidence to show that three of the board members had made pre-hearing statements to indicate bias. Therefore the hearing could not have been impartial and unbiased.

Sisney is entitled to pursue his claims for breach of contract and breach of implied covenant of good faith. To find that 70 O.S. § 6-101-13 strips him of all of his contract rights and remedies would violate his constitutional right to seek redress from the courts.

Respectfully submitted,



Rachel Lawrence Mor, OBA No. 11400

3037 NW 63rd Street, Suite 200

Oklahoma City, OK 73116

(405) 562-7771 (Telephone)

(405) 285-9350 (Facsimile)

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

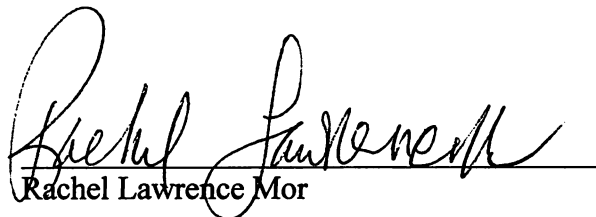
w/o cases attached

I certify that on the 9th day of November 2011, a true and correct copy of the above and foregoing document was delivered upon Service via U.S. Mail, postage prepaid thereon, to:

Kent B. Rainey, Esquire

ROSENSTEIN, FIST & RINGOLD
525 South Main, Suite 700
Tulsa, OK 74103

Phyllis L. Walta, Esquire
Monika Turek, Esquire
WALTA & WALTA
120 East Oklahoma
P.O. Box 398
Hennessey, OK 73742



Rachel Lawrence Mor