

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

BRIAN VUKADINOVICH,)	
)	
Plaintiff,)	
vs.)	
)	CAUSE NO. 2:13-cv-00144-PPS
HANOVER COMMUNITY SCHOOL)	
CORPORATION, ET AL.,)	
)	
Defendants.)	

COURT'S FINAL JURY INSTRUCTIONS

Dated: March 11, 2016

s/ Philip P. Simon
PHILIP P. SIMON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

INSTRUCTION NO. 1

Members of the jury, you have seen and heard all the evidence and arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow sympathy to influence you.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

INSTRUCTION NO. 2

During this trial, I have asked questions of witnesses myself. Do not assume that because I asked questions I hold any opinion on the matters I asked about, or on what the outcome of the case should be.

INSTRUCTION NO. 3

In this case Plaintiff has decided to represent himself and not use the service of a lawyer. This is his absolute right. This decision must not affect your consideration of the case.

Because Plaintiff has decided to represent himself you heard him speak at various times during the trial. You heard him make an opening statement and a closing argument. You also heard him ask questions of witnesses and make objections. His words during these parts of the trial were not evidence. It was evidence, however, when he testified from the witness stand while under oath.

INSTRUCTION NO. 4

In this case one of the defendants, Hanover Community School Corporation, is a corporation.

All parties are equal before the law. A corporation is entitled to the same fair consideration that you would give any individual person.

INSTRUCTION NO. 5

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence and stipulations. A stipulation is an agreement between both sides that certain facts are true.

INSTRUCTION NO. 6

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers or by Mr. Vukadinovich when he is not under oath are not evidence. The parties have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said or what Mr. Vukadinovich said when he was not under oath, your memory is what counts.

INSTRUCTION NO. 7

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

INSTRUCTION NO. 8

You will recall that during the course of this trial I instructed you that I admitted certain evidence for a limited purpose. You must consider this evidence only for the limited purpose for which it was admitted.

INSTRUCTION NO. 9

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this an “inference.” A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

INSTRUCTION NO. 10

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact.

Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

INSTRUCTION NO. 11

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

INSTRUCTION NO. 12

You may consider statements given by parties or by witnesses under oath before trial as evidence of the truth of what he said in the earlier statements, as well as in deciding what weight to give his testimony.

With respect to other witnesses, the law is different. If you decide that, before the trial, one of these witnesses made a statement not under oath or acted in a manner that is inconsistent with his testimony here in court, you may consider the earlier statement or conduct only in deciding whether his testimony here in court was true and what weight to give to his testimony here in court.

In considering a prior inconsistent statement or conduct, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

INSTRUCTION NO. 13

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

INSTRUCTION NO. 14

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

INSTRUCTION NO. 15

You have heard a witness, Mr. Anthony Sindone, give opinions about matters requiring special knowledge or skill. You should judge his testimony in the same way that you judge the testimony of any other witness. The fact that Mr. Sindone has given an opinion does not mean that you are required to accept it. Give the testimony whatever weight you think it deserves, considering the reasons given for the opinion, the witness's qualifications, and all of the other evidence in this case.

INSTRUCTION NO. 16

A summary of the discontinued courses and added courses for the school year 2012-13 at the Hanover Community Schools is in evidence. The original materials used to prepare that summary also are in evidence. It is up to you to decide if the summary is accurate.

INSTRUCTION NO. 17

You must give separate consideration to each claim and each party in this case. Although there are two defendants, it does not follow that if one is liable, the other is liable.

INSTRUCTION NO. 18

Plaintiff has brought claims against the Hanover Community School Corporation and the Board of Trustees of Hanover Community School Corporation. When I say to you “the Hanover Community School Corporation,” that term includes the Board of Trustees. Likewise, when I say “Board of Trustee,” that term includes the Hanover Community School Corporation.

INSTRUCTION NO. 19

Principal Justin Biggs is no longer a defendant in this case. You should not consider any claims against Justin Biggs. Do not speculate on the reasons why Mr. Biggs is no longer a defendant in this case. You should decide this case as to the remaining parties.

INSTRUCTION NO. 20

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

INSTRUCTION NO. 21

If you decide for Defendants on the question of liability, then you should not consider the question of damages.

INSTRUCTION NO. 22

I have a duty to caution or warn an attorney or party who does something that I believe is not in keeping with the rules of evidence or procedure. You are not to draw any inference against the side whom I cautioned or warned during the trial.

INSTRUCTION NO. 23

The Age Discrimination in Employment Act, which is often referred to by its initials, "ADEA," makes it unlawful for an employer to discharge any individual or otherwise discriminate against any individual with respect to compensation, terms, conditions or privileges of employment, because of the individual's age. The ADEA also prohibits employers from retaliating against employees because the employee exercised his right under the ADEA.

INSTRUCTION NO. 24

The United States Congress passed the Civil Rights Act to enforce rights secured by the Constitution. One of these acts is Section 1983 of Title 42 of the United States Code.

Section 1983 provides that any person may seek redress in this court, by way of damages, against any person or persons or governmental entity who, under color of any law, statute, ordinance or regulation, subjects such person to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. Plaintiff's federal due process claim is brought as a claim under 42 U.S.C. § 1983.

When I say that a person acts "under the color of law," I mean that a person uses or misuses authority that he has because of his official position.

INSTRUCTION NO. 25

Plaintiff asserts three federal claims against Defendants.

First, Plaintiff asserts that Hanover Community School Corporation discriminated against him because of his age when his employment contract was terminated.

Second, Plaintiff claims that Hanover Community School Corporation retaliated against him for settling a prior age discrimination lawsuit against the Hammond Schools when his employment contract was terminated.

Third, Plaintiff claims that Hanover Community School Corporation and Ms. Kaiser violated his constitutional right to due process.

All of these claims require Plaintiff to prove certain elements. I will now instruct you on each element of these claims.

INSTRUCTION NO. 26

Plaintiff claims that his employment contract was terminated by Defendant, Hanover Community School Corporation, because of his age. To succeed on this claim, Plaintiff must prove by a preponderance of the evidence that his employment contract was terminated by Hanover Community School Corporation because of his age. To determine that Plaintiff's employment contract was terminated because of his age, you must decide that Hanover Community School Corporation would not have terminated Plaintiff's employment contract had he been under the age of 40 years old but everything else had been the same.

If you find that Plaintiff has proved this by a preponderance of the evidence, then you must find for Plaintiff. However, if you find that Plaintiff did not prove this by a preponderance of the evidence, then you must find for Hanover Community School Corporation.

INSTRUCTION NO. 27

Plaintiff claims that he was retaliated against when his employment contract was terminated by Hanover Community School Corporation because Plaintiff settled a prior age discrimination lawsuit against another school corporation. To succeed on this claim, Plaintiff must prove by a preponderance of the evidence that Hanover Community School Corporation terminated his employment contract because the Plaintiff settled a prior age discrimination lawsuit against another school corporation. To determine that Plaintiff's employment contract was terminated because he settled a prior age discrimination lawsuit against another school corporation, you must decide that Hanover Community School Corporation would not have terminated Plaintiff's employment contract if he had not settled a prior age discrimination lawsuit against another school corporation but everything else had been the same.

If you find that Plaintiff has proved this by a preponderance of the evidence, then you must find for Plaintiff. However, if you find that Plaintiff did not prove this by a preponderance of the evidence, then you must find for Hanover Community School Corporation.

INSTRUCTION NO. 28

If you find for Plaintiff on either his age discrimination or retaliation claim, you must then decide whether Hanover Community School Corporation willfully violated the Age Discrimination in Employment Act. To show this, Plaintiff must prove by a preponderance of the evidence that Hanover Community School Corporation knew that it was violating the Age Discrimination in Employment Act, or was indifferent to whether its actions violated the Age Discrimination in Employment Act, and not simply that Hanover Community School Corporation was aware that it was engaging in age discrimination.

INSTRUCTION NO. 29

In deciding Plaintiff's claims, you should not concern yourselves with whether Hanover Community School Corporation's actions were wise, reasonable, or fair. Rather, your concern is only whether Plaintiff has proved that Hanover Community School Corporation terminated his employment contract because of his age or in retaliation for his prior age discrimination lawsuit against another school corporation.

INSTRUCTION NO. 30

Plaintiff claims that Ms. Kaiser in her position as Superintendent violated Plaintiff's rights to due process. The essential requirements of due process are notice and an opportunity to be heard. In this context, due process requires that an employee be given notice of the potential termination of his employment contract, an explanation of the reasons for the decision to potentially terminate his employment contract, and an opportunity to present his side of the story. There is no dispute that Plaintiff received notice of the potential termination of his employment contract, but the parties do dispute the adequacy of the notice.

There is no fixed formula to determine whether Ms. Kaiser's hearing with Plaintiff met the due process requirement to provide Plaintiff an opportunity to present his side of the story. The analysis of the adequacy of the meeting is flexible and depends on the circumstances surrounding the meeting. The hearing provided by Ms. Kaiser did not need to be elaborate to satisfy the requirements of due process. It did not need to be a full evidentiary hearing like a person might receive in court. The hearing also did not need to definitively resolve the propriety of potential termination of Plaintiff's employment contract. The hearing only needed to provide Plaintiff a reasonable opportunity to be heard and present his side of the story.

To succeed on this claim, Plaintiff must prove by a preponderance of the evidence that Plaintiff's hearing with Ms. Kaiser was a sham or a pretense, meaning

that Ms. Kaiser must have been unwilling to listen to what Plaintiff had to say and prejudged the outcome.

INSTRUCTION NO. 31

If you find that Ms. Kaiser in her position as Superintendent violated Plaintiff's right to due process, you must then consider whether Hanover Community School Corporation is also liable to Plaintiff for a violation of due process. Hanover Community School Corporation is not responsible simply because it employed Ms. Kaiser. Rather, Hanover Community School Corporation is also liable to Plaintiff for a violation of due process if the School Board delegated to Ms. Kaiser the authority to decide the process due to teachers having their employment contract terminated.

In order to prove that Hanover Community School Corporation is liable to Plaintiff for a violation of due process, Plaintiff must prove by a preponderance of the evidence that: 1) Ms. Kaiser in her position as Superintendent violated Plaintiff's rights to due process; and 2) the School Board delegated to Ms. Kaiser the responsibility for deciding the process that was due to teachers having their employment contract terminated.

To prove that the School Board delegated this authority to Ms. Kaiser, Plaintiff must prove more than merely that the School Board accepted the process that Ms. Kaiser chose to give to Plaintiff. Rather, Plaintiff must prove that the School Board delegated the authority to make policy to Ms. Kaiser.

INSTRUCTION NO. 32

If you find that Plaintiff has proven any of his claims against any of the Defendants, then you must determine what amount of damages, if any, Plaintiff is entitled to recover. Plaintiff must prove his damages by a preponderance of the evidence.

If you find that Plaintiff has failed to prove any of his claims, then you will not consider the question of damages.

INSTRUCTION NO. 33

If you find that Plaintiff has proven his claim of age discrimination or retaliation by a preponderance of the evidence, you may award him as damages any lost wages and benefits he would have received from Hanover Community School Corporation if his employment contract had not been terminated minus the earnings and benefits that plaintiff received from other sources during that time that he would not have otherwise received. It is Plaintiff's burden to prove that he lost wages and benefits and their amount. If he fails to do so for any periods of time for which he seeks damages, then you may not award damages for that time period.

INSTRUCTION NO. 34

If you find that

1. Plaintiff did not take reasonable actions to reduce his damages, and
2. that Plaintiff reasonably might have found comparable employment if he had taken such action,

you should reduce any amount you might award Plaintiff for lost wages by the amount Plaintiff reasonably would have earned during the period for which you are awarding lost wages.

INSTRUCTION NO. 35

If you find from a preponderance of all the evidence that Hanover Community School Corporation is liable to Plaintiff on his claim of retaliation, then you may award compensatory damages only for injuries that Plaintiff has proved by a preponderance of the evidence were caused by Hanover Community School Corporation's wrongful conduct.

Likewise, if you find from a preponderance of the evidence that Ms. Kaiser violated Plaintiff's rights to procedural due process, then you may award compensatory damages only for injuries that Plaintiff has proved by a preponderance of the evidence were caused by Ms. Kaiser's wrongful conduct.

Likewise, if you find from a preponderance of the evidence that Ms. Kaiser violated Plaintiff's rights to procedural due process, *and* the Board delegated to Ms. Kaiser the responsibility for deciding the process that was due to teachers having their employment contract terminated, you may award compensatory damages from Hanover Community School Corporation only for injuries that Plaintiff has proved by a preponderance of the evidence were caused by Ms. Kaiser's wrongful conduct.

Your award must be based on evidence and not speculation or guesswork. That does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of the injury, even if they are not easy to measure.

In calculating compensatory damages, you should not consider the issue of lost wages and benefits. You should consider the following types of compensatory damages and no others:

1. The physical and emotional pain and suffering that Plaintiff has experienced and is reasonably certain to experience in the future. No evidence of the dollar value of physical or emotional pain and suffering has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate Plaintiff for the injury he has sustained.

INSTRUCTION NO. 36

The Plaintiff may only receive one full compensation for his injuries. Double recovery for the same injury is not allowed. If you find that the Plaintiff has proven more than one of his claims, the Plaintiff is entitled to be compensated only for the injuries that he actually suffered from each claim. Thus, if Plaintiff has proven one or more of these claims, but the resulting injury was no greater than it would have been had only one of the claims been proven, you should award an amount of compensatory damages no greater than you would award if Plaintiff had proven only one of his claims.

However, if you can identify separate injuries resulting from separate claims, you should award an amount of compensatory damages equal to the total of the damages you believe will fairly and justly compensate Plaintiff for the separate injuries Plaintiff has suffered.

INSTRUCTION NO. 37

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

Take these forms to the jury room, and when you have reached unanimous agreement on the verdict, your presiding juror will fill in and date the appropriate form, and all of you will sign it.

INSTRUCTION NO. 38

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

INSTRUCTION NO. 39

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.