

**Northfield School Board v. Washington South
Education Association and Paul Clayton
Vt. Sup. Ct; April 12, 2019**

Summary prepared by Jim DesMarais, Leg. Counsel

Facts:

- Paul Clayton, a teacher at Northfield Middle High School, was accused of creating a hostile work environment
- After investigation by school administrators during which the administrators gave Mr. Clayton two opportunities to respond, which he declined to do, the administrators sent a letter to the superintendent with their findings
- The superintendent then wrote a letter to Mr. Clayton offering him an opportunity to meet to discuss the matter. About a week later, the superintendent met with Mr. Clayton and his Association representation.
- The superintendent, Mr. Clayton, and his Association representation met for a second time. At this meeting, the superintendent delivered a letter to Mr. Clayton, advising him that he was being suspended in accordance with [16 V.S.A. § 1752](#). The letter explained that the superintendent found the allegations against Mr. Clayton to be well founded and was thus suspending him because his actions demonstrated “conduct unbecoming a teacher,” per [§ 1752\(c\)](#). The letter also notified Mr. Clayton of his right to appeal the suspension decision to the Board and outlined the [§ 1752\(e\)](#) procedures and deadline to bring such appeal.

- 1 • Neither Mr. Clayton nor anyone on his behalf filed a notice of
2 appeal. As required by [§ 1752\(h\)](#), the Board met in a warned
3 executive session to review the superintendent's decision to suspend
4 Mr. Clayton and recommendation in favor of dismissal. On
5 December 14, the Board informed Mr. Clayton, via written letter per
6 [§ 1752\(i\)](#), that they unanimously affirmed his suspension and
7 dismissed him from employment at the school, effective
8 immediately.
- 9 • Mr. Clayton, now represented by the Vermont-NEA, submitted a
10 grievance alleging a violation of the collective bargaining agreement
11 (CBA) that covered Mr. Clayton and requesting that the parties
12 proceed directly to final and binding arbitration.
- 13 • The Board responded to Vermont-NEA's letter and declined to
14 accept the grievance, explaining that Mr. Clayton waived his right to
15 file a grievance under the CBA because he did not follow the
16 statutorily-prescribed pre-termination procedures under [§ 1752](#) and
17 therefore the grievance was barred as a matter of law.
- 18 • The lower court agreed with the Board's position.

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20 **Applicable Law; 16 V.S.A. § 1752**

- 21
- 22 • Provides grounds and procedures for suspension and dismissal of
23 teachers
- 24 • Provides that a superintendent may suspend a teacher under
25 contract on the grounds of incompetence, **conduct unbecoming a**
26 **teacher**, failure to attend to duties, or failure to carry out reasonable
27 orders and directions of the superintendent and school board.
- 28 • Provides for pre-termination due process rights, which include:
29 ○ Notice requirements

- 1 ○ Right to appeal to the school board
- 2 ○ Process for appeal
- 3 ○ Right to counsel
- 4 ● Provides that no **action** shall lie on the part of a teacher against any
- 5 school district for breach of contract by reason of suspension or
- 6 dismissal **unless the procedures herein described have been**
- 7 **followed by said teacher.**

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9 **Vt. Sup. Ct. Holding:**

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- 11 ● The court held in favor of the School Board (denying the right to
 - 12 arbitration)
 - 13 ● The court’s decision was based on its interpretation of 16 V.S.A.
 - 14 § 1752
 - 15 ● The court found that:
 - 16 ○ The statute does not allow teachers to negotiate in their
 - 17 CBA alternative pre-termination procedures
 - 18 ○ [§ 1752](#) provides that no **action** shall lie on the part of a
 - 19 teacher against any school district for breach of contract by
 - 20 reason of suspension or dismissal **unless the procedures**
 - 21 **herein described have been followed by said teacher,** and
 - 22 that the teacher did not follow those procedures
 - 23 ○ In response to the argument that the term “action” means a
 - 24 judicial action and would not bar arbitration, the court found
 - 25 that this term was broad enough to encompass both judicial
 - 26 action and arbitration, and therefore in this case arbitration
 - 27 was precluded