“Double jeopardy” and teacher discipline

By Harry R. Pringle

Old cases can still be very good cases, and occasionally it makes sense to go into our archives to find solutions to current problems. One good example of this occurred recently when a school client called about a teacher who had received an oral warning from her principal about her conduct in class. Upon reviewing the situation, the Superintendent felt that the conduct was much more serious and warranted a formal written reprimand and meeting with the school committee. The question: Could the Superintendent and the school committee discipline the teacher, even though the Principal had already dealt with the issue?

The concept of double jeopardy is one with which we are all intuitively familiar. The Fifth Amendment to the United States Constitution provides eloquently that no person shall be "subject for the same offense to be twice put in jeopardy of life or limb." That basic criminal protection has, since 1791, been a bedrock of the due process protections that we all enjoy.

Not surprisingly, the Fifth Amendment's protection against double jeopardy has also been imported into the jurisprudence of labor arbitration. Arbitrators have long held that workplace due process, and the concept of just cause, include the right to protection against double jeopardy. A standard labor arbitration text states the rule this way:

Disciplining an employee twice for the same act constitutes double jeopardy and is a due process basis for invalidating the discipline. Where an employer issues discipline based upon information available to it, and then further investigation reveals facts justifying greater discipline, the employer may not – as a general rule – impose the greater discipline.¹

Given this general rule, one might think that the answer to the question that began this article would be "no," and that once the principal had disciplined the teacher, nothing more could be done. That it is important to know that in 1989 a very similar issue was considered by the Maine Superior Court, which came to the contrary conclusion and held that the concept of double jeopardy did not apply to teacher discipline in this kind of a case.

Biddeford Board of Education v. Biddeford Teachers’ Association² involved the appeal of an adverse arbitration award by the Board of Education. The facts were simple: A long time Biddeford high school teacher had resorted to unprofessional conduct when he "swore at, demeaned, and degraded" a number of students in his class. The high school principal spoke with the teacher and wrote a simple letter,
admonishing the teacher to cease the use of profanity with students. When the superintendent found out about the situation, he decided that the situation was far more serious than the principal had recognized and referred it to the school board. After a hearing, the school board ultimately imposed its own discipline on the teacher, directing that a disciplinary report prepared by the superintendent be filed in the teacher’s personnel file for a three-year period.

Not surprisingly, the teacher and the Association filed a grievance and took the case to arbitration. Although the arbitrator found that the teacher’s conduct was serious enough that, if it had continued, suspension or even dismissal might have been warranted, he also concluded – consistent with the general rule applied by arbitrators noted above – that the additional discipline imposed by the board constituted “double jeopardy” and therefore ordered the personnel file expunged.

Fortunately, the Superior Court disagreed. The reasoning of the Superior Court is important, because it emphasizes the special nature of teachers as employees under Maine law. The Court began by noting that under Title 20-A, only a school board can dismiss a teacher. The school board is responsible for managing the school system and the superintendent is charged with directing and supervising the work of all teachers. Given this legal framework, the Superior Court concluded as follows:

The arbitrator’s award cannot be upheld as it is contrary to state law in that it would preclude further action if a principal took any minor action to correct a developing problem. Principals would be required to refer all teacher disciplinary matters, even the most minor, to the school board to first find out whether the board wished to be involved. Such a procedure wastes time and money and prevents prompt corrective action from being taken by principals …

Principals must be encouraged to take prompt, decisive action to eliminate behavior which interferes with the right of a student to get the best possible education. Whether further action will be taken by the school board is of no consequence. The arbitrator’s interpretation cannot be upheld.

Of course, the decision of the Superior Court in Biddeford Board of Education is not an invitation to discipline, and re-discipline, employees with impunity. Good human relations principles suggest that it is always better for a principal to confer with the superintendent before taking any significant employment action, for precisely this reason. In those cases where a second look is clearly warranted, however, and where teachers in particular are involved, the statutory authority of superintendents and school boards ultimately to employ and discipline teachers means traditional rules of double jeopardy may well not apply. And that is why a little known arbitration appeal from 1989 is still completely relevant to Maine school systems in 2008.

Endnotes

3. 20-A M.R.S.A. § 13202.
4. 20-A M.R.S.A. § 10001.
5. 20-A M.R.S.A. § 1055(10). The statute has recently been amended to provide that the Superintendent is responsible for the “evaluations” of all teachers, but the intent of the language remains the same.
6. Decision and order at 3-4.