

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

SEP 19 1989

ROBERT L. HOECKER
Clerk

PAUL MICHALS,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 89-1105
	)	(D.C. Civil No. 88-B-265)
DENVER PUBLIC LIBRARY; LIBRARY	)	(D. Colorado)
COMMISSION OF THE CITY AND COUNTY	)	
OF DENVER; LAURA CHRISTENSEN;	)	
EUGENE L. COPELAND; GRIEGO TONI JONES;	)	
LENA ARCHULETA; DONALD K. BAIN;	)	
BARBARA BATEY; MICHAEL J. GARCIA;	)	
DORIS ROTHENBERG; RICK J. ASHTON,	)	
individually and in her capacity as	)	
City Library Personnel Officer;	)	
and CITY AND COUNTY OF DENVER,	)	
	)	
Defendants-Appellees.	)	

ORDER AND JUDGMENT*

Before LOGAN, MOORE, and ANDERSON, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Plaintiff Paul Michals appeals the grant of summary judgment in favor of the defendants in the 42 U.S.C. § 1983 suit he filed against the Denver Public Library and other related parties, arising out of the public library board's denial of reclassification of Michals' employment position within the library. Michals argues that the procedures employed by the library denied his substantive due process rights.

Michals was and is an employee of the Denver Public Library, holding a position as a switchboard operator. He requested that his job be reclassified to a higher-paying position because he believed the position classification did not describe his duties. A provision in the Denver city code and library regulations sets out a procedure to be followed when there is such a request for reclassification. When Michals' request was denied initially, following the library's procedures he requested advisory arbitration. After taking evidence the arbitrator ruled in Michals' favor and recommended to the library board that the position be reclassified. The library's personnel policy manual provides that the written recommendation of the arbitrator, "articulating the rationale," shall be in the form of a recommendation "upon which the library commission will make a final determination." Library Personnel Policy Manual, Steps of Formal Grievance Procedure, § 2.13.1.5 step 3. Under step 4 of that same procedure, the library commission makes a final determination upon the recommendation.

In the instant case, the board acted without holding any further hearing and based upon the transcript of the proceeding.

Its decision, contrary to the recommendation of the arbitrator, was that the position should not be reclassified. In reaching this conclusion, the board rejected the credibility determinations of the arbitrator. I R. tab 7 ex. 5.

On appeal Michals appears to assert that it is a violation of his substantive due process rights for the board to make a decision contrary to the arbitrator's recommendation, without a hearing. We reject this argument. There are numerous instances, particularly in the area of agency appeals such as social security determinations, when the ultimate decision-making board generally makes decisions based upon a written record in which it may reject credibility determinations by the administrative law judge. No infirmities have been found in this process. See, e.g., Oldham v. Secretary of Health and Human Services, 718 F.2d 507, 510 (10th Cir. 1988). We see no essential difference in the procedures here.

Michals may be making an alternative argument that there was insufficient evidence to support the determination of the library board, hence its action was arbitrary and unreasonable to such an extreme that its decision was violative of Michals' due process rights. Cf. Jackson v. Virginia, 443 U.S. 307, 324 (1979) (in habeas challenge to state criminal convictions, petitioner is entitled to relief if "upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt"). We have reviewed the record and are satisfied that there was sufficient margin for disagreement in the evidence that the board was not required to accept the

recommendation of the arbitrator. The rules of the library leave sufficient room for the exercise of the commission's judgment with respect to reclassification that we can find no due process violation.

AFFIRMED.

Entered for the Court

James K. Logan
Circuit Judge