

**MARTINEZ V. BOARD OF EDUC., 1971-NMSC-033, 82 N.M. 375, 482 P.2d 239 (S. Ct. 1971)**

**CLEMENTE MARTINEZ, Plaintiff-Appellee,  
vs.  
BOARD OF EDUCATION OF THE VAUGHN MUNICIPAL SCHOOLS,  
Defendant-Appellant**

No. 9134

SUPREME COURT OF NEW MEXICO

1971-NMSC-033, 82 N.M. 375, 482 P.2d 239

March 15, 1971

Appeal from the District Court of Guadalupe County, Angel, Judge

**COUNSEL**

DONALD A. MARTINEZ, Las Vegas, New Mexico, Attorney for Appellee.

JAMES A. MALONEY, Attorney General, E. P. RIPLEY, Special Assistant Attorney General, Santa Fe, New Mexico, Attorneys for Appellant.

**JUDGES**

MCMANUS, Justice, wrote the opinion.

WE CONCUR:

Paul Tackett, J., Donnan Stephenson, J.

**AUTHOR: MCMANUS**

**OPINION**

MCMANUS, Justice.

{1} Defendant Vaughn Municipal School Board appeals from judgment for plaintiff Clemente Martinez in an action for breach of a school bus operator's contract. At issue is the effect of 77-14-5, N.M.S.A. (1953 Comp.) on the transportation contract between the parties.

{2} Defendant alleges that 77-14-5(C) became a part of the contract between the parties and gave them the right to terminate the contract when the number of pupils on the route fell below ten.

The section states:

"The state board shall hold a hearing on the written protest and may modify or change any school bus route if it determines the modification or change will be beneficial to the school district affected. **However, no school bus route serving less than ten [10] students shall be established or maintained.**" (Emphasis ours.)

{3} Plaintiff agrees that the statute became a part of the contract although not expressly set out therein. Compare *Wiggs v. City of Albuquerque*, 56 N.M. 214, 242 P.2d 865 (1952). However, he argues that 77-14-5, supra, was applicable only at the time of the making of the contract and the establishment of the bus route.

{4} The language of 77-14-5, supra, is clear and unambiguous. It pertains not only to the establishment, but also the maintenance of school bus routes by the state transportation division of the department of education, with provision for protest by local school boards through 77-14-5(A), which states:

"A local school board may file a written protest with the state board objecting to a school bus route established by the state transportation division. The written protest shall contain the objections of the local school board to the school bus route."

{\*376} There is also provision for modification or change of established school bus routes. Section 77-14-5(D) provides:

"No school bus route shall be modified or changed in any manner inconsistent with the provisions of an existing school bus service contract unless the proposed modification or change is consented to by the state transportation director."

{5} However, the defendant did not follow the proper administrative channels. The defendant unilaterally revoked the contract in question without recourse to the requisites of 77-14-5(D), supra, which clearly requires that recourse be had through the state transportation director.

{6} The judgment of the lower court is hereby affirmed.

{7} IT IS SO ORDERED.

WE CONCUR:

Paul Tackett, J., Donnan Stephenson, J.