

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

PAMELA HAGEN

VS.

LINCOLN SCHOOL COMMITTEE

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DECISION

Held: Nontenured teacher failed to show that school committee's decision not to renew her teaching contract was erroneous.

October 14, 1993

Introduction

This matter concerns an appeal by Pamela Hagen from the decision of the Lincoln School Committee not to renew her teaching contract for the 1992-1993 school year.¹

For the reasons set forth below, we deny the appeal.

Background

Appellant is a nontenured teacher. She was employed by the School Committee during the 1991-1992 school year as a special education resource teacher at the Lincoln Junior/Senior High School.

By letter dated February 6, 1992, Superintendent of Schools Dr. Colette B. Traylor notified Appellant that

On February 10, 1992, the Lincoln School Committee will meet and will give consideration to the non-renewal of your Contract. This notice is being forwarded to you pursuant to the General Laws of Rhode Island 16-13-2. (School Committee Exhibit 1).

The letter advised Appellant of her right to participate in the meeting and concluded by stating that

Basically, the above-noted process is being undertaken due to the uncertainties pertaining to projected funding levels and to possible regulatory reductions. I will keep you informed as soon as more definitive information becomes available pertaining to the 1992-1993 funding sources and the impact on your employment status.

1 The Commissioner designated the undersigned hearing officer to hear this appeal. It was heard on December 15, 1992. By letter of December 18, 1992, Appellant requested that the hearing be reopened in order to introduce "recently uncovered information." (Appellant's Exhibit 4). The request was heard on February 3, 1993. On March 15, 1993 the hearing officer granted the request to reopen the hearing and issued a subpoena duces tecum directing the School Committee to produce a School Department memorandum at the next hearing. The memorandum was produced at the May 14, 1993 hearing in this matter. The record closed on June 1, 1993.

By letter dated February 11, 1992, Appellant was notified of the School Committee's decision not to renew her teaching contract for the 1992-1993 school year. (School Committee Exhibit 2).

Dr. Traylor testified that the School Department's budget process for the 1992-1993 school year began in late fall 1991. She testified that the possibility of serious reductions in state aid to cities and towns was an emerging issue at the time. In January 1992 a budget of approximately \$17,340,00 was submitted to the School Committee. The School Committee reduced the proposed budget by approximately \$167,000 and sent it to the town budget board later in January 1992. The budget board had not made any recommendation concerning the School Committee's 1992-1993 budget at the time of Appellant's notice of nonrenewal. The budget board later recommended that the budget be further reduced by approximately \$88,000, and a School Committee budget of \$17,093,879 was approved at the financial town meeting in May 1992.

Dr. Traylor testified that funding for the 4 existing resource teacher positions at the Junior/Senior High School was included in the budget approved by the School Committee. Because the budget was tight and fixed costs could not be cut, the \$88,000 reduction imposed at the financial town meeting forced the School Committee to consider streamlining services where possible. Dr. Traylor stated that it was determined that one

2 A dispute later arose as to whether the \$17,093,879 appropriation included a set-off for approximately \$275,000 in restricted-grant funds subsequently received by the School Committee. This dispute became the subject of an appeal to the Commissioner in Lincoln School Committee vs. Town of Lincoln. The Commissioner's September 27, 1993 decision in that case held that the School Committee's appropriation of \$17,093,879 included grant funding.

position in the resource programs at the Junior/Senior High School could be eliminated while keeping the student-teacher ratio within regulatory limits. As a result, a resource program position was eliminated -- that of Appellant's.

Dr. Traylor also stated that, despite previous discussions within the educational community to the contrary, no reductions in state mandates, specifically with respect to special education, occurred. She testified that the School Committee's budget for 1992-1993 was greater than that of the previous school year.

Positions of the Parties

Appellant contends that the reasons given for her nonrenewal are vague and ambiguous, and not objectively truthful because the School Committee received a larger appropriation for the 1992-1993 school year than it had for the the previous school year. Appellant argues that the basis for her nonrenewal as expressed in Dr. Traylor's February 6, 1992 letter is mere conjecture, that the letter failed to mention the student-teacher ratio in the Junior/Senior High School's resource programs, and that she was qualified to fill other teaching positions which later became available.

The School Committee contends that the Commissioner's decision in Lauren Birrell-Graham et al. v. Barrington School Committee, August 3, 1992, is controlling here in view of the similarity of circumstances in the two cases, i.e., a school department faced with cuts in its proposed budget having to

3 In support of this latter contention, Appellant relies on decisions of the Commissioner and Board of Regents in the cases of Raymond Bilodeau et al. vs. Providence School Committee, Rosemarie Alvarnas vs. Warren School Committee, and Alfonso N. Borges vs. Central Falls School Committee.

provide notices of nonrenewal well in advance of the time when final decisions regarding staffing must be made. The School Committee argues that the reasons for nonrenewal as set forth in the February 6, 1992 letter are sufficient given that a forecast into the future had to be made at that time. The School Committee did not know what its final budget would be at the time notices were required to be sent, thus funding uncertainties existed. It contends that the record substantiates the uncertainties regarding projected funding levels, and that Appellant was therefore provided with a legitimate reason for her nonrenewal.

Discussion

Under R.I.G.L. 16-13-2 a school committee is not required to show good and just cause in support of its decision not to renew the contract of a nontenured teacher. It must, upon request, notify the nontenured teacher of the reasons or cause for its decision and provide the teacher with an opportunity to show the committee that it is mistaken in its decision. As stated by the Rhode Island Supreme Court in Jacob v. Board of Regents, 117 R.I. at 171 (1976), "[t]he burden of persuasion remains on the teacher to convince the committee that it was mistaken when the committee reached the conclusion that it did." In an appeal to the Commissioner of Education, the hearing officer conducts a de novo hearing and makes an independent decision as to whether the school committee erred in deciding not to renew the nontenured teacher's contract. The nontenured teacher continues to carry the burden of proof in the proceeding before the Commissioner.

As established in the cases cited by Appellant, the non-

tenured teacher must be given an objectively truthful reason for his or her nonrenewal. The Commissioner addressed this subject in Bilodeau et al. v. Providence School Committee by stating that "the teacher's burden is Sisyphean if he or she must contend with reasons which turn out not to have been the actual reasons for the committee's decision." (Decision of August 2, 1982, p. 5). According to the Commissioner, there must "be a correspondence between the reason given and the real motivation for the action taken." Ibid.

Appellant argues that the reasons given for her nonrenewal are deficient in several respects. We disagree.

First, we do not find the reasons to be vague or ambiguous. The statement of cause provided in Dr. Trailor's February 6, 1992 letter to Appellant, i.e., "uncertainties pertaining to projected funding levels" and "possible regulatory reductions," meets the requirement that nontenured teachers be afforded "an opportunity to learn the reasons why the committee did not rehire them . . ." Jacob v. Board of Regents, Ibid. at 170. We find that Dr. Trailor's letter gave Appellant sufficiently clear notice of the reasons for her nonrenewal so as to provide her with a meaningful opportunity to convince the school committee that its decision was incorrect.

Nor do we find the reasons to be defective as being conjecture. The references in the notice to funding "uncertainties" and "possible" regulatory reductions merely reflect the timing of the notice, which is controlled by the requirement in R.I.G.L. 16-13-2 that such notices be given on or before March 1. The record shows that, as of the time of the issuance of the notice of nonrenewal, the School

Committee's funding level was not definite and the possibility of regulatory reductions existed. The evidence also establishes that the decision not to renew Appellant's contract was based on the information available at the time. The fact that the notice could only be as definite as circumstances permitted does not invalidate the statement of cause contained therein.

We also reject Appellant's argument that the reasons for her nonrenewal were not objectively truthful. While the "regulatory reductions" stated in the notice of nonrenewal did not ultimately occur, the record shows that it was a real motivation for the School Committee's February 10, 1993 decision. "Uncertainties pertaining to projected funding levels" was also a real motivation for the School Committee's action, and was borne out by a subsequent reduction in the Committee's budget. The record establishes that Appellant's position was eliminated only after the financial town meeting altered the School Committee's proposed funding level by cutting \$88,000 from its budget.⁴ While the amount appropriated at the financial town meeting was larger than the prior year's appropriation, this fact does not make the funding-related reason for Appellant's nonrenewal untruthful given the absence of any showing that expenditures remained at the prior year's level.

We find that the reasons expressed in Appellant's notice of nonrenewal were actually relied upon by the School Committee. Furthermore, the funding related-reason proved to be based in fact and therefore constitutes a valid basis for the nonrenewal

4 As mentioned in footnote 2, the fiscal uncertainty did not completely end with the appropriation approved at the financial town meeting.

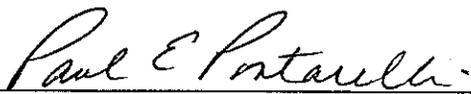
of Appellant's contract.

As for Appellant's contention that she was entitled to be appointed to other teaching positions in the school system which later became available, R.I.G.L. 16-13-2 does not provide a non-tenured teacher with any such right of recall or reinstatement. See Gerald Morisseau vs. Cumberland School Committee, Commissioner's Decision, July 16, 1990, pp. 8-9.

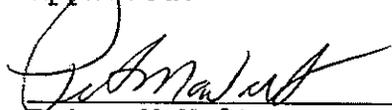
Conclusion

Appellant has failed to show that the School Committee acted erroneously in deciding not to renew her teaching contract.

The appeal is denied.


 Paul E. Pontarelli
 Hearing Officer

Approved:


 Peter McWalters
 Commissioner of Education

Date: October 14, 1993

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- 5 The School Committee's reliance on the student-teacher ratio in the resource programs at the Junior/Senior High School was merely a means to determine how to reconcile the budget reduction imposed at the financial town meeting. The reason for Appellant's nonrenewal remained funding-related.