

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

BARBARA MARSHALL,
CAROL BEAULIEU-GONSALVES

V.

BURRILLVILLE SCHOOL
COMMITTEE

DECISION

Held: The nonrenewal of the appellants' annual contracts as nontenured teachers on the basis of "financial uncertainty" was valid.

Date: June 8, 1994

Travel of the Case

Both of the appellants were nontenured teachers in the Burrillville school system during school year 1991-1992. Both teachers were notified that their teaching contracts would not be renewed for the ensuing school year and on February 19, 1992 the Burrillville School Committee voted to non-renew their contracts. Thereafter, they appealed to the Burrillville School Committee, and after hearing the matter, the school committee voted on March 31, 1993 to sustain its original decision. On May 5, 1993 an appeal was filed on behalf of both appellants with Commissioner Peter McWalters. Hearings were held on September 13 and 27, 1993 and the record in this case closed on October 3, 1993.

Jurisdiction to hear this appeal lies under R.I.G.L. 16-39-2 and 16-13-4.

Findings of Relevant Facts

- In school year 1991-92 Barbara Marshall was employed as an English teacher at Burrillville High School. Tr. Vol. I. p.9.
- In school year 1991-92 Carol Beaulieu-Gonsalves was employed as a half-time teacher for children in the English as a Second Language program in Burrillville. Tr. Vol. II|p. 7.
- Both Ms. Marshall and Ms. Beaulieu-Gonsalves were nontenured teachers. Joint Ex. I and II.
- On February 19, 1992 the Burrillville School Committee voted not to renew the teaching contracts of Ms. Marshall and Ms. Beaulieu-Gonsalves, along with the contracts of all other nontenured teachers in the school system, because of financial uncertainty created by the possibility that the school committee's proposed budget would not be fully funded. Joint Ex. I and II.
- Both Ms. Marshall and Ms. Beaulieu-Gonsalves appealed their non-renewals and requested a statement of cause. Joint Ex. I and II.

- The statement of cause furnished by the school committee cited as the reason for nonrenewal:

the financial uncertainty created by the possibility that the School Committee's proposed budget of \$17,161,347 for 1992-93 may not be fully funded.

Joint Ex. I and II.

- When funds for education were finally appropriated, there was a shortfall of approximately \$600,000 between the School Committee request and the amount appropriated (\$17,161,347 v. \$16,526,165). Tr. Vol. I. p. 29; S.C. Ex. A.

(the following findings pertain only to appellant Marshall)

- Despite the budget "shortfall" Dr. Flynn, Superintendent of Schools, maintained the same number of secondary English teachers in school year 1992-93 as existed in school year 1991-92. Tr. Vol. I p.11.
- On or about March 1, 1992 the School Committee received an arbitration award which directed that a middle school English teacher be transferred to the highschool English position to which Barbara Marshall had been appointed the previous year. S.C. Ex C.
- The transfer resulting from the arbitration award created a vacancy in the language arts department at the middle school. A reading specialist at the middle school requested, and was granted, a transfer into this vacant position. Tr. Vol. I pp. 14-15.
- A secondary English teacher who was on a leave of absence for school year 1991-1992 requested, and was granted, and extension of that leave for school year 1992-93. Tr. Vol. I. p. 12.
- Sometime in April of the 1991-92 school year Dr. Flynn determined that he would staff the secondary English positions which were available at that time by a competitive process involving those nontenured teachers who had been nonrenewed earlier in the year. The process would assist him "in making a determination as to the suitability of staff members for various positions for next year". S.C. Ex. B. Tr. Vol. I pp. 36-37.

- As a result of this process (described in the Superintendent's April 8, 1992 memorandum, S.C. Ex B.) a committee ranked Ms. Marshall fourth among the four nontenured secondary English teachers who had been nonrenewed. Tr. Vol. I pp. 62-64.
- The other individuals ranked ahead of Ms. Marshall were rehired¹ for school year 1992-93, but because only three secondary English positions became available, Ms. Marshall was not. Tr. Vol. I pp. 109-111.
- At least one of the teachers who was rehired as a result of the ranking process had less seniority than Ms. Marshall. Tr. Vol. I p. 110.
- In another department seniority was used in the process of returning two other nontenured, nonrenewed teachers to positions as they came available. Tr. Vol. I pp. 98, 107, and 108.
- On July 16, 1992 the School Committee sent Ms. Marshall an amended statement of cause which added to the previously-stated reason of "financial uncertainty" the reason that there were fewer positions available for nontenured teachers in the appellant's department because of the return from leave and transfer of certain tenured teachers. Joint Ex I.

(the following findings pertain only to appellant Ms. Beaulieu-Gonsalves)

- Despite the budget shortfall for the 1992-93 school year, Superintendent Flynn determined that he would continue the half-time ESL position held by the appellant during the prior school year and that this position was available. Tr. Vol. II p. 8.
- In August Dr. Flynn called Ms. Beaulieu-Gonsalves regarding the ESL position to inquire if she wished to return to the position. Tr. Vol. II p. 10.
- On August 5, 1992, Ms. Beaulieu-Gonsalves wrote to Dr. Flynn indicating she "accepted recall" to the ESL position, but wished to exercise an election to take a parental leave for school year 1992-93. Joint Ex. II.
- Dr. Flynn responded in writing to the appellant that she was not being recalled to the position, but rather was being "considered for employment" for the upcoming school year. Joint Ex. II, letter of August 6, 1992 to the appellant from Dr. Flynn.

¹The parties described the process of rehiring these other teachers as rescinding their non-renewals.

- The ESL position was subsequently filled by another teacher. Tr. Vol. II p. 11.
- An amended statement of cause was sent to Ms. Beaulieu-Gonsalves on or about October 1, 1992. Joint Ex. II. Tr. Vol. II p. 11. In addition to the previously cited reason of "financial uncertainty", the amended statement added as a reason for the appellant's nonrenewal her unavailability to teach during the 1992-93 school year. Joint Ex. II.
- Dr. Flynn testified that at the time he contacted the appellant in August concerning her availability to fill this position, he had a concern that he would not find a teacher to work under a one-year contract, i.e. if he rehired the appellant and she then was granted a parental leave for school year 1992-93. Tr. Vol. II pp. 15-17.
- At the time that Dr. Flynn determined he would not rehire the appellant because of her unavailability for school year 1992-93 based on his concern there would be difficulty finding a certified, part-time teacher to take the position for one year only, he did have on file an application from a Burrillville resident who met the certification requirements for the position. Tr. Vol. II p. 19.

Position of the Parties

Appellants

Counsel argues that both of the appellants' nonrenewals are invalid because the reason given in the original "statement of cause" was not the actual reason for their contract nonrenewal. In each case other factors motivated the school committee to sustain the nonrenewals under review here. In the case of Ms. Marshall, it was a performance assessment process which resulted in her not being ranked as high as other English teachers who had been nonrenewed. Ms. Marshall's attorney questions both the validity and fairness of the process used to rank these teachers, and notes that if her performance were to be called into issue in the nonrenewal decision it should, as state law 16-13-2 requires, have been contained in the statement of cause. Likewise, in Ms. Beaulieu-Gonsalves' case, if her "unavailability", i.e. her desire to exercise her parental leave option under the collective bargaining agreement, were to be a reason for her nonrenewal, it had to

be included in the statement of cause furnished to the appellant upon her request for a statement of cause on March 5, 1992. If in each case financial uncertainty was no longer a reason for nonrenewal, and was replaced by a different reason, the school committee is precluded from relying on the new or alternate reason because it did not motivate the school committee to take the action that it did in February 1992, to nonrenew the appellants' annual contracts. The School Committee's attempt to rely on additional reasons cited in an "amended statement of cause" furnished at a much later point in time to the appellants is invalid. These reasons did not exist on March 1, 1992 and were not cited in the original statements of cause provided to the appellants under the statute.

The appellants argue that the only reason advanced in a timely way under the statute -- "financial uncertainty" does not establish a valid reason for nonrenewal of the appellants' contracts. Given the timelines governing both state and municipal appropriations to fund education, there will always be financial uncertainty facing school committees on March 1st of a given year. If this reason alone is justification for terminating the employment of nontenured teachers, counsel argues that the Teacher Tenure Act will be undermined. Arbitrary nonrenewals every year will prevent nontenured teachers in a school system from serving under the three successive annual contracts required to attain tenure.

In the cases of both of the appellants, it is further argued that the school committee acted arbitrarily and capriciously.² First, the school committee did not recognize the appellants' reemployment rights when, even though the budget was cut, it did not result in the reduction of the number of secondary English positions (Ms. Marshall's case) or in the elimination of the ESL position previously held by Ms. Beaulieu-Gonsalves. Since the underlying reason cited in the statement of

²It is not clear whether this argument presupposes that the appellants' were validly nonrenewed and entitled to recall or that their nonrenewals are automatically rescinded.

cause ceased to exist (i.e. elimination of teaching positions because of budget cuts) counsel argues both appellants were entitled to reemployment. In Ms. Beaulieu-Gonsalves case, counsel argues that when the budget was certain and her position was available, she was entitled to it. Therefore, she was entitled to exercise a right accorded under the collective bargaining agreement to teachers included in the bargaining unit. Additionally, it is argued that Dr. Flynn's conclusion that it would be difficult for him to fill the position on a one-year only basis is arbitrary and capricious because he had on file the application of at least one person from Burrillville who was certified in ESL.

Counsel makes similar arguments with respect to the disregard of Ms. Marshall's reemployment rights, given that the same number of secondary English positions was maintained in school year 1992-93 as existed in the prior school year. Although Ms. Marshall had rights to a position, she was passed over by Superintendent Flynn for a teacher who had even less seniority in the system. Ms. Marshall alleges that the process devised by Superintendent Flynn to rank the four teachers was prompted by his personal bias against her. She attributes this ill will to the fact that Ms. Marshall's appointment the prior year resulted in a grievance from a tenured teacher.

Position of the School Committee

Counsel for the school committee argues that the nonrenewals of both appellants were accomplished in full compliance with the procedures set forth in R.I.G.L. 16-13-2. He further notes that the reasons cited in both the original statement of cause and the amended statement of cause are accurate and valid reasons for nonrenewal.

With regard to Ms. Marshall's nonrenewal, counsel notes that faced with the staffing need for three language arts teachers³ and a situation of four teachers unemployed, Dr. Flynn established a fair and reasonable process to fill these positions. The process was designed to select the best qualified teacher (from the group which had been nonrenewed) rather than merely filling the position with the teacher who had the most seniority.

Similarly with respect to Ms. Beaulieu-Gonsalves, it is argued that Dr. Flynn acted reasonably in first offering the position to her in August. When she indicated her desire to be granted a "parental leave" for the 1992-93 school year, the Superintendent determined that it was not in the best interests of the school system to rehire her. Given her unavailability, and the anticipated difficulty of finding a teacher with the requisite certification to fill in for a one year assignment, Dr. Flynn filled the position with another teacher.

As we understand the school committee's argument, the amended statements of cause in each case notified the appellants of the reason for their nonrenewal, as well as the reason why their nonrenewals were not subsequently rescinded.

Decision

The threshold issue here is whether or not the action taken by the Burrillville School Committee effected a valid nonrenewal of both appellants. State law requires that a nontenured teacher, who is employed on an annual contract, be notified in writing on or before March 1, that "the contract for the ensuing year will not be renewed"⁴, R.I.G.L. 16-13-2 goes on to state that upon

³The total number of language arts positions in the system had been reduced because of the budget shortfall. The school committee took the position that this set in motion a process of "musical chairs" which did not permit the rehiring of all nonrenewed nontenured teachers in the language arts department, which includes secondary English teachers.

⁴It is obvious that the Legislature meant to say the contract (for the current year) will not be renewed for the ensuing year. This has uniformly been the interpretation of R.I.G.L. 16-13-2.

request a teacher shall be furnished with a statement of cause for the nonrenewal and that:

whenever any contract is not renewed or the teacher is dismissed, the teacher shall be entitled to a hearing and appeal pursuant to the procedure set forth in § 16-13-4.

The appellants have argued that the "financial uncertainty" cited by the school committee in its statement of cause was not the actual reason for their nonrenewal. In each case, the appellants note that the actual reason for their nonrenewal arose after March 1 of the contract year and was included in a document characterized as an "amended statement of cause". In Ms. Marshall's case it was the "return from leave and the transfer of certain tenured teachers" resulting in fewer positions being available in her department. The amended statement of cause sent to Ms. Beaulieu-Gonsalves cited her unavailability to teach during the 1992-93 school year. The appellants' argue adamantly that the school committee cannot supplement a statement of cause with reasons not in existence on March 1st and not included in the original statements of cause furnished to them.

We agree with the appellants that the supplementary reasons (not in existence on March 1st) incorporated in an amended statement of cause cannot support these non-renewals. These supplementary reasons played no role in the school committee's February 19, 1994 decision and vote to nonrenew.⁵ However, we do not agree with the appellants that their nonrenewals were invalid. They received timely notice of nonrenewal (February 10, 1992) the school committee took timely action (February 19, 1992) and, upon appellants' request they received a timely statement of cause (April 29, 1992) notifying them of the reason for nonrenewal of their contracts. At the time the school committee action was taken a verified budget shortfall was projected and caused the committee to take the

⁵See page 3 of the decision of the Commissioner in Tracy v. Scituate, March 12, 1984; Bilodeau v. Providence, page 4, decision of the Commissioner dated August 2, 1982.

action it did. Financial uncertainty, and its potential impact on staffing levels, grounded the school committee's action in a legitimate, factually accurate reason.⁶

The appellants' premise is that when budgetary uncertainty is subsequently removed⁷ and the number of positions in a department is not reduced as a result of the funding level, the nonrenewals are rendered a nullity. We disagree. This interpretation of R.I.G.L. 16-13-2 would put a school committee in the position of notifying a teacher of nonrenewal by March 1st, stating the reason but deferring final action on the matter until a later time to see if the reason remained accurate. Although the teacher would be entitled to the benefit of a "second look" under this scenario, the school committee would be prevented from reacting to changes in circumstances arising after March 1st. This is not what the statute says. The issue of nonrenewal of the annual contract must be taken up by March 1st. The teacher has the advantage of early notice, and decision making concerning his or her employment status for the upcoming year. At the time the school committee takes its action, it must have a legitimate reason for nonrenewal and state such reason upon the request of the teacher. Facts and circumstances, and even projections, as they exist on or before March 1st provide the framework for this decision.

We are aware of some prior decisions of the Commissioner in which the principle was established that a reason valid on March 1st will not support the nonrenewal of a nontenured teacher if subsequent events render such reason inaccurate. See decision of the Commissioner of Education in Lee v. East Providence, January 11, 1982; Bilodeau v. Providence School Committee, August

⁶Financial uncertainty has been upheld as a basis for teacher nonrenewals. See Ornazian et al v. Providence School Committee decision of the Commissioner dated May 11, 1983 (regarding appellant DeMello); Germani et al v. Providence School Committee, decision of the Commissioner dated March 30, 1984 (regarding appellant Borges); and the more recent decision of the Commissioner in Hagen v. Lincoln School Committee, October 14, 1993. It is not clear from the decision in Birrell-Graham v. Barrington School Committee (August 3, 1992) whether the statement of cause cited "anticipated budgetary shortfall" or "fiscal exigencies", but the decision in that case upheld the nonrenewal of nontenured teaching contracts when a budget shortfall was anticipated.

⁷Even when, as happened here, there is a substantial budgetary shortfall.

2 1982⁸. Also other decisions upholding the nonrenewals of nontenured teachers imply that the reason given must continue to be accurate at the time of any subsequent hearing by the school committee. We refer to decisions in which the nonrenewals are sustained in part, on a finding that at the time of hearing on the teacher's appeal the reason provided continues to be accurate.⁹ There is authority to the contrary however, including a decision of the Board of Regents in Giron v. East Providence School Committee, July 24, 1980 which supports the proposition that the reason given need only continue to be accurate "beyond the statutory date for notification". In Giron the teacher claimed that the reason given to her in February, i.e. return of the teacher whom the appellant was replacing, was not factually accurate on the date the school committee heard her appeal from her nonrenewal, since the committee knew at that time (June 5, 1979) that the teacher would not be returning from a parental leave. The Board of Regents dismissed her claim, finding that the subsequent change in the circumstances cited to the teacher on her nonrenewal did not invalidate her nonrenewal.¹⁰ Consistent with this reasoning is the statement found in the subsequent decision of the Commissioner in Tracy v. Scituate, supra that:

our examination of Rhode Island school law indicates that the school committee would have been justified in basing its nonrenewal decision on its prior good faith expectation that (the teacher whom the appellant had been hired to replace) would be returning from leave. p. 1.

⁸The analysis in Bilodeau focused on the fact that the accurate reason for the "failure to recall" the appellants was different from the reason of "administrative reorganization" provided to them when they were nonrenewed. The administrative reorganization had not occurred as anticipated.

⁹See Germani v. Providence, March 30, 1984 (re appellant Borges); Burr v. Johnston School Committee, March 17, 1982; Hagen v. Lincoln School Committee, October 14, 1993; Birrell-Graham v. Barrington School Committee, August 3, 1992.

¹⁰We are constrained to note that the Commissioner's decision upholding the nonrenewal in Giron did not rest on this same principle. See the decision dated November 14, 1979.

The language of the statute (16-13-2) leads us to the conclusion that the school committee's decision is to be based, and later is supportable, on circumstances as they exist at the March 1st statutory deadline. This conclusion is also supported by the analysis of the Rhode Island Supreme Court in Jacob v. Board of Regents for Education, 117 R.I. 164; 365 A2d 430 (1976). In discussing the purpose of according a hearing to nontenured teachers our court states:

...We believe that § 16-13-2 gives the probationary teacher a chance to question the decision regarding his contract of employment while at the same time maintaining the distinction between the tenured and the nontenured teacher (p. 170).

The court also notes that:

While the hearing contemplated by § 16-13-2 is not quasi-judicial in nature, the committee does have a duty to listen to a dissatisfied teacher in an objective manner and fairly consider its original decision (emphasis added).

Noticeably absent from the Court's discussion of the purpose of the hearing is any mention that it could permit, much less require, a school committee to reconsider its original decision to nonrenew a teacher's annual contract in light of then-current factual circumstances. Since the appellants here were provided with a valid and factually accurate reason for their non-renewal, and accorded all procedural rights to which they are entitled under the statute, their nonrenewals are valid.

Nonrenewals are not invalidated because other factors ultimately affected the school committee's decision not to rehire them. These subsequent factors played a significant role in a later, separate decision made by the superintendent that they not be rehired for the 1992-93 school year.

The second, and equally difficult legal issue in this case is the question of what reemployment rights obtain to nontenured teachers whose contracts have been nonrenewed because of financial uncertainty. Our law gives them no statutory recall rights and we presume neither does their collective bargaining agreement. For both of these teachers, the school district's financial uncertainty was resolved with no resulting reduction or elimination of the relevant positions.¹¹ Yet, both appellants found themselves without employment in school year 1992-93. In Ms. Marshall's case, a process she questioned from the very beginning produced a ranking of four teachers - with the result that a teacher with less seniority than she was rehired. Ms. Beaulieu-Gonsalves points to the fact that but for the financial uncertainty prevailing in February, she would have been granted¹² a parental leave for school year 1992-93. The reason cited by the school committee in its statement of cause - "financial uncertainty" arises as a routine operating condition for all school committees in Rhode Island. As pointed out by appellants' counsel, it is a reason which could be used to undermine the teacher tenure law, by permitting routine annual nonrenewals of nontenured teachers, thereby preventing these teachers from acquiring three successive annual contracts. Simply by citing a situation which arises by virtue of the nature of the appropriation process, school committees could annually disengage nontenured teachers, never permitting them to acquire tenure.

While we do not disagree that there exists a potential for abuse of financial uncertainty as a ground for nonrenewal of the annual teaching contract, that is clearly not the case presented here. If the school committee had wished to subvert the Teacher Tenure Act it would not, in each instance, have returned to the group

¹¹We fail to see how the decision to eliminate an elementary level literacy position, argued to be in the "language arts department" impacted on the number of secondary English position.

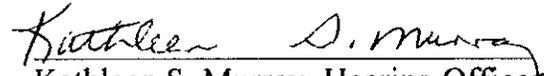
¹²Superintendent Flynn had indicated on January 14, 1992 that he would recommend approval of a parental leave for this period. See Joint Ex. 5.

of teachers whose contracts had been nonrenewed in filling the positions it considered "available". It was this very action of first returning to the limited group of teachers who had been nonrenewed for financial uncertainty, rather than advertising position vacancies that was argued by the appellants to be inconsistent with Dr. Flynn's testimony that the evaluation/ranking process was designed to determine the best possible candidates for the positions. Given that the appellants' had no statutory or contractual rights to a position, we find that it made perfect legal and practical sense for Dr. Flynn to try to reemploy the teachers whose prior year's annual contracts had been non-renewed. First and foremost, this action facilitated their acquiring three year's of successive annual contracts, consistent with the teacher tenure law's concept of continuous service. Secondly, the school administrators were acquainted with these individuals and familiar with the quality of their performance. From a practical and legal standpoint, Dr. Flynn acted appropriately.

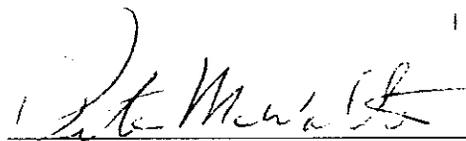
There is no indication under the facts presented in this case that "financial uncertainty" was used as subterfuge to hide an effort to prevent nontenured teachers from obtaining tenure. The school committee did not, as is argued by the appellants "get rid of all nontenured teachers and let them compete with the world". (Tr. Vol. II p. 47). The superintendent demonstrated an intent to maintain continuity of teaching personnel in the Burrillville system. But for the ranking she achieved by virtue of a reasonable evaluation process, Ms. Marshall would have been offered a position for the next school year. Had she been available to teach,¹³ Ms. Beaulieu-Gonsalves would have received another annual contract with the Burrillville school system. In both cases, Superintendent Flynn has not been shown to have acted arbitrarily or capriciously.

¹³She had no contractual right to a parental leave since, as we have ruled, she was not employed at that time.

For the foregoing reasons, the appeals of Ms. Marshall and Ms. Beaulieu-Gonsalves are denied.


Kathleen S. Murray, Hearing Officer

Approved:


Peter McWalters, Commissioner

June 8, 1994
Date