

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

HELEN KAGAN AND THOMAS MCGHEE
V.
BRISTOL/WARREN REGIONAL SCHOOL
COMMITTEE

DECISION

Held: The School Committee did not have a valid basis for nonrenewal of the appellants' contracts for school year 1993-94.

Travel of the Case

On February 1, 1994 the appellants Helen Kagan and Thomas McGhee appealed to the Commissioner from the decision of the Bristol/Warren Regional School Committee upholding the nonrenewals of their teaching contracts. The undersigned was designated as a hearing officer to hear and decide this appeal. A hearing was held on June 27, 1994 and the record in the case closed on July 11, 1994.

Issue

Was the nonrenewal of the appellants' contracts as teachers in the Bristol-Warren Regional School district valid?

Findings of Relevant Facts

- During school year 1992-93 Helen Kagan and Thomas McGhee were employed as nontenured teachers in the Bristol-Warren Regional School District. Joint Ex. I.
- Both of the appellants had been employed since 1990-91 (initially by the Warren School Committee) Tr. p. 16.
- On February 18, 1993 the appellants, along with thirty-four other nontenured teachers received notice from newly-appointed Superintendent Guy DiBiasio that he would be recommending nonrenewal of their employment contracts. Joint Ex. I. Tr. pp. 17-19.
- The reason for the Superintendent's recommendation was his belief that there were more qualified teachers available for their positions. Joint Ex. I; Tr. p. 19.
- The Superintendent's recommendation was not made after a review of the personnel folders of any of the thirty-six (36) nontenured teachers¹ or any other documentation concerning their qualifications or performance. Tr. p. 39.

¹ Superintendent DiBiasio testified that even if he had consulted personnel records, the records received from the Warren School Department were incomplete and would not provide a clear picture of individual performance. Tr. pp. 59-60.

- The Superintendent's recommendation was not based on any individual assessment of any of the thirty-six (36) teachers' performance or qualifications. It hinged on his feeling he could do better based on experience as an educator, his observation of programs in the Warren and Bristol school systems, and his knowledge of candidates "out there" who were applying for positions. Tr. pp. 22, 39-40.
- On February 25, 1993 the Bristol/Warren Regional School Committee accepted the Superintendent's recommendation and voted to non-renew the contracts of the appellants, along with thirty-four (34) other nontenured teachers for the reason that it was believed that there were more qualified teacher available for their positions. Joint Ex. I; Tr. p. 19.²
- The School Committee, prior to its vote, was not provided with any facts with regard to the thirty-six individual nontenured teachers. Tr. p. 20.
- At or about the beginning of the 1993-94 school year contract negotiations between the teacher unions and the regional school committee resulted in an unwritten agreement by the school committee to reemploy as many of the thirty-six teachers as there were available positions. All but Ms. Kagan and Mr. McGhee were re-employed for school year 1993-94. Tr. pp. 42, 52-53, 63-67 and 70.
- The "recall" of the thirty-four nontenured teachers who had been terminated along with the appellants by the earlier action the School Committee was not accompanied by any determination of their individual performance or qualifications. Tr. pp. 36, 42, and 70.
- On September 28, 1993 the appellants requested a hearing on the issue of their nonrenewal. Joint Ex. II.
- A hearing was held by the School Committee on November 22, 1993. The Committee sustained its earlier decision. S.C. Ex. B; Joint Ex. I.

² The contracts of all sixty-seven (67) nontenured teachers in the school district were non-renewed at the February 25, 1993 meeting. The nonrenewal of the other thirty-one (31) nontenured teachers was from reasons such as uncertainty of funding, return of other teachers from leaves of absence and displacement by more senior teachers, etc. Joint Ex. I.

Position of the Parties

Appellants Kagan and McGhee

Counsel for the appellants argues that they have been treated arbitrarily and capriciously in that their nonrenewals were unaccompanied by any individual determinations of their qualifications and performance. Neither the Superintendent's recommendation nor the School Committee's vote is supported by any facts -- merely the Superintendent's belief that there were more qualified candidates available for their positions.

Ultimately, reemployment in the Bristol/Warren schooldistrict in school year 1993-94 had nothing to do with qualifications or performance, but rather with the collective bargaining process and the agreement reached with regard to reemployment of nontenured teachers. Had the Superintendent concluded that there were two more positions available, Ms. Kagan and Mr. McGhee would have been reemployed as well, irrespective of their past performance or professional qualifications.

The Bristol/Warren Regional School Committee

The newly-appointed superintendent, charged with ensuring teacher excellence in the regional school district and faced with an approaching March 1st deadline for providing non-renewal notices to nontenured teachers, sought to avoid tenure by default. Accordingly, counsel argues, he provided statutory notice to all nontenured teachers for whom no other reason existed for nonrenewal, that their contracts were to be nonrenewed.³ His recommendation, and the School Committee's subsequent action on Dr. DiBiasio's recommendation was based on his professional belief that more qualified teachers were available for these

³ Actually the notice, to the appellants at least, also notified them that their employment would thereby be terminated. Joint Ex. I. Tr. p. 26.

positions. The School Committee argues that the Superintendent's good faith belief can provide adequate support for the decision of the school committee to terminate the appellants' employment. If the evidentiary standard in nonrenewal cases is restricted to documented performance failure of nontenured teachers, then, counsel argues, local school committees will be prevented from ensuring that excellence is the standard of performance required of public school teachers in Rhode Island.

Decision

The charge of the regional school committee to its newly-appointed Superintendent is one that we endorse wholeheartedly. Ensuring that public school teachers achieve tenured status only after they have demonstrated excellence in teaching should be the goal of the decision making process in renewing the annual contract of a nontenured teacher, especially when that teacher approaches completion of the third annual contract.

The decision not to renew the annual contract of a nontenured teacher, clearly is not required by law to be based on "good and just cause". It must, nonetheless, be a reasonable decision, supported factually or grounded in some justification that would insulate the action from being classified as arbitrary and capricious. See page 3 of Karagozian v. North Providence School Committee, May 17, 1979 decision of the Commissioner.

A host of reasons, including a school district's desire to find a more qualified teacher, as yet unidentified, have been sustained as a valid basis for the nonrenewal of a teacher's annual contract. See Tracy v. Scituate School Committee, decision of the Commissioner dated March 12, 1984. We have reviewed the Commissioner's decision in Tracy, supra, and in particular the discussion at page 5 that:

we think that the law is plain that the burden was (and is) on the appellant to show that other, more qualified teachers were not available ... page 5, Tracy v. Scituate, *supra*.

This language is consistent with the proposition set forth by our Supreme Court in Jacob v. Board of Regents 117 R.I. 164 (1976) that the burden of proof in such cases rests solely with the nontenured teacher. This proposition does not, however, relieve the school committee of its initial burden of going forward to demonstrate the existence of a valid reason for its action. In cases in which the teacher's nonrenewal is premised on the availability of better-qualified teachers, some showing must be made that the school committee's conclusion was not arbitrary.

The School Committee's conclusion here have that other, more qualified candidates were available for thirty-six (36) positions in its system, based exclusively on the Superintendent's good-faith professional belief and unaccompanied by any facts concerning the qualifications or performance of these individuals or the quality of the applicant pool does not have sufficient objective support. While there was some reference by the Superintendent to his knowledge that he had many applications "on file", there was no indication that his decision was grounded in any determination he had made with respect to the qualifications of these job applicants. He clearly had made no assessment of the qualifications or performance of Ms. Kagan and Mr. McGhee or the other teachers who were similarly non-renewed.

We do not suggest that a Superintendent's decision need be supported in every case by reference to the qualifications of the nonrenewed teachers or the prospective applicants. For example, when as here, an impending statutory deadline is coupled with inadequate records denying a Superintendent the opportunity to gather timely information on the individuals we could foresee a

nonrenewal notice validly premised on the Superintendent's plan to review credentials/performance indicators for these teachers at a later time, even in the context of considering these nonrenewed teachers along with other applicants for vacancies in the school system.

This was not the situation presented in the record of this case. The testimony does not show the existence of a plan to review the credentials of the appellants at any point in the process. Not only was the Superintendent's recommendation that the appellants' contracts be nonrenewed, but his notice incorporated his decision that their employment was to be terminated. His decision was not designed to ensure his future opportunity to assess the credentials of the appellants, or even consider their credentials in comparison with other, as yet unidentified, theoretically better-qualified teachers. Regardless of whether Ms. Kagan and/or Mr. McGhee were in fact excellent teachers, they were terminated on the basis of a professional belief and left with the sole recourse of participating in a hearing in which it would be their burden to show the non-existence of better qualified teachers. The unfairness of such a process is compounded by the subsequent recall of thirty four (34) teachers similarly situated to the appellants on the sole basis of financial expediency. We fail to see how such action necessarily implements a philosophy of "excellence in teaching". It was just as likely to undermine such a plan.

Under the facts and circumstances of this case, we find the reason for the appellants' nonrenewal to be lacking in factual support or other justification. As such, the reason was not a valid basis for nonrenewal. The appeals are sustained and the School Committee is directed to reinstate the appellants and pay them damages for loss of wages or other losses incurred.

Kathleen S. Murray
Kathleen S. Murray, Hearing Officer

Approved:

Peter McWalters
Peter McWalters, Commissioner

August 23, 1994
Date