

**STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS**

COMMISSIONER OF EDUCATION

FREDA LEHRER *

V. *

NORTH SMITHFIELD SCHOOL COMMITTEE *

DECISION

Held: **The non-renewal of the
Appellant's contract as a
nontenured reading specialist
based on financial uncertainty
was valid.**

Travel of the Case

Through counsel, Freda Lehrer appealed to Commissioner Peter McWalters on November 20, 1996. She disputes her non-renewal as a half-time teacher in the North Smithfield school system. The undersigned was designated to hear this appeal on December 5, 1996 and requested that the parties select an agreed-upon hearing date, which they finally did on April 21, 1997. The matter was heard on June 12, 1997 at which time both parties presented evidence and legal argument. The parties agreed to defer consideration of any appropriate remedy until after the merits of the claim were decided.

The record in the appeal closed upon receipt of the transcript on July 11, 1997. At the request of the superintendent, decision in this matter has been expedited so that relevant staffing decisions can be made for the 1997-98 school year. Commissioner McWalters has directed that decision in the matter be expedited.¹

Issue

Was the non-renewal of Freda Lehrer's contract as an elementary reading teacher valid?

Findings of Relevant Facts

- Freda Lehrer was employed as a reading teacher at the Halliwell School in North Smithfield during school year 1995-96. Tr. P. 9.
- Ms. Lehrer was a part-time (.5) non-tenured teacher. Tr. P. 9. Stipulation of the parties. Tr. P. 6.
- At its February 6, 1996 meeting, the North Smithfield School Committee voted to non-renew Ms. Lehrer's contract for the ensuing school year. Appellant's Ex. 1.
- The appellant received notice of the School Committee's action, together with a subsequent statement of cause from the chairperson of the School Committee, on February 13, 1996. Appellant's Ex. 2. Tr. Pp. 7-8.
- The reasons stated in the notice of non-renewal of the appellant's contract were a) uncertainty of funding needed to retain present staff and programs; and b) the possibility that a more senior teacher could lose his/her position and be eligible for the appellant's position. Appellant's Ex. 1 and 2.

¹ Given that the appeal was filed on November 20, 1996, and a request for the parties to agree upon a convenient date for hearing was pressed over several months, we would suggest that a better route would be to anticipate the need for making staffing decisions in scheduling the hearing date. Expediting some appeals necessarily delays the issuance of decisions in other cases.

- The Superintendent's non-renewal recommendation was based in part upon information he had received from the principal of the Halliwell School that at least fifteen (15%) percent of the district's Chapter 1 funds would be cut in school year 1996-97. Tr. P. 143.
- Ms. Lehrer's position was supported by Chapter 1 funding. Tr. P. 27.
- After July 1, 1996, the Superintendent reviewed funding received through Chapter 1 (federal grant) as well as state and local appropriation. He then determined that sufficient funding would be available to expand the reading program at the Halliwell School. A full-time position was created. Tr. P. 28, 38.
- The need for a full-time reading specialist at Halliwell had been raised with the Superintendent in May of 1996 by a recommendation from a team of school administrators reviewing needs of the Chapter 1 program for the 1996-97 school year. Tr. Pp. 42, 122-124.
- A job posting soliciting applicants for a full-time (1.0) Reading specialist had been made on or about June 12, 1996. Appellant's Ex. 3.
- The reason the committee recommended one (1) full-time teacher rather than two part-time teachers to meet the reading program needs of the Halliwell School was that the needs of the children were not being met at the previous .8 (.3 and .5 part-time teachers) staffing level, continuity of instruction was not maintained, and scheduling of meetings with other staff was limited by the accessibility of two part-time teachers rather than one full-time. Tr. Pp. 52-53, 62, 122-124.
- The two part-time positions (.5 and .3) at the Halliwell School were converted to one (1) full-time position. Tr. Pp. 52-56.
- The full-time reading specialist position at the Halliwell School was offered to Ms. Lehrer, but she was not interested in a full-time position for personal, family-related reasons. Tr. Pp. 33, 71.
- A new teacher was then hired for the full-time reading specialist position at the Halliwell School for school year 1996-97. Tr. P. 18.
- The certified nurse-teacher staffing level at the Halliwell School also changed from school year 1995-96 to 1996-97. Tr. Pp. 54-55. The nurse-teacher employed there in a part-time (.5) position was presented, and accepted, the option of expanding her position to a full-time (1.0) certified nurse-teacher at the school. Tr. P. 56.
- In the case of the expansion of the nurse-teacher position, the additional .5 was posted as a separate position (Appellant's Ex. 3. Tr. P. 39) and the nurse-teacher could have remained in the part-time position had she chosen to do so. Tr. P. 47.
- The school committee has in place a policy on Reduction in Professional Staff Work Force which provides for recall of teachers "whose services are terminated because of a necessary reduction in personnel. . .". Such recall is on a seniority basis. Appellant's Ex. 4.
- The school committee has not issued a decision on the merits of the appeal following its hearing on September 17, 1996. It did reaffirm its acceptance of a settlement proposal made by the appellant in a letter dated October 16, 1996. S. C. Ex. A and C. Tr. P. 119.

Position of the Parties

Appellant Freda Lehrer

Counsel for the appellant takes the position that mere uncertainty with respect to funding is not a valid reason on which to premise the non-renewal of a non-tenured teacher's contract. In every fiscal year cycle, there is a customary and routine uncertainty as to the total funding appropriated for the operation of the school district. He questioned whether the specific information about a fifteen (15%) percent reduction in Chapter 1 monies was provided to the Superintendent prior to him making a recommendation with respect to this non-renewal. Even if uncertainty of funding were an appropriate reason for non-renewal of a non-tenured teacher's contract, once the funding became certain, i.e., after July 1, 1996, the appellant's non-renewal should have been rescinded. The basis for her lay-off had ceased to exist. Her recall to the position should not be defeated by the intervening decision to have one full-time reading teacher at the school, since she was legally entitled to be placed back in the position she held during school year 1995-96. The school district did not, at any point, notify her that her layoff would be premised on a decision to eliminate the part-time position she held at the Halliwell School.

Numerous questions were raised by counsel with regard to the unwillingness of the district to reconfigure the remaining staff of the Chapter 1 reading program and/or change the school to which the appellant was assigned. These steps could have enabled the appellant to have maintained a .5 position in the system, even if it were at another school. Counsel also pointed out that when the school-nurse teacher position was expanded at the Halliwell School, to meet increased student needs, the district did not create one full-time position, giving the option of continuing part-time to the certified nurse-teacher at Halliwell.

The appellant's attorney also argues that school committee policy would require her recall to the "next vacant position". We assume he means the .5 position she previously held, since she had not received prior notice of the elimination of that position and its replacement with a full-time position.

Finally, he notes that no decision was rendered by the school committee following its hearing of the appellant's appeal. The only response to his request for a decision, based on the arguments presented at the hearing, was the committee's confirmation of its willingness to settle this dispute under the terms proposed by the appellant. This violates state law requiring a timely decision on her appeal.

The School Committee

The attorney for the school committee asserts that in non-renewing a non-tenured teacher it need not establish just cause. It is the non-tenured teacher's burden in such cases to demonstrate that the school committee's decision was a mistake, irrational, or had no basis in fact. The accuracy of the facts supporting the non-renewal decision is assessed at the time the decision is made, i.e., on or before March 1 of the year in question. If the notice was validly given and the facts supporting the decision are accurate at that time, subsequent changes in the situation do not impact on the validity of the non-renewal. In this case, uncertainty of funding for this Chapter 1 position prevailed in February and continued through the March 1 deadline for providing notice. There is no continuing obligation to the teacher, and in the event that funding later becomes certain, and is sufficient, that teacher's non-renewal is not rescinded or rendered invalid.

The subsequent decision to convert two part-time positions at the Halliwell School to one full-time reading position was based on the educational needs of students and other factors directly related to the effectiveness of the program. The appellant was offered this position, but rejected it for personal reasons. The administrators of the school district were under no obligation to reconfigure staff and positions to facilitate the appellant's return somewhere else in the system in a part-time capacity. Her layoff was thus valid under state law. In offering the full-time position to Ms. Lehrer the school committee has fully complied with the provisions of the school policy on reductions in professional staff, to the extent that policy may apply to non-tenured teachers.

Decision

The appeal in this case raises the same central issue decided by the Commissioner in Marshall et. al. v. Burrillville School Committee, June 8, 1994. There, as here, it was argued that a school committee must rescind its non-renewal of the contract of a non-tenured teacher when financial uncertainty is removed and sufficient funds are available. Rather than repeat the analysis and discussion of this issue here, we will simply incorporate the Marshall decision by reference in this case. Suffice it to say that the statutory March 1 deadline for notice to non-tenured teachers of their non-renewal renders facts as they exist at that time determinative of the validity of such action. Thus, even though total funding eventually received by the North Smithfield school department enabled it not only to maintain, but to expand its Chapter 1 reading program, this did not affect the validity of Ms. Lehrer's non-renewal.

Whether by virtue of the policy cited by the Appellant (Ex. 4) or for some other reason, Superintendent Moretti offered Ms. Lehrer re-employment for school year 1996-97. At that point in time, decisions had been made to reconfigure and expand Chapter 1 reading services and utilize one full-time teacher for the Halliwell School, rather than two part-time teachers. The uncontroverted facts were that this decision was by virtue of a committee recommendation and based on factors related to student needs and program effectiveness. Grounded in such facts, we find this decision has not been shown to be arbitrary or unfair, even though the school administrators approached the expansion of nursing services at the school in a different way.

Even if similar factors² should have governed the decision on how to increase the level of certified nurse/teacher staff at the Halliwell School, we would note that the part-time nurse-teacher there had not received any notice of her contract's non-renewal (or termination of her service as a tenured teacher) for the 1996-97 school year. Therefore, even if the district wished to expand her .5 position into a 1.0 position in the subsequent year, regardless of her willingness to become full-time, it did not have the flexibility to do

² Continuity of instruction, access for meetings with staff, etc.

so. In any event, even if the two teachers were similarly situated, there is sufficient evidence in the record to support the decisionmaking with regard to the creation of one full-time position to meet the school's needs for a reading teacher. The decision was for educational reasons as demonstrated in this record.

Finally, with respect to the alleged failure of the school committee to issue its decision as requested by Ms. Lehrer's counsel, we find that the committee has not responded to the legal arguments made at the September 17, 1996 hearing. It merely implicitly denied such appeal in the October 16, 1996 letter to Ms. Lehrer's counsel. The chairman reiterated the committee's acceptance of the resolution presented by Ms. Lehrer's counsel. The letter affirming the committee's acceptance of the settlement proposal does not constitute a "decision" on the merits of her appeal, even though it implicitly denies her appeal. In this sense, the procedural shortcomings in this matter resemble those presented by the appellants in the case of DesRochers v. Johnston, decision of the Commissioner dated January 27, 1976 and Hajjar v. Westerly, decision of the Commissioner dated December 5, 1980. In these decisions, the Commissioner found that the procedural rights of the teacher whose contract is non-tenured must be observed and, if they are not, such deficiency may invalidate the non-renewal. In the case before us, the teacher did receive a statement of cause, and a subsequent hearing before the school committee, but not a:

clear, written decision based exclusively on the record, detailing the reasons and factual basis therefor . . . (Board of Regents Guidelines E-6.2 dated January 9, 1975.)

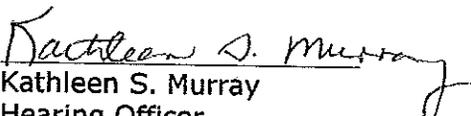
While we consider the procedural deficiency serious, we do not find that the due process violation should, in this case, render Ms. Lehrer's non-renewal invalid. Her hearing, unlike that in Hajjar, supra was timely. Although it was not held until mid-September, this was the time frame agreed upon by the parties. Also, unlike the situation in DesRochers and Hajjar there was no confusion as to what the "bottom line" of the

Committee's post-hearing decision was. It was the factual findings and reasoning for that decision which are absent from the school committee's decision.

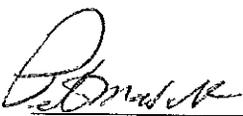
In DesRochers, the Commissioner never reached the underlying issue as to whether the reason for non-renewal was valid. He found the procedural irregularities to be determinative. In Hajjar, the Commissioner did reach the merits and found that the reason cited was not a valid one. Thus, that decision was based on both the substantive and procedural deficiencies in the appellant's non-renewal. Here, the basis for Ms. Lehrer's non-renewal was clearly a valid one. She was offered re-employment in the district, even though the full-time nature of the position prevented her from accepting it. Under such circumstances, the technical defects in her non-renewal should not invalidate what would otherwise be appropriate school committee action.

The appeal is denied.

For the Commissioner:


Kathleen S. Murray
Hearing Officer

Approved:


Peter McWalters
Commissioner

Date: August 26, 1997