

0028-99

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

LAWRENCE NAMEROW

VS.

PAWTUCKET SCHOOL COMMITTEE

DECISION

Held: School Committee's decision not to
renew nontenured teacher has not
been shown to be unreasonable.

November 9, 1999

Introduction

This matter concerns an appeal by Lawrence Namerow, a nontenured teacher,¹ from the decision of the Pawtucket School Committee not to renew his contract.

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

Background

Appellant's employment with the Pawtucket School Committee commenced with the 1995-96 school year. He taught science at Shea High School that year and for the following two school years. On February 11, 1998, the School Committee voted not to renew Appellant's teaching contract, thereby denying him tenure. Appellant's non-renewal was based on the belief that there were better teachers available to fill his position.

Appellant was evaluated during each of his three years of service in Pawtucket. The evaluation form consists of 24 items in the following 4 categories: personal qualifications, professional qualifications, teacher techniques and classroom management. Boxes marked "satisfactory" and "unsatisfactory" accompany the items in each category, as well as a space for comments. Spaces marked "principal's comments" and "director's comments" are located at the bottom of the one-page document.

In his evaluation dated January 22, 1996, Appellant received "satisfactory" ratings in all 24 items. The department chairman who observed Appellant in a Life Science Limited English Proficiency class made positive comments with regard to 4 of

1 The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeal. A hearing was conducted on August 25, 1998, at which time a stipulated record was submitted. The parties subsequently filed memoranda, and the record in this matter closed on March 3, 1999.

the items, including a comment for the item of “handling of behavior problems” that Appellant was “good for this class.” [Joint Exhibit 1]. The chairman also wrote in the comments section at the bottom of the document that Appellant “may need improvement in handling behavior problems.” In the principal’s comment, Appellant was urged “to figure out new strategies in dealing with lower level students with regard to classroom management.”

Appellant’s evaluation dated January 9, 1997 again contained satisfactory ratings for all 24 items. The chairman commented that Appellant “has made considerable progress in classroom management areas this year,” and the principal noted “Good improvement. Keep up the good work.” [Joint Exhibit 1].

The department chairman observed Appellant in his “very difficult” Life Science General (Collaborative) ² class on January 21, 1998. [Joint Exhibit 1]. Appellant subsequently received “satisfactory” rankings in all items except for an “unsatisfactory” in “control of learning situation” in the classroom management category. Other than the notation that Appellant “has no room of his own but floats from room to room,” there were no comments on the evaluation. The chairman informed Appellant that he “was not pleased with what had transpired in the class and would give him a second chance to correct it.” [Joint Exhibit 1, p. 84]. The chairman conducted another observation of Appellant on January 23, 1998, in his other Life Science General class. Appellant again received “satisfactory” rankings in all items except for “control of learning situation.” The chairman attached a written memo to the principal which specifically described his

2 The class included 13 or 14 special education students, as well as a special-education teacher and an aide.

concerns with Appellant's classroom control on both observation dates. The principal's comment on the form stated "I can only recommend Appellant for tenure if there is significant improvement in the above unsatisfactory area." [Joint Exhibit 1]. The department chairman later met with Appellant for about an hour to discuss strategies and techniques to improve his management of the classroom.

The department chairman testified that he occasionally taught in a classroom next to Appellant's and he also would pass by Appellant's classroom while performing departmental duties, during which he would hear noise and rowdiness coming from Appellant's classroom. The principal also heard noise and student conversations emanating from Appellant's classroom as he walked by. Other teachers complained to the principal about noise in Appellant's classroom. The principal recalled being summoned to Appellant's classroom on a couple of occasions to assist with student disturbances. It was the principal's opinion that Appellant does not have control over his classroom.

Dr. Hans Dellith, Superintendent of Schools, testified that he spoke to the principal about Appellant's performance and he reviewed the evaluations. According to the Superintendent, Appellant has a demonstrated inability to maintain control of his

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- 3 The concerns related to Appellant's failure to request a pass from or speak to students arriving late to class, his choice and implementation of a test review procedure, his permitting students to walk around the class freely, his failure to keep the class organized after he had finished an "excellent" 20-minute lesson, and his returning graded tests to students while two other students were taking a make-up test in the same room, the result being that, undetected by Appellant, a student with the corrected test provided answers to one of the students taking the make-up test.

classroom. Based on previous efforts to hire a science teacher, and his personal knowledge, the Superintendent was of the opinion that Appellant ought to be denied tenure because there were better teachers available.⁴

Appellant described the difficulties he encountered being the least senior member of the science department at Shea High School. His classes were demanding due to the high number of low-level learners and special-education students. The special-education teacher and aide in his collaborative class would arrive late or leave early. He was not assigned to a particular classroom, and had to “float” from period to period through the building, transporting his materials to different rooms, not all of which had a desk for him. The mentor assigned to him in his first year was virtually nonexistent, and his superiors never initiated any effort to provide guidance or assistance. Appellant noted that his students had a 91% pass rate in 1997-98. He also acknowledged that the department chairman always responded to his questions, that he was unaware of the voluntary mentoring program outlined in the teachers’ collective-bargaining agreement, and that he never sought a more preferable teaching assignment at the teachers’ job fair.

Positions of the Parties:

Appellant contests the nonrenewal notice on procedural and substantive grounds.

4 The Superintendent specifically named Susan Sieczkiewicz as a better science teacher. Ms. Sieczkiewicz began teaching at Tolman High School on January 20, 1998 for the remainder of the school year. The principal of Tolman, based on his observations of Ms. Sieczkiewicz, found her to be an “outstanding talent,” with “highly effective” classroom management. [Joint Exhibit 2, p. 201]. Ms. Sieczkiewicz, also a “floating” teacher, received a nonrenewal notice in February 1998. On June 15, 1998 she submitted a letter of resignation because she had accepted a teaching position out of state.

Appellant argues that the hearings before the School Committee were unfair and defective because that body failed to comply with a subpoena requesting documentation concerning available teachers, and because one member of the Committee acted as an advocate for the School Department. Appellant further contends that the reason offered for his nonrenewal is not supported in fact. According to Appellant, the Superintendent's testimony is neither credible nor legally sufficient given his lack of personal knowledge of Appellant's teaching ability. Appellant also maintains that the School Committee overlooked the uniquely difficult circumstances in which Appellant was required to perform his duties at Shea High School, and that the evidence failed to establish the existence of better available teachers. On this latter point, Appellant notes the absence of any evaluation of Ms. Sieczkiewicz and her receipt of a nonrenewal notice, thereby making her unavailable.

Applying the Board of Regents' decision in Kagan and McGhee vs. Bristol/Warren Regional School Committee, October 12, 1995, the School Committee asserts that it has met the standard of demonstrating an objectively truthful reason for Appellant's nonrenewal as of the time of the Committee's action. The Committee contends that while Appellant offered excuses for his problems with classroom discipline, he did not dispute that his performance in this area was less than adequate. Nor did Appellant produce any evidence to contradict the Superintendent's belief that better science teachers were available. In coming to this belief, the Superintendent made a good faith inquiry into Appellant's abilities. As for Appellant's procedural arguments, the Committee insists that the member in question acted within his role as a member of a

school committee reviewing its own decision not to renew a teacher's contract, and that no relevant documents existed for production purposes with regard to Appellant's subpoena. The Committee further denies that Appellant was unfairly prejudiced because it produced the principal of Tolman High School at the hearing to respond to Appellant's subpoena-related inquiries, that Appellant never again raised the issue before the Committee, and that Appellant waived his right to a *de novo* hearing before the Commissioner.

Discussion

The decision not to renew the annual contract of a nontenured teacher must be
5 reasonable. To be reasonable, the decision must be related to the education process, not trivial, and supported in fact. A school district's desire to find a more qualified teacher, as yet unidentified, is a valid reason not to renew a nontenured teacher's contract. *See Tracy vs. Scituate School Committee*, March 12, 1984. In an appeal of a nonrenewal decision, the burden of proof rests with the nontenured teacher.

In Kagan and McGhee vs. Bristol/Warren Regional School Committee, August 23, 1994, the Commissioner sustained the appeals of two nontenured teachers because the school committee was found not to have had sufficient objective support for its decision that there were more qualified teachers available for appellants' positions. In doing so, the Commissioner noted that the committee's decision was "based exclusively on the Superintendent's good-faith professional belief and unaccompanied by any facts concerning the qualifications or performance of [appellants] or the quality of the

5 The decision does not require "just cause," the standard for tenured teachers.

applicant pool . . .” Ibid., p. 6.

On appeal, the Board of Regents reversed the Commissioner’s decision, finding the comments regarding the review of qualifications had expanded the existing legal requirements for the nonrenewal of nontenured teachers. According to the Board, the reason for a nontenured teacher’s nonrenewal must be objectively truthful and accurate at the time it is given based upon information available at that time. The Board also emphasized the importance of preserving the distinction between probationary and
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tenured teachers.

In the matter before us, Appellant has the burden of proving that the reason offered for his nonrenewal is not reasonable. To do so he must show that the reason is not objectively truthful or accurate, that it is not relevant to the education process, or that it is trivial. He must show that this was the case as of February 11, 1998, the date of the Committee’s decision, and he must use information available as of that date.

By deciding there are better teachers available than Appellant, the School Committee has determined that there is a material deficiency in Appellant’s performance. Appellant’s superiors have testified that the shortcoming is his difficulty in maintaining control of the classroom.

We find support for the School Committee’s determination in the record of this case. The department chairman addressed the subject of classroom management in each of his evaluations of Appellant. While the chairman noted in the 1996 evaluation that

6 The Board’s decision was affirmed in Providence Superior Court, C.A. 95-5847, on September 11, 1997, and certiorari was denied by the Supreme Court on March 13, 1998.

Appellant's handling of behavior problems was good for the class he formally observed, his further comment that Appellant "may need improvement in handling behavior problems" is consistent with the chairman's testimony regarding day-to-day contacts he had with Appellant's classroom. The principal's comment on the 1996 evaluation also focused on work Appellant needed to do in the area of classroom management.

The chairman's comment in the 1997 evaluation returned to the topic of classroom management, noting considerable progress by Appellant. But the chairman's initial 1998 formal observation was disappointing, and classroom control issues arose on the second observation as well. The chairman rated Appellant's "control of learning situation" as unsatisfactory in both 1998 evaluations, and he reported his specific observations in a memorandum to the principal. The principal had his own contacts with Appellant's classroom, from which he heard noise and student conversations. The principal received complaints from other teachers about noise in Appellant's classroom, and he had occasion to be summoned there when students became disruptive. The Superintendent spoke to the principal about Appellant's performance and he reviewed the evaluations. He came to the conclusion that Appellant was unable to maintain control of his classroom. The Superintendent drew on his personal knowledge and the district's recent teacher recruitment experience to form a belief that there were better science teachers available than Appellant. It was his opinion that Susan Sieczkiewicz, the recently-hired science teacher finishing the school year at Tolman, is one of those better teachers.⁷

⁷ Although Ms. Sieczkiewicz received a nonrenewal notice, she remained "available" because a notice can be rescinded at any time.

While we do not dispute Appellant's claims that there were aspects of his job at Shea High School that increased the difficulty of his teaching duties, there is no way to judge Appellant's work performance other than in the context of his actual work assignment. The curriculum at any particular school must be delivered to all students with whatever equipment and space are available. We believe this is a challenge faced by all teachers in some way. The duties of a new teacher at the bottom of the seniority list can be especially challenging. In attempting to meet this challenge during the probationary years, it is incumbent upon the teacher to address identified deficiencies, seek help and remediation, and raise his or her performance to the standard that is expected of a tenured teacher. If need be, the probationary teacher must explore alternative work assignments in cases where he or she feels the challenge is overwhelming. In any event, the primary responsibility for a teacher's performance level rests with the teacher.

It is equally important to note, however, that the school district has a duty to provide new teachers with substantive guidance through the evaluation process. The purpose of a new teacher evaluation is to provide the teacher with opportunities to learn and improve. Viewed in this light, the evaluation process in this case is troubling. The record shows that Appellant received "satisfactory" rankings in all 24 categories in his first and second year evaluations. While general comments were made concerning classroom management in these two years, Appellant was not provided with a substantive account of his perceived inadequacies in this area until he received an "unsatisfactory" ranking in his third (and final) year. At the hearing, Appellant's difficulties in classroom management during all three years were cited as justifying his nonrenewal.

Although we believe it would have been better practice for the school district to have provided specific corrective guidance to Appellant during his first two evaluations, we do not find that the amount of notice and feedback given to Appellant during the three years rendered the School Committee's decision unreasonable. Appellant was advised during his first year that he needed to devote additional effort to the area of classroom management. This area was mentioned again in Appellant's second evaluation, noting the progress he had made. In Appellant's third year, his problems with classroom management resulted in an extra observation, a detailed memorandum, and a conference with the department chairman.

It is clear to us that Appellant has a genuine desire to be a good schoolteacher. He cares for his students and his work. His burden in this case, however, is to prove that the School Committee's decision not to renew his contract, and thus deny him tenure, is unreasonable. Appellant, in hindsight, may have issues with his working conditions. He also may feel that his superiors should have initiated efforts to guide and assist him. But the record does not show that Appellant was treated arbitrarily or that the School Committee's decision was unsupported in fact. Given the importance of classroom management to the education process, we find ample justification for the Committee's nonrenewal of Appellant's contract.

8 We caution school committees and school administrators that new teacher evaluations must be full and fair in all three years of the nontenured period.

9 We do not find that the questions and comments of the School Committee member whose role at the hearing was questioned by Appellant exceeded the latitude given to a factfinder, nor do we find any basis in Appellant's subpoena-related arguments to reverse the School Committee's decision.

Conclusion

The School Committee's decision not to renew Appellant's contract has not been shown to be unreasonable. Accordingly, the appeal is denied.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: November 9, 1999