

0017-02

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER
OF
EDUCATION

* * * * *

Julie D'Souza

v.

Woonsocket School Committee

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DECISION

Held: The petitioner, a non-tenured probationary teacher, is appealing a decision of the Woonsocket School Committee not to renew her teaching contract. The appeal is denied and dismissed.

DATE: June 3, 2002

TRAVEL OF THE CASE

This is an appeal of a non-tenured teacher from a decision of the Woonsocket school committee not to renew her teaching contract. The jurisdiction of the commissioner to hear this matter is established under R.I.G.L. 16-39-1, R.I.G.L.16-39-2 and R.I.G.L.16-13-2. The parties have agreed that this appeal may be decided upon the record compiled before the school committee, and memoranda and arguments submitted to the present hearing officer.

POSITION OF THE PARTIES

In her brief the petitioner argues that:

- Her personnel record did not contain all the material relevant to her non-renewal.
- Proper evaluations of her work were not performed, particularly because: "there was an absence of any plan for improvement." (TR.p.65)
- The principal's evaluation of the petitioner, and the reasons he gave for her non-renewal, were not "objectively truthful or accurate."

The school committee's reply to these arguments is that:

- The petitioner was properly evaluated.
- The committee was warranted in its belief that it could find a better teacher than the petitioner.
- The petitioner's unsupported statement that the evaluations and the non-renewal recommendation were not "objectively truthful or accurate" is contradicted by the record.

FINDINGS OF FACT

The Superintendent

1. On January 31, 2001 the petitioner, a non-tenured probationary mathematics teacher in the Woonsocket public schools, was notified by a letter from the Superintendent of Schools that he would be recommending to the School Committee that her teaching contract not be renewed for the 2001-2002 school year. (Tr. Exhibit 1)
2. This non-renewal letter was based on the recommendation of Principal Robert Vachon. (Tr. P. 8, 9, 16, 21) While the Superintendent saw the

petitioner's personnel file he did not review it: "to any great degree." (Tr. P. 9)

3. The Superintendent knows that he discussed this matter with principal Vachon, but he cannot put a number on how many times the matter was discussed. (Tr. P.20)
4. The superintendent described his approach to making non-renewal decisions in these terms:

Essentially when an administrator, any administrator tells me that there is a problem with one of their teachers we talk about it. Do I record the times and dates? No, I don't. It's a big system. I have a lot of buildings, a lot of principals, a lot of teachers. Mr. Vachon has talked to me about Ms. D'Souza a number of times. Those are the things that I evaluate and if I'm concerned or question one of his statements or recommendations, it's addressed at that time. I don't list them all and then put them on the scale and see which way the scale tips at the end of the school year. It's cumulative. (Tr. P.18)

5. In making non-renewal decisions the superintendent uses both the teacher's personnel file and the recommendations of his administrators. The superintendent, who administers a large urban school system, was unable to give a detailed recollection of his discussions concerning the performance of the petitioner. His testimony was to the effect that while he made his own decisions he had to depend on the recommendations of his subordinates, in this case, the principal. (Tr. P.16) In making a non-renewal decision the superintendent looks with special emphasis on a non-tenured teacher's third year of teaching because it is expected that new teachers need "an opportunity to make mistakes, to grow and to improve." (Tr. P. 17)
6. On January 31, 2001 the superintendent directed a letter to the petitioner informing her that he would recommend to the school committee that her contract not be renewed. The reason stated for the non-renewal was that:

In your area of certification there may be a more qualified teacher available to carry out the duties and responsibilities associated with this particular position. (Tr. Exhibit 1)

7. On February 7, 2001 the school committee, based upon this reason, voted not to renew the petitioner's contract. The petitioner was informed of this vote by a letter from the superintendent dated February 8, 2001. The

same letter advised her of her right to request a hearing before the school committee on her non-renewal.(Tr. Exhibit 2)

8. This hearing was held on June 6, 2001 and the school committee, after listening to testimony, voted to affirm its decision not to renew the petitioner's contract. The case was appealed to the commissioner.(Tr. P. 1)

Principal Vachon

9. Principal Vachon has a principal's certificate issued by the Rhode Island Department of Education. (Records of the Department of Education) He has a B.A. degree in Social Studies with certification in English Reading. He has a Master's degree in Administration and a Master's degree in reading. (Tr. 34)
10. As early as the year 2000 discussions took place between the Superintendent and the petitioner's principal to the effect that the school system could find a better teacher than the petitioner. These discussions were not based upon information in the petitioner's personnel file, but rather verbal communications from principal Vachon to the superintendent. (Tr. P. 9, 10, 21)
11. Parents had brought complaints about classroom control to principal Vachon. (Tr. P. 11)
12. In preparing his final evaluation of the petitioner principal Vachon reviewed her entire file including her evaluations. (Tr.P.31)
13. When principal Vachon discussed this matter with the superintendent he gave him a written evaluation of the petitioner and her entire file. (Tr.P.32)
14. Principal Vachon personally viewed the petitioner's teaching. (Tr. P.37)

Louise Thornton, Chair of the Mathematics Department

15. Louise Thornton, who has been a teacher since 1974, is the Chairperson of the Woonsocket mathematics department.(Tr.P.49) She is certified in Mathematics, Chemistry, Physics, and General Science. She received informal training in making teacher evaluations from the former chair of the mathematics department. She has no formal instruction in making teacher evaluations. (Tr. P.50) In the year 2000 she prepared evaluations for each of the 14 members of her staff .(Tr.P.51)

16. Ms. Thornton offered to help the four non-tenured teachers in the department if there were any areas in which she could help. (Tr.P.52) Ms. Thornton viewed the petitioner's teaching a number of times, with and without notice. (Tr. P.51, 52) She spoke to principal Vachon about her concerns with the petitioner's teaching:

I began to speak of the classroom visits that I had made beginning early in the school year, early in the first quarter in September, in fact. There were disciplinary issues that were occurring in her third block class. I visited that class for the purpose of looking for any classroom management weaknesses that I could perhaps help with firming up, strengthening. She was having difficulty with disruptive students. I saw students who were not engaged in instruction and more engaged in conversations among themselves. I observed a teacher speaking and other students not listening. (Tr.P.53)

17. Ms. Thornton did not expect to see a third year teacher reduced to tears. (Tr.P.55, 56) She herself had seen the petitioner in tears. (56) Ms. Thornton was aware of times when other teachers had to cover the petitioner's class. Ms. Thornton testified that at times other teachers came to her and said: "Julie is in tears. I'm covering her class." (Tr.P.58) Thornton also testified in part that: "There were disciplinary issues that were occurring in her third block class." (Tr. P. 53) "She was having difficulty with disruptive students." (Tr. P.53) Thornton also testified that the disciplinary problems she saw were not to be expected "in a third year teacher." (Tr. P. 55)
18. Ms. Thorton, from the beginning of September, kept notes concerning the problems the petitioner was having, but she did not convert these notes into a narrative form until January 2001 when the narrative was given to principal Vachon. (Tr. P.57) These notes were never placed in the petitioner's personnel file. The narrative seems to have been placed in the file in January. (Tr.P.57, 58)
19. Ms. Thornton has a notebook computer on which she keeps her evaluation notes. She uses these notes to prepare required school documents. She takes her notebook computer back and forth from home to school. She has diskettes at home "of the copies of the department evaluations." (Tr.P.59, 60)

Petitioner's Evaluations

20. Petitioner's first year evaluation found her teaching to be satisfactory. [It is however curious that the blocks on her evaluation relating to school discipline are marked "NA"---"Not Applicable."] (Tr.12, Exhibit 2a) There is nothing in this evaluation which would have caused the petitioner not to be renewed for the following year---"That's why she was not non-renewed that year." (Statement of the Superintendent. (Tr. P. 15)

21. The petitioner's evaluation dated 29 January 2001 stated that

Ms. D'Souza is very knowledgeable in her subject field. She exhibits fine qualities when teaching advanced divisions. When a low-level ability group challenges her, she frequently has problems controlling them. This frustration has caused her to break down emotionally many times over the past three years. These episodes continue in this her third year. I am unconvinced [that] D'Souza will be able to teach academic levels properly. Therefore I recommend she not be granted tenure. (Tr. Exhibit 3)

22. The same evaluation noted that the petitioner "must continually spend inordinate amounts of time on discipline" and that she had difficulty in maintaining the engagement and interest of some students. (Tr. Exhibit 3)

The Petitioner

23. The record in this case reflects that the petitioner helped read the proofs of a substantial math textbook, and that the author gave her credit for "constructive efforts in improving the text." She also set up a web page to help her students. [Exhibit 5] (Tr. P. 61, Exhibit 4)

24. The collective bargaining agreement requires a teacher's personnel file to be kept in one location and that the teacher be given access to this file. (Contract of Woonsocket Teacher's Guild, Local #951, July 1, 2000 to June 30, 2003, Section 8)

25. There is no allegation here that the petitioner was a member of the union.(Tr.)

26. Nowhere in the record can we find evidence to indicate that the petitioner disputes the difficulty she had in controlling some of her classes. This is in spite of the fact that the petitioner testified in this matter. (Tr. P. 60)

Discussion of the Law

A non-tenured teacher whose contract is not renewed is entitled to a hearing, but this hearing is not quasi-judicial in form. Instead, the non-renewed teacher is simply entitled to be given the actual reason, or reasons, for the non-renewal, along with an opportunity to explain his or her position in the matter. The school committee has no burden of proof in the hearing. The committee must simply listen to what the non-tenured teacher has to say and, in good faith, consider this statement when it deliberates on its final decision. The school committee is not required to have good cause for not renewing the teacher's contract.¹ In fact a non-tenured teacher can be denied a contract renewal simply because the school committee believes that it can obtain the services of a better teacher elsewhere.²

In *Laurie v. North Kingstown*, Commissioner of Education, March 9, 1992 it was stated that in cases of this nature:

[T]he Commissioner must make an independent decision as to whether the School committee made a mistake in not renewing the petitioner's contract. In making this decision the Commissioner must be mindful of the fact that the entire burden of proof is on the non-tenured teacher.

We also believe that in making a decision as to whether or not a teacher is to receive tenure it is appropriate to use a standard which focuses on quality teaching rather than on teaching which is marginally acceptable. (See: *Birrell-Graham vs. Barrington*, Commissioner of Education, August 1992.)

As we see in this case the petitioner is making a very determined effort to blur the distinction between tenured and non-tenured teachers. She does by arguing that the school committee has the burden of proving that written evaluations containing sufficient cause to justify the non-renewal of a non-tenured must be in existence before a school committee can make a non-renewal decision. In fact, however, the law seems to be that, in making a non-renewal decision, a school board has the right

...to reach its conclusion about a non-tenured teacher on a broad base of input received from a variety of people, including members of the public, parents of students and a board

¹ *Jacob v. Board of Regents for Education*, 117 R.I. 164, 365 A.2d 430 (1976)

² *Helen Kagan and Thomas McGhee V. Bristol-Warren Regional School Committee*, Board of Reberts, October 12, 1995.

member's own knowledge of a teacher even if that knowledge is acquired through having a child in the teacher's class."³

In fact, the applicable Rhode Island statute, R.I.G.L. 16-13-3 imposes no requirement for prior documentation. Of course, we certainly agree with the petitioner that a school committee must maintain a sound personnel evaluation system.⁴ Still, when it comes to *non-renewal* the only thing that the statute requires is that the non-tenured teacher be given *written notice* of the actual reasons for the non-renewal. The statute does not require that this non-renewal notice itself be supported by any special form of a "paper trail." But, assuming that such a "paper trail" is required, we have in this case the written third year evaluation of the petitioner by principal Vachon. (Exhibit 3) This written evaluation, which alleges at least partial inability to control and motivate a class, would certainly suffice to support the school committee in reaching the conclusion that it could hire a better teacher.

The petitioner also argues that the union contract was violated because the chair of the mathematics department, Louise Thornton, kept notes relating to teacher performance on her notebook computer. The record shows that this computer was carried back and forth between home and school and that the chair of the department used the notes contained in this computer to prepare required school documents.

Although the record does not seem to allege that the petitioner is a member of the union we will assume, for purposes of this discussion, that she is. We do not believe that the non-observance of a term of a collective bargaining contract could potentiate into the grant of tenure. Tenure rights are created by statute, not by the collective bargaining law. It is true that the tenure law specifies that a school district's failure to give *written notice* of non-renewal prior to March 1 of any given year can potentiate into the grant of tenure. However, there is nothing in the tenure law that says that the filing, or non-filing, of any other document can have so drastic an effect. Given this we do not believe that we are authorized to go beyond the statute and attribute such power to any other document.⁵

In any event, we doubt whether the notes contained on Louise Thornton's notebook computer constituted anything more than working papers from which "required" documents could be prepared. These notes were just that---notes. They amounted to working papers used to prepare documents to be filed. They were not in any sense final documents. We, of

³ *Dore v. Bedminster TO. BD. Of Ed.*, N.J. Super. A.D., 449 A.2d 547 (1982)

⁴ *Namerow v. Pawtucket School Committee*, Commissioner of Education, November 9, 1999. See: *RI Basic Education Plan (BEP)*, Topic 37. Personnel Procedures and Records .

⁵ See: *Marotta v. Vocational Technical High School*, 589 N.E.2d 334 (Mass.App.Ct.1992)

course, note that Louise Thornton did testify she also kept *copies* of teacher evaluations on her computer. Still, we are cited to no prohibition against the existence of copies of evaluations. We therefore cannot accept the petitioner's argument on this point. Moreover we do not believe that the remedy for incorrectly filing documents would be an award of lifetime tenure to a teacher about whom the school committee had reservations.⁶

The petitioner does not seem to have subpoenaed or even requested to see these notes. The petitioner has also failed to allege that the non-disclosure of these notes prejudiced her case in any way. These facts alone decisively undercut the petitioner's argument.

The petitioner further argues that the principal who evaluated her should have received special training in making teacher evaluations. Of course the principal in this case has a principal's certificate.⁷ To obtain such a certificate a candidate must complete, as part of an approved degree program, or as a series of individual graduate level courses, course work in *Supervision of Instruction*, *Supervision and Evaluation of Professional Staff*, and *Program Evaluation*.⁸ We therefore must reject the petitioner's argument.

The petitioner also objects to the evaluations conducted by the chair of the math department. We believe, however, that it is certainly the job of the chair of a math department to evaluate teachers of mathematics. Ms. Thornton, the chair of the mathematics department, is herself an experienced teacher. She is certified in Mathematics, Physics, Chemistry, and General Science. She received informal instruction in making teacher evaluations from the former department chair. We are not cited to any provision that requires an evaluator to have any more qualifications than this evaluator has. We therefore must reject the petitioner's argument on this point.

We also must reject petitioner's argument that she was entitled to a formal remediation plan before a decision not to renew her contract could be made. A moment of thought will show that if a school committee:

...lacks discretion not to reemploy an annual contract teacher if that teacher has successfully completed probation, then the teacher has essentially gained renewable contract status via probation. This could effectively amount to rewarding a teacher

⁶ *Marotta*, supra.

⁷ Records of the Rhode Island Department of Education

⁸ Rhode Island Principal Certificate Standards.

for an unsatisfactory performance, an outcome the legislature surely did not intend.⁹

Finally the petitioner contends that the reason cited for her non-renewal "is not objectively truthful or accurate." The problem with this argument is that the record does not support it. Principal Vachon and Louise Thornton both testified that they observed that the petitioner had difficulty in classroom control, and in keeping students engaged. These concerns were relayed to the superintendent. Petitioner's final written evaluation was clear on these points. The school committee therefore had reason to believe that it could hire a better teacher.

It may be noted here that since this case involves a non-tenured teacher the petitioning teacher carries the burden of proof.¹⁰ The petitioner however has completely failed to rebut the contention that the school committee could hire a better teacher. As a matter of fact, although the petitioner testified in this case, she failed to dispute any of the factual assertions made by principal Vachon or by Louise Thornton, the chair of the mathematics department.

Conclusion

The petitioner's appeal must be denied and dismissed since the petitioner has failed to prove that the reason given for her non-renewal was invalid.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

June 3, 2002
Date

⁹ *Kingsbury v. Genesse School District No. 282*, 979 P.2d 1149 (Idaho 1999)

¹⁰ *Jacob v. Board of Regents for Education*, 117 R.I. 164, 365 A.2d 430 (1976)