

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Debra Woods

v.

Pawtucket School Committee

.....

DECISION

Held: Ms. Woods has failed to demonstrate that the School Committee’s decision not to renew her contract was based on an invalid reason, one that was not objectively truthful or accurate, or not relevant to the education process, or that was trivial. Although the hearing before the School Committee was flawed, in that it received hearsay evidence in support of some of the factual bases for Ms. Woods’ nonrenewal, substantial competent evidence of each of the three reasons for her nonrenewal remains.

DATE: June 23, 2004

Travel of the Case

On August 7, 2003 Debra Woods filed an appeal with Commissioner Peter McWalters from the decision of the Pawtucket School Committee not to renew her contract as a certified nurse teacher at the Henry J. Winters School. The unanimous decision of the School Committee was made at its meeting of July 30, 2003 and it followed two evenings of hearing by the School Committee. The undersigned was designated to hear and decide this appeal.

Jurisdiction to hear the matter at the Commissioner's level lies under R.I.G.L. 16-13-4 and 16-39-2.

By agreement of the parties a hearing was convened on the date of October 9, 2003 and at that time the parties agreed that the evidentiary record made before the Pawtucket School Committee would be submitted for de novo review at the Commissioner's level. (See transcript of the October 9, 2003 hearing at pages 2-4). The transcripts of testimony before the Pawtucket School Committee on February 11, 2003 and April 28, 2003 were received as were the exhibits marked at those hearings (as provided by counsel for the School Committee). Memoranda summarizing the parties' legal arguments in this case were also submitted. This process was completed on November 25, 2003 when the record closed.

ISSUE PRESENTED

Was the nonrenewal of Debra Woods invalid in that it was not supported by a legitimate, non-arbitrary reason or because it was motivated by bias against her because of a complaint she filed against her Principal?

Findings of Relevant Facts:

- Debra Woods was employed as a school nurse teacher at the Henry J. Winters School in Pawtucket from August, 2001 until the end of that school year. S.C.Ex. 2,3 and 4.
- In that capacity Ms. Woods served under an annual contract of which she received notice of nonrenewal on February 13, 2002. S.C.Ex.2,3 and 4.
- The School Committee set forth three reasons for Ms. Wood's nonrenewal: (1) a more senior teacher returning from a leave of absence could elect to return to the position held by Ms. Woods; (2) it was anticipated that there would be a reduction in the number of certified nurse teachers on staff for the 2002-2003 school year; (3) the School Committee shared the Superintendent's belief that better nurse-teachers were available to fill Ms. Wood's position. S.C.Ex.2.
- At the time of the School Committee's nonrenewal of Ms. Woods a certified nurse teacher with more seniority was on leave from her nursing position and had an option

under the collective bargaining agreement to return to her nursing position. Tr.Vol.I, pp.14-15.

- At the time of Ms. Wood's nonrenewal the Pawtucket school department had fiscal constraints which caused the Superintendent to anticipate the elimination¹ of two school nurses from the district's staff. Tr.Vol.I, p.15.
- At the time of Ms. Wood's nonrenewal, Superintendent Hans Dellith believed² that better nurse teachers were and/or would be available to fill the position held by Debra Woods. He formed this belief based upon input from Ms. Wood's supervisor, Principal Larry DeYoung, his own review of Ms. Woods' personnel file, and his knowledge of potential candidates, in particular another Pawtucket school nurse who was also being placed on nonrenewal status. Tr.Vol.I.pp.13, and 16-19, 31-39.
- Debra Woods had an established pattern of being late to her work at Winters School, and despite verbal notice from her principal that chronic tardiness was not acceptable, her lateness to work continued into the month of December, when she received a written reprimand for tardiness on December 20, 2001. Tr.Vol.I, p.16-17, 25, 41-51;S.C.Ex.8 and 9;
- Ms. Wood's professionalism was brought into issue on two specific occasions--one in which she gave Tylenol to a child whose parent had requested that he not receive medication in school (Tr.Vol.I p.79) and the second time when she offered to share her own prescription medication with a co-worker(Tr.Vol.I pp.45-46)³
- Prior to placing a written reprimand in Ms. Wood's personnel file with respect to her chronic tardiness, Principal DeYoung had several conferences with her, emphasizing that absent an occasional unforeseen problem, her timely arrival at school was expected and required by the teachers' contract. S.C.Ex.8; Tr.Vol.I.pp.41-51.
- Although Mr. DeYoung had not yet completed a formal written evaluation⁴ of Ms. Wood's performance, he made a verbal recommendation to the Superintendent with respect to the renewal of her contract. He indicated to the Superintendent that her performance had been unsatisfactory. This was prior to Superintendent Dellith's

¹ Two nursing positions were in fact eliminated in school year 2002-2003.

² Implicit in the School Committee's vote not to renew Ms. Wood's was its acceptance of the Superintendent's belief that a better school nurse teacher than Ms. Woods was available.

³ In the record there is evidence (testimony of Mr. DeYoung) that Ms. Woods admitted that these two incidents occurred. These admissions constitute competent evidence of these incidents. Proof of various other alleged professional deficiencies in this record consisted mainly of hearsay. For purposes of our de novo review, we have disregarded such evidence in light of counsel for the Appellant's argument that the School Committee's admission of hearsay violated the procedural rights of Ms. Woods. It is our opinion that our reliance on only competent evidence in the record responds to the Appellant's arguments as to the violation of her rights which would otherwise occur. This issue will be discussed later in this decision.

⁴ The record contains a signed Summative Evaluation dated March 18, 2002 (Performance Area: Professionalism) and an unsigned Summative Evaluation dated November 19, 2001 and February 26, 2002 (Performance Area: Teaching Techniques). These written documents confirm the earlier assessment made by Principal DeYoung and conveyed to Superintendent Dellith prior to the February 8, 2002 notice to Ms. Woods and recommendation to the School Committee at its February 12, 2002 meeting.

recommendation to the school committee that her contract not be renewed. Tr.Vol.I pp.52-53.

- Principal DeYoung's written reprimand of Ms. Woods for her tardiness was not biased or motivated by the complaint filed by Ms. Woods with respect to the faculty holiday celebration held at his home. Tr. Vol.I and II.
- Mr. DeYoung's assessment of Ms. Woods' performance during school year 2001-2002 as unsatisfactory was not biased, inaccurate, or motivated by a desire to retaliate against her for her complaint of sexual harassment. Tr. Vol. I and II.

Positions of the Parties

Appellant Debra Woods

At the outset, counsel took the position that the nonrenewal of Debra Woods must be substantiated by all three of the reasons identified by the Pawtucket School Department. Tr.Vol.I p.11.

In the memorandum submitted on the Appellant's behalf, her counsel further argues that no legally admissible evidence whatsoever was produced to support two of the three reasons for her nonrenewal, i.e. the contractual option of a more senior teacher to return to her position from a leave of absence and the anticipated elimination of two school nurse positions in Pawtucket because fiscal constraints. With respect to the third reason advanced by Superintendent Dellith, i.e. the belief that a better school nurse was available to fill the Appellant's position, counsel argues that this conclusion is by its very nature purely subjective. (See Tr.Vol. I p.9) In this case, the subjective conclusion is not supported by objective fact. Those facts which were put forth through Superintendent Dellith's testimony, and on which he relied, was information provided to him by others, namely Principal Larry DeYoung. The fact that the Superintendent had no personal knowledge with respect to alleged deficiencies of Ms. Woods shows that his testimony regarding performance issues constitutes "rank hearsay" (memo of the Appellant pages 7-8).

Counsel further submits that the testimony of Larry DeYoung, which on its face may provide factual support for the conclusion that a better school nurse would be available, should be discredited because it results from his bias against her and his desire to retaliate against her for allegations she made that she was sexually harassed. Mr. DeYoung's testimony as to his assessment of Ms. Wood's overall performance is itself based on hearsay, in that it incorporates the complaints of two Winters school parents who did not present direct testimony at the hearing. He also based his assessment of Ms. Wood's on a telephone call he received from someone he could not identify at the Department of Health, who inquired about forms which allegedly had not been submitted in a timely fashion by Ms. Woods.

Compounding the issue created by Mr. DeYoung's reliance on these statements in making his recommendation, this same information was presented through his testimony before the School Committee, and over objection, ruled admissible. The written

complaints of the parents were marked as exhibits for the School Committee's review. (S.C.Ex. 11 and 12) Counsel for Ms. Woods argues that this is yet another example of the School Committee's receipt of improper hearsay on vital aspects of the case, to Ms. Wood's prejudice.

Other allegedly improper evidence prejudicial to Ms. Woods is the testimony and report of Mr. Joseph Haddad, a consultant retained by the school department to investigate Ms. Wood's complaint of sexual harassment. Her complaint stems from the December 15, 2001 holiday party at the principal's house. Mr. Haddad testified at length about the investigation he conducted and the conclusions he reached. There was an attempt to include only that portion of the Haddad report that contained his "conclusions" and did not contain his findings of fact, but the entire report was received as a full exhibit. (S.C.Ex.13)⁵ Counsel for the Appellant cites the School Committee's receipt of Mr. Haddad's testimony and its consideration of the conclusions he reached in his report as highly prejudicial to the Appellant. The issue of fact as to whether Ms. Wood had been sexually harassed, or whether her complaint of harassment factored in her unsatisfactory evaluation, was before the School Committee for its independent determination. Admission of Mr. Haddad's conclusions improperly influenced the members of the School Committee and was extremely prejudicial to Ms. Woods.

The issue of the abrupt and unauthorized change in the schedule and rules for the nurse's office was raised by the School Committee⁶. These incidents further support the conclusion that a better school nurse than Ms. Woods could be found. In her memo, the Appellant argues that in this situation, Ms. Woods was merely trying put in place a formal protocol to prevent the Principal, or any other member of the school staff, from dispensing medicine to students when she was not available. Rather than constituting unprofessional conduct, she argues this incident demonstrates her professionalism. It was her attempt to have all school staff act in accordance with school health regulations. Since she had taken the position that Mr. DeYoung should not access her locked medicine cabinet to obtain students' medications under any circumstances, and had criticized him for doing so, she argues that this was yet another motive he had for recommending her nonrenewal.

Another example cited of the improper evidence included in the record was the Summative Evaluation of March 18, 2002. Counsel's objection to the School Committee's receipt of this evidence was overruled. He argued that the document was not in existence, and could not have been relied on by the Principal or Superintendent at the time the recommendation to nonrenew Ms. Woods was presented to the School Committee on February 12, 2002. The document was argued to be irrelevant and an improper attempt to buttress the otherwise insubstantial evidence that there were deficiencies in Ms. Woods' performance.

⁵ We would note that Ex. 13 also includes Mr. Haddad's notes of the interviews he conducted in the course of his investigation.

⁶ Mr. DeYoung did not testify as to the facts on this, but it was mentioned by Dr. Dellith in his testimony and described by him as one of the issues he and Mr. DeYoung discussed; it was one of the bases for Dr. Dellith's conclusion that a better school nurse than Ms. Woods would be available for the position.

Counsel submits that the totality of the inadmissible evidence permitted into the record over objection rendered the proceedings illegal, arbitrary and capricious. As a result of this prejudicial error Ms. Woods has been denied due process. He argues her rights were also violated by her obligatory attendance at a party which violated the school department's own policy prohibiting sexual harassment. The reasons given for her nonrenewal, to the extent they exist at all, are merely a pretext for her dismissal from her position as Winters' school nurse.

Pawtucket School Committee

The School Committee, at the outset, highlights the distinction between a tenured teacher, whose position is secure, absent good and just cause, and a nontenured teacher, who serves under an annual contract which is subject to nonrenewal. In both substance and procedure, the appeal rights of these two classes of teachers differ substantially, the Committee contends. First, while the School Committee seeking to validate its termination of a tenured teacher has an evidentiary burden to sustain its action by establishing "good cause", it is the nontenured teacher who has the burden in proceeding before a school committee to question his/her nonrenewal. The nontenured teacher must establish that the nonrenewal was due to mistake or was based on an impermissible reason. The hearing afforded the nontenured teacher is "rudimentary" and not even quasi-judicial in nature. As set forth in the case of Jacob v. Board of Regents, 117 R.I. 164, 365 A.2d 430 (1976) the only requirement is that the hearing provide the nontenured teacher a "full and fair opportunity to persuade and convince the board that it is mistaken" in its decision. Jacob at 170.

From a substantive standpoint, the reasons provided to Ms. Woods have not been demonstrated to lack factual support or be motivated by bad faith and this was her burden in these proceedings. See brief of the School Committee pp. 1-2. Reasons supporting the nonrenewal of an annual contract have traditionally included the possibility that a more senior teacher may elect to return from a leave (Marshall v. Burrillville School Committee⁷) and the possible elimination of a position because of fiscal constraints (Marshall v. Burrillville, supra). In this case, the School Committee argues that Ms. Woods presented no evidence to rebut Dr. Dellith's testimony that at the time her contract was nonrenewed, there was another more senior nurse teacher who had the option of taking Ms. Woods' position. Also uncontroverted in this record is the fact that fiscal constraints resulted in the elimination of two nurse-teaching positions, which was anticipated at the time of Ms. Woods' nonrenewal. On the basis of these two legally sufficient and factually-supported reasons, then, the School Committee takes the position that it has demonstrated that its nonrenewal of Debra Woods is valid. Stated another way, Ms. Woods has failed to meet her burden of proof that these two reasons were in error or were advanced in bad faith.

As to the third reason, the School Committee again argues that while it was a heavily contested issue, the belief that better school nurses than Debra Woods were

⁷ decision of the Commissioner dated June 8, 1994.

available has factual support and was not advanced in bad faith. The Committee cites evidence of Ms. Woods' chronic tardiness and many instances of unprofessional behavior as factual underpinnings for the belief of Mr. DeYoung, Dr. Dellith, and the members of the School Committee. In addition to Ms. Woods' performance, Dr. Dellith testified that he was knowledgeable about the performance of another nurse-teacher already working in the system who was also in "lay-off" status. This nurse, whose performance was better than that of Ms. Woods, would be available to fill her position should it remain vacant. This information was also presented to the School Committee at the hearing.

Although Ms. Woods attempted to show that the unfavorable recommendation she received from her principal was based on his desire to retaliate against her, counsel for the Committee characterizes these efforts as "highly questionable" and her claim of being offended and sexually harassed "completely mendacious". The jokes and gifts at Mr. DeYoung's party for faculty were humorous, not offensive, counsel submits. He argues that Ms. Woods decided that she was offended by the events at the holiday party only after Mr. DeYoung formally reprimanded her for chronic lateness. It was she who retaliated against him by filing a baseless claim of sexual harassment. In the same category were her accusations that Principal DeYoung improperly accessed students' medication so that it could be dispensed to them on field trips, or delivered to a parent, when she was not present at Winters School. Again, the Committee asserts, these claims of impropriety are without merit. Mr. DeYoung acted properly at all times and in accordance with school health regulations on dispensing medication to students. Clearly, counsel argues, these claims were asserted in retaliation for the Principal's attempts to discipline Ms. Woods, and in the end, remove her from her position at Winters.

The School Committee takes issue with the proposition that when it heard Ms. Woods' appeal it received what should have been inadmissible evidence--hearsay with respect to allegations of unprofessional conduct, failure to comply with deadlines, inappropriate dispensing of Tylenol, etc. With respect to the two complaints from parents, their admission was not in error because the complaints constituted an exception to the hearsay rule- "verbal acts". The Committee cites the case of Forest v. Pawtucket School Committee, decision of the Commissioner August 28, 1981 as precedent for its position. Apart from the substance of the complaints themselves, Mr. DeYoung's testimony concerning his investigation of these complaints and his conclusions were admissible to demonstrate the thorough process he followed in making his recommendation. Mr. DeYoung related his conclusions to Dr. Dellith when discussion of Ms. Woods' renewal occurred. In making personnel decisions, a Superintendent must necessarily rely on the observations and reports of building administrators, and Dr. Dellith was justified in relying on the findings of Mr. DeYoung in these matters.

The same arguments are advanced with respect to the information received as to forms Ms. Woods allegedly neglected to file in timely fashion at the Department of Health. Mr. DeYoung's testimony as to the telephone call he received was properly admitted, again under the "verbal acts" exception to the hearsay rule. The transfer of this information from Mr. DeYoung to Dr. Dellith and the superintendent's subsequent reliance on it in making his recommendation were perfectly appropriate. Again, counsel

for the School Committee points out, the Appellant has conceded that a superintendent is justified in relying upon the observations of his building administrators.

Even if the information the Appellant complains of was improperly placed before the School Committee, this error was not prejudicial to Ms. Woods. She had ample notification of the matters at issue because of her prior discussions with both Mr. DeYoung and Mr. Haddad. Furthermore, she had ample opportunity to cross-examine both of these witnesses when they testified, and to call any witnesses to bolster her case. She had full opportunity to tell her side of the story. Keeping in mind the rudimentary hearing process available to a nontenured teacher, Ms. Woods had a full and fair opportunity to correct any information she felt was erroneously presented to the School Committee. These incidents were clearly relevant to the issue of deficiencies in her performance at Winters School.

DECISION

This case is presented for decision in an unusual posture. Typically the Commissioner's de novo review of a School Committee decision is based on a new record created during the appeal process. In this case, however, the parties agreed to submit the record created before the Pawtucket School Committee. Presumably, its voluminous nature and the extensive time it would have taken to recreate it were the reasons. In our experience, such an agreement is usually indicative of the parties' consensus that the record provides a fair and accurate factual basis for the decision at the Commissioner's level.⁸ In this case this assumption proved incorrect in that counsel for the Appellant has raised substantial issues with respect to numerous evidentiary rulings of the Pawtucket School Committee. He alleges that these erroneous rulings have resulted in a record replete with incompetent evidence, to the prejudice of Ms. Woods.

Certain evidentiary rulings of the School Committee were, in our opinion, in error. The evidence with respect to the substance of the two parental complaints as well as the Haddad report⁹ were improperly placed before the School Committee for their consideration.¹⁰ This information, taken for the truth of the matters asserted therein, is distinguishable from a situation in which evidence of the mere *existence* of numerous staff complaints is offered to support an evaluator's conclusion that a principal lacked the

⁸ One recent exception to this was in the case of Jason R. v. East Greenwich School Committee, a June 6, 2001 decision of the Commissioner. In that case, the parties requested that the record created before the School Committee be received as the record before the Commissioner, with the proviso that the hearing officer would reconsider the objections raised by the student's counsel before the Committee, and rule anew on these objections, most of which were based on the hearsay rule. The hearing officer agreed to "sift through" the record to determine if competent evidence supported the finding that Jason R. was guilty of misconduct. The question of appropriate discipline was deferred until after this preliminary process was completed.

⁹ which contained statements and reports from declarants, other than while testifying, and offered for the truth of the matter;

¹⁰ e.g. most, if not all of Mr. DeYoung's statements about what happened at the Christmas party were contained in the Haddad report and presented to the School Committee in that context, rather than through his direct testimony on this subject.

support of his staff. Such was the case in Forest v. Pawtucket School Committee, decision dated August 28, 1981, cited by the School Committee in support of its position. The parental complaints and the Haddad report were undoubtedly prejudicial to Ms. Woods, because, at least in part, the School Committee based its decision on this evidence.¹¹

We have not construed counsel's agreement to submit the evidentiary record made before the School Committee as a waiver of the right to raise such issues, nor has waiver of such right been advanced as an argument by the School Committee. Based on our acceptance of the Appellant's arguments as to the inadmissible nature of this evidence, the findings of fact in this decision are based solely upon evidence which should have been admitted, and which would have been admitted if the matter had proceeded to de novo hearing before the Commissioner. It is our conclusion that a hearing officer is able to "sift through" the record to determine if there is sufficient competent evidence to support the nonrenewal of Ms. Woods.

In doing so, we find that substantial competent evidence supports all three of the reasons provided by the Pawtucket School Committee as the basis for its decision not to renew Ms. Woods' annual contract as a school nurse at the Winters School. The fact of a more senior teacher's option to return to Ms. Woods' position and an anticipated reduction in the number of school nurses employed by the district were uncontradicted. The fact that the Committee believed it could find a better person than Ms. Woods for the position is supported by evidence of Ms. Woods' chronic lateness. Her excuse for such lateness--childcare issues--may have excused an occasional late arrival to school, but not the every day tardiness demonstrated by Ms. Woods. At the beginning of the school year, Principal DeYoung conveyed to Ms. Woods his flexibility with respect to an occasional child care emergency, only to find his statement mischaracterized when he later attempted to secure Ms. Woods' timely arrival to school. Mr. DeYoung exerted the type of progressive discipline expected of a competent administrator in that he first counseled Ms. Woods with respect to her chronic lateness and, with no improvement in her punctuality, reprimanded her in writing. This evidence, standing alone, provides adequate factual support for the proposition that a better school nurse would be available to serve the Winters School students. Information as to a specific nurse who would likely be available to fill the position, although not necessary in terms of factual support, further justifies the School Committee's belief that a better person would be available to serve the pressing needs of students at Winters.

Ms. Woods admitted, and provided no explanation for, two incidents of unprofessional behavior, one in which she administered Tylenol to a student despite his

¹¹We do not mean to imply that Dr. Dellith was prevented from receiving all relevant information provided by Principal DeYoung and relying on it in making his recommendation to the school committee. Certainly an administrator's reliance upon reports and conclusions of his/her subordinates is appropriate and accepted administrative practice; however, reliance on such reports and statements for the truth of the matters asserted therein (when no exception to the hearsay rule applies) at a formal hearing is a different matter. See the discussion of the risks encountered by a School Committee when it is "too liberal" in its approach to evidentiary questions, at page 5 of the Forest decision. Receipt and reliance on competent evidence also ensures the integrity of a record later submitted on appeal in a different forum where the rules of evidence are generally applicable.

parent's written instructions not to do so. The second incident, of which there is not much detail in the record, involved her offer of her own prescription medication to another staff member at Winters. Evidence of her admission to these two acts was contained in the testimony of Mr. DeYoung, who immediately let Ms. Woods know that this behavior was not acceptable. This evidence lends further objective support to the belief that better nurses were available.

Finally, we find no support for the allegation that Mr. DeYoung's written reprimand and eventual recommendation that Ms. Woods not be renewed were the result of retaliation. A review of all of the evidence would indicate that any retaliation was more likely than not on the part of Ms. Woods. Her claim of sexual harassment followed the formal action taken by Principal DeYoung to discipline her for her chronic tardiness. Her statement to her union representative immediately following receipt of the reprimand was essentially that she would "get even" with Mr. DeYoung. Likewise, her claim that her nonrenewal was in response to her complaints that the Principal accessed the medicine cabinet to remove students' medication for field trips lacks merit. While we do not agree with the position taken by the School Committee that the Principal's access to prescription medication is consistent with the Rules and Regulations for School Health Programs, his removal of the medications was clearly for legitimate purposes. The important fact for this case is that the first time Ms. Woods registered complaints about this was at the hearing on her nonrenewal.

Therefore, based on the competent evidence in the record submitted by the parties, the reasons advanced by the school committee for Ms. Woods' non-renewal have not been shown to be inaccurate, mistaken, or devoid of factual support. They are not trivial or irrelevant to the education process. Despite her claim of retaliation, we find no merit whatsoever to the claim that Ms. Woods' non-renewal was in retaliation for her claim against Principal Larry DeYoung.

Her appeal is denied.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

June 23, 2004
Date