

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Rafaela Tanguma

v.

Providence School Board

.....

DECISION

Held: Ms. Tanguma was nonrenewed for a reason which is valid and, in light of precedent on the burden of proof for a nontenured teacher, has not succeeded in proving that a teacher more qualified than she could not be found. However, the factual record as to the process which was followed is troubling and raises questions as to the Providence school department's implementation of the Teacher Tenure Act.

DATE: January 27, 2006

Travel of the Case

On August 24, 2004 Rafaela Tanguma, through her legal counsel, appealed to Commissioner Peter McWalters from an August 23, 2004 vote of the Providence School Board not to renew her contract for the subsequent year. A full de novo hearing was requested under R.I.G.L. 16-13-4. The matter was assigned to a designated hearing officer on August 30, 2004. By agreement of the parties, the appeal was not heard until January 27, 2005 at which time testimony and documentary evidence were taken. At the conclusion of the hearing, the parties agreed that a new date would be selected for legal argument to be presented – in writing by the School Board and orally by counsel for the Appellant. The date chosen for legal arguments was September 13, 2005. At that time both parties elected to present their arguments orally.¹ The record closed upon receipt of the transcript on October 3, 2005.

Jurisdiction to hear this case arises under R.I.G.L. 16-13-4.

Issue

Was the decision of the Providence School Board not to renew the teaching contract of Rafaela Tanguma made for a valid reason and does the decision otherwise meet legal requirements for the nonrenewal of a nontenured teacher ?²

Findings of Relevant Facts:

- Rafaela Tanguma was a probationary teacher under annual contract in the Providence school system during the 2003-2004 school year. PSB Ex.A. She began teaching in the Providence school system in 1999 as a long term substitute and 2003-2004 was her third year under annual contract as a probationary teacher. Tr.Vol.I p.135.Vol.II p. 208-213.
- Ms. Tanguma holds proper certification to teach, and was assigned to teach, a self-contained, special education bilingual class at Mount Pleasant High School during the 2003-2004 school year. Her class was comprised of ten students in grades nine through twelve, and she had a bilingual teacher assistant. Tr. Vol.I.p.141, 153-154.

¹ A subsequent request by the School Board to submit a written memo based on a decision that all cases heard by the Commissioner would be briefed was denied on October 7, 2005.

² Some would argue that the decision of a school committee in a nonrenewal case must not only be for a valid reason, but in the context in which it is made, must be reasonable and not be arbitrary, capricious, or unfair, the standard by which the Commissioner has reviewed local decisions, especially those such as nonrenewals, which are not adjudicative in nature. On this issue, see Namerow v. Pawtucket School Committee, decision of the Commissioner dated November 9, 1999; Karagozian v. North Providence School Committee, decision of the Commissioner dated May 17, 1979; but see Chrabaszcz v. Johnston School Committee, decision of the Commissioner dated January 28, 2005.

- On or about December 18, 2003 Ms. Tanguma was formally evaluated and a “Probationary Teacher Evaluation” was completed by Assistant Principal John Craig after he had made a scheduled observation of Ms. Tanguma teaching a class in creative writing. The class was taught in English.³ Joint Ex.1; Tr. Vol.I p.147.
- Mr. Craig noted in the evaluation that when he had observed Ms. Tanguma in the prior school year she had a very difficult and extremely uncooperative group of students that year and that she had to get “better control” of her class and be better able to get her lessons presented and completed. He observed in his 2003-2004 evaluation that Ms. Tanguma had “come a long way this year”, that the behavior of her class was “totally appropriate” and that she was able to present her lesson with no interruption and all students were on task and focused. He found the presentation to be clear and the lesson to be a “big success”. Upon reviewing her portfolio (of her lesson plans), he found it to be “very impressive and complete”. Overall, he gave her a score of seventeen (17) out of a possible twenty (20) points and stated that he “applauded” Ms. Tanguma’s progress and stamina, her love for her students and her profession. Joint Ex. 1.⁴
- The evaluation mistakenly indicates that Ms. Tanguma is in her first year as a probationary teacher. Joint Ex.1.
- A copy of the evaluation was given to Ms. Tanguma and a copy was sent to the human resources office of the School Department.⁵ The copy maintained on file in the Human Resources is not signed by the principal of Mount Pleasant, Maureen Crisafulli. Joint Ex. 1.
- On January 22, 2004 the principal of Mount Pleasant High School, Maureen Crisafulli, signed the “Probationary Teacher Evaluation” on the line indicated for the principal’s signature. The printed text of the evaluation, above the signature lines, contains the statement “I recommend the above-named teacher for continued employment in the Providence School Department”. Joint Ex.1; Tr. Vol.I pp.93-98.
- At some point in late January, or early February of 2004 principals in the Providence school department were asked to identify probationary teachers whom they would recommend for nonrenewal. Tr. Vol.I, pp.17-18. In response to this request, Principal Maureen Crisafulli filled out a form entitled “Probationary Teacher Non-renewal Referral” and recommended Ms. Tanguma for nonrenewal. Tr.Vol.I.p.24. Although Principal Crisafulli believed that Ms. Tanguma was in her first year as a probationary teacher, she indicated on the form that Ms. Tanguma was in her second year of teaching. She left blank the section of the form which calls for the score on Ms. Tanguma’s formal evaluation and did not attach a copy of the evaluation that Mr. Craig had done in December of that school year and that she had signed on January 22, 2004. PSB Ex. A. Tr. Vol.I.pp. 61-63;77-79, 104.

³ Most of Ms. Tanguma’s lessons were presented to her bilingual, Spanish-speaking class in Spanish, e.g. biology, algebra, and history.

⁴ Mr. Craig did not testify at the hearing – his observations and opinions were presented through the formal, written evaluation.

⁵ On both the copy maintained on file in the human resources office, as well as the copy given to Ms. Tanguma, the line for the signature of the principal is blank.

- The “Probationary Teacher Non-renewal Referral (PSB Ex.A) identifies three reasons for the Principal’s recommendation: (1) lack of lesson plans when absent (2) limited English and communication problems and (3) lack of classroom management. PSB Ex. A.
- The Director of Human Resources, Donald W. Zimmerman reviewed the evaluations on file for each teacher for whom he received a “Probationary Teacher Non-renewal Referral”. He later met with each of the principals to go over their reasons for recommending non-renewal. In Ms. Tanguma’s case, Mr. Zimmerman does not recall having her evaluation at hand or discussing it when he met with Principal Crisafulli. (Tr.Vol.I pp. 55-57). Ms. Crisafulli does not recall that Mr. Zimmerman had a copy of the evaluation when he met with her or discussed it with her when they met to go over her recommendation not to renew Ms. Tanguma’s contract. Tr. Vol.I pp. 106-107.
- Mr. Zimmerman subsequently met with Superintendent Melody Johnson concerning the recommendation not to renew Ms. Tanguma’s teaching contract. At that meeting he presented the “Probationary Teacher Non-renewal Referral” that had been filled out by Ms. Crisafulli, with a January 13, 2004 memo attached to it about Ms. Tanguma’s failure to leave lesson plans in the appropriate place so that they could be used when she was absent from January 5-9, 2004.⁶ He does not recall having a copy of Ms. Tanguma’s evaluation at their meeting, and the form Ms. Crisafulli had filled out left blank the line indicated for the score she received on her evaluation. Tr. Vol.I pp.24-28.
- The information presented to Superintendent Johnson by Mr. Zimmerman consisted of the Non-renewal Referral form, the attached memo regarding missing lesson plans, and the information he received during his meeting with Ms. Crisafulli. The Superintendent made her decision that Ms. Tanguma would be recommended for nonrenewal to the Providence School Board on the basis of this information. Tr. Vol.I pp. 27-28, 33-34.⁷
- On February 23, 2004 the Providence School Board voted to “terminate” Ms. Tanguma’s teaching contract as of the last day of the 2003-2004 school year. Joint Ex. 2.
- After a full hearing on the issue of her nonrenewal, the Providence School Board voted to sustain its prior decision based on the evidence that “the supervising administrator and the Superintendent had a good-faith belief that more qualified teachers are or may be available” to fill Ms. Tanguma’s position. PSB Ex. C.
- Mrs. Tanguma did not have lesson plans on file in the main office of Mount Pleasant or with her department chair when she was absent due to illness during the week of

⁶ The attachment was a January 13, 2004 memo documenting Ms. Tanguma’s failure to have on file, in the main office or with the Department chair, lesson plans for a week that she was absent. Ms. Tanguma had evidently left them in the drawer of her desk. PSB Ex.B.

⁷ The record does not contain Superintendent Johnson’s recommendation, but we infer that she did make such a recommendation from the testimony and Joint Ex.2, a letter from Mr. Zimmerman dated February 24, 2004 notifying Ms. Tanguma that the Providence School Board had voted to “terminate” her teaching contract “in accordance with the provisions of Title 16”.

January 5-9, 2004.⁸ She had left the lesson plans in the drawer of her desk. PSB Ex.B;Tr. Vol.I p.139.

- Mrs. Tanguma testified that during school year 2003-2004 she called the office about once a week for assistance in dealing with out of control students. Tr. Vol.I.p. 165.
- Mrs. Tanguma's bilingual special education class at Mount Pleasant High School was eliminated prior to the start of the 2004-2005 school year. Tr. Vol.I pp. 183-184.

Positions of the Parties

Rafaela Tanguma

The Appellant argues that in her third and final probationary year, Ms. Tanguma was recommended for nonrenewal by a new principal at Mount Pleasant High School who had no adequate factual basis to do so. Counsel argues on Ms. Tanguma's behalf that in light of the very positive formal evaluation she received in December of the 2003-2004 school year, the decision to nonrenew her contract is prima facie "arbitrary and capricious". For at least two years previously, Ms. Tanguma had taught under annual contracts as a probationary teacher and both of her prior principals had expressed no criticism of her communication skills or her classroom management. Yet, Ms. Crisafulli, a first-year principal, found Ms. Tanguma's communication skills to be problematic and her classroom management to be inadequate. A single time when there was a mixup as to where her lesson plans were located became the focus of a decision to terminate her as a teacher. Counsel's argument implies that the true reason for her nonrenewal is that an effort was underway to reduce the number of tenured teachers in the school system. He submits that a review of the evidence will show that the school department has not proven that it can find a better bilingual special education teacher than Rafaela Tanguma.

Taking into account the fact that Ms. Tanguma is a bilingual teacher and that her class is Spanish speaking, any deficiencies in her fluency in English do not necessarily indicate that she could not effectively teach her class or communicate with parents of her students. In fact, several of the subjects she taught to her students were taught entirely in Spanish. Her evaluation by Assistant Principal John Craig should put to rest any issue regarding her teaching performance. Counsel argues that although Ms. Tanguma may have made several calls to the main office for assistance with unruly students, this fact should not be held against her, given the great demands faced by a teacher of a self-contained special education class. He notes that some of Ms. Tanguma's students had disabilities which would explain any behavioral problems. The final issue – the absence of lesson plans for a week's absence in January – is disputed and Ms. Tanguma testified that the lesson plans she left in her desk were, in fact, eventually found and used by the substitute teacher.

⁸ Mrs. Tanguma testified that she was unaware of the protocol requiring that lesson plans should have been on file in the office or with her department chair and that she found indications that the lesson plans had ultimately been found during the week of her absence.

From a procedural standpoint, Ms. Tanguma argues that a process which permits a first-year principal to invalidate and totally discount a formal evaluation of her teaching simply because the principal “disagrees” with it is truly arbitrary. Similarly, a process which permits a Superintendent to make recommendations to the School Board without reference to a formal evaluation, but rather on the basis of a list generated by the Human Resources Office – a list on which Ms. Tanguma’s name appeared, accompanied by inadequate and inaccurate information – is arbitrary and unfair. Her appeal should be upheld, counsel submits.

Providence School Board

Given Ms. Tanguma’s status as a probationary teacher, counsel for the School Board argues that it is under no burden to demonstrate good and just cause for her nonrenewal. The School Board has met its burden of demonstrating that it had a legitimate, education-related reason for the action that it took, that the reason is objectively accurate, and it is not trivial. The School Board cites as controlling precedent Jacob v. Board of Regents for Education, 117 R.I. 164, 365 A2d 430 (1976), Tracy v. Scituate School Committee, decision of the Commissioner dated March 12, 1984 and Kagan and McGhee v. Bristol/Warren Regional School Committee, decision of the Board of Regents dated October 12, 1995. Taken together, these cases establish that the reason given to Ms. Tanguma for her nonrenewal (a good faith belief that a more qualified teacher was available) is valid and that she has not sustained her burden of proof that another, more qualified teacher was not available at the time of the School Board’s decision.

In addition, the School Board argues that the facts of this case provide objective support for the School Board’s conclusion that a better qualified teacher than Ms. Tanguma was available. There is evidence that Mrs. Tanguma had difficulties in English and that these difficulties created communication problems with her class. Counsel for the School Board argues that English proficiency is a valid requirement for a bilingual teacher and the fact that all of Ms. Tanguma’s students in the 2003-2004 school year were Spanish-speaking does not negate the issue created by her own lack of fluency in the English language. Secondly, when Ms. Tanguma was absent for a full week in January, major problems were created by the fact she did not leave lesson plans in either the main office or with her department chair. The memorandum sent to her by Principal Crisafulli confirms this incident. Ms. Tanguma did not challenge this written reprimand through the grievance process. Finally, it is undisputed that Ms. Tanguma frequently called the office when her students became disruptive and out of control. If she had been better at classroom management, these issues would have been resolved without intervention by other school personnel. Ms. Tanguma had only ten students and was assisted by a classroom aide. Her class was not a behavior disordered class, but merely learning disabled. In light of all of the evidence, there is factual support for the School Board’s conclusion that it could find a better qualified teacher than Ms. Tanguma.

DECISION

A review of the legal precedent on the subject of non-renewal⁹ indicates that when a school committee chooses to non-renew the contract of a probationary teacher based on its desire to find a better teacher (or, as it is sometimes stated, its belief that a better qualified person is available), this is a valid reason for non-renewal in the sense that it is not trivial and related to the education process. Furthermore, there is a presumptive factual basis for such assessment¹⁰. The burden of proof is that of the non-renewed teacher to show that the school committee could not find a better teacher from somewhere if it sought to do so.

Although the 1999 decision of the Commissioner in Namerow v. Pawtucket School Committee which involved the non-renewal of a third-year probationary teacher utilized a different analysis,¹¹ the evidence submitted by the parties and the arguments made in that case determined its decisional framework. In this case, counsel for the Providence School Board included in her opening statement the rulings of the Board of Regents and the Superior Court in the Kagan case, establishing the School Board's position that it had no burden to present a factual basis for the conclusion that it could find a more qualified teacher than Ms. Tanguma. Although the School Board did submit testimony that its decision was grounded in fact and argued that it was not "arbitrary and capricious" (Tr.Vol I pp.5-8) it clearly preserved its first argument that it was not required to do so. The Board of Regents' decision¹² in the Kagan case is binding precedent. There is a presumption that there is a factual basis for the nonrenewal decision. In cases in which the reason is to find a more qualified teacher, the teacher must prove that a more qualified teacher could not be found.

We find that Ms. Tanguma has not proven in the record of this case that the School Board could not find a better teacher if it sought to do so.¹³ She fully admits that she is not the "perfect teacher" and that there is room for improvement in her teaching. See Vol.I pp. 145-146. However, she does point out that she has a love for her students and a dedication to teaching, especially in the field of special education. See Vol. I pp. 148-149. She has been intent on becoming the best teacher she can be, working very hard in the new teacher mentoring program, and with her Assistant Principal during the 2003-2004 school year, to

⁹ Specifically Jacob v. Board of Regents for Education, 117 R.I. 164, 365 A2d 430 (1976), Tracy v. Scituate School Committee, decision of the Commissioner dated March 12, 1984 and the decision of the Board of Regents (October 12, 1995) and Superior Court (1997 WL 1526517, August 21, 1997) in Kagan and McGhee v. Bristol/Warren Regional School Committee.

¹⁰ Even in a situation in which the Superintendent has no specific facts about the teachers or the applicant pool in making his/her recommendation, the burden of proof still rests with the teacher to show there is no more qualified teacher who could be found. The presumption that a factual basis exists extends even to the situation in which the reason is related as a "good faith belief" that a better teacher is available. See Kagan and McGhee v. Bristol/ Warren Regional School Committee, decision of the Board of Regents, October 12, 1995, affirmed by the R.I. Superior Court on August 21, 1997, 1997 WL 1526517.

¹¹ See Namerow v. Pawtucket School Committee, decision of the Commissioner dated November 9, 1999.

¹² Which on review was affirmed by the Superior Court because it was not arbitrary, capricious, or an abuse of the Board of Regents' discretion.

¹³ It is not the School Board's burden to prove that it could find someone better than Ms. Tanguma, as has been argued by her counsel. See Vol. I p.202

improve the effectiveness of her teaching and her control over sometimes-difficult students. She points out that her evaluation confirms that she is a vastly improved teacher. Implicit in her argument is that, given more time, she could become the best teacher available.

We assume that all of these arguments were presented to the Providence School Board in attempt to persuade the members of the Board that the decision not to renew her contract was a mistake¹⁴. The School Board had the discretion to reconsider its original decision. Our de novo review of the School Board's decision is constrained by the precedent as to what her burden of proof in this case was - to show that the Board could not find a better teacher than she - anywhere. In light of this, we are constrained to affirm the decision of the Providence School Board not to renew Ms. Tanguma's contract.

If, however, on any review of this decision, the analysis in Namerow v. Pawtucket School Committee, supra, is applied, we find that the record does not show that there was a "material deficiency" in Ms. Tanguma's teaching performance. Unlike the situation in the Namerow case, we find that the record does not support such a determination. The written recommendation for non-renewal made by Principal Maureen Crisafulli listed three factual bases for her recommendation. Her testimony at the hearing was directed at substantiating these facts. However, it is our opinion that Ms. Crisafulli's testimony was neither credible nor reliable and we must disregard it its entirety. According to her testimony, which proved to be untrue, Ms. Tanguma was in her first year as a probationary teacher¹⁵ - yet she checked off "second" (and it was actually her third) to indicate year of teaching when she recommended her for nonrenewal. Although she knew that a formal evaluation of Ms. Tanguma's teaching had been made¹⁶ and that Ms. Tanguma had received a copy of it, she left blank the line for the score Ms. Tanguma had received. The criticisms she had of Ms. Tanguma's communication skills and classroom management were raised for the first time when she saw fit to recommend Ms. Tanguma for nonrenewal. Ms. Crisafulli never raised them with Ms. Tanguma. Most significantly, Ms. Crisafulli testified that she disagreed with Assistant Principal John Craig's rating and his positive evaluation of Ms. Tanguma's teaching performance and that she therefore did not sign the evaluation. Her signature would have affirmed the language on the form recommending that Ms. Tanguma be continued in the employment of the Providence School Department. However, on cross examination, Ms. Crisafulli admitted that she did, in fact, sign the evaluation form on January 22, 2004. No explanation for this chain of events was offered. The conclusion we draw with respect to this is that Ms. Crisafulli made two inconsistent recommendations as to Ms. Tanguma's retention in late January of 2004. Absent an explanation, it is indicative of her lack of credibility. Thus her testimony does not provide support for the alleged deficiencies in Ms. Tanguma's qualifications and performance.

Without the testimony of Principal Crisafulli, there is no evidentiary support for the three factual bases on which a conclusion as to a "material deficiency" in Ms. Tanguma's

¹⁴ such is one of the purposes of the hearing to which the non-tenured teacher is entitled under the Rhode Island Supreme Court's decision in Jacobs, supra.

¹⁵ But had been employed previously as a long term substitute for several years.

¹⁶ Although she didn't agree with it

performance can be made. While there were obvious issues with respect to Ms. Tanguma's spoken fluency in the English language, a hearing officer is unable to assess the impact language difficulties may have had on her qualifications to be a bilingual teacher or on her performance as a bilingual special education teacher at Mount Pleasant High School. With respect to the allegation of "lack of classroom management" without testimony of an educator we cannot draw any inference that Ms. Tanguma's requests for intervention by school administrators was excessive or involved situations which she should have been able to handle on her own. Finally, with respect to the inability to locate lesson plans for her class when she was absent for a week due to illness, without the testimony of the principal, we cannot conclude that Ms. Tanguma violated protocol in leaving lesson plans for when she was absent in her desk drawer. Based on the reliable evidence in this record of Ms. Tanguma's performance, i.e. Assistant Principal John Craig's formal evaluation in December of 2003 and his assessment that she rated a score of 17 out of a possible 20 points, we find no evidence that there was a material deficiency in her teaching performance. These conclusions are stated in the event the Namerow analysis is adopted on any review of this decision.

The process is also troubling in other respects. Once Principal Crisafulli made her recommendation that Ms. Tanguma not be renewed¹⁷ the only reference to the very positive formal evaluation she had received (and, evidently, the only evaluation made during her entire three-year probationary period) was made by the Human Resources Director in isolation so that he could determine whether her evaluation was "totally inconsistent" with the proposal that her teaching contract not be renewed. Mr. Zimmerman testified as to his opinion that the evaluation was not the "primary document" that should be used in making non-renewal decisions (Tr.p. 33-34) It was his intent to distance the formal evaluation process from such decisions (Tr. p32). We agree that one of the primary purposes of a probationary teacher's evaluation is its use as a tool for feedback to the teacher and to guide improvement. It certainly is correct that the nonrenewal decision need not be limited to reference to the formal evaluation. However, where, as in this case, the Superintendent's decision was made without reference to the only formal evaluation that had been made of Ms. Tanguma's teaching¹⁸ there is a degree of unfairness that results. The objectives of the three year period as a "probationary period" are also undermined.

One can only speculate as to what Superintendent Johnson's decision would have been had she been aware of Ms. Tanguma's evaluation results or if she was aware of the fact that she had only one evaluation during her entire probationary period. In fact, it is unclear whether the Superintendent knew that Ms. Tanguma was actually in her third year of the probationary period. The process utilized here deprived the decisionmaker of what should have been highly relevant information to her decision as to whether Ms. Tanguma should be recommended for non-renewal. Without the evaluation itself and with a blank space where her evaluation score should have been indicated, the material the Superintendent reviewed placed no weight on the formal components of the process and

¹⁷ A recommendation that followed her signing the evaluation which recommended that Ms. Tanguma's employment be continued.

¹⁸ And, in fact, the non-renewal referral form completed by Principal Crisafulli left blank the line where Ms. Tanguma's score of 17/20 should have been indicated.

too much weight on the opinion of the principal. Once the School Board acted on the Superintendent's recommendation, and Ms. Tanguma then had the opportunity bring her evaluation results forward to the School Board at her hearing, the burden had shifted to her to show that she was the best teacher available.

We understand it to be implicit in the notion of a three-year "probationary period" that evaluative information developed on a nontenured teacher will be reviewed in determining whether the teacher will become tenured. In the Namerow decision, the Commissioner underscores the duty of school districts to provide new teachers with substantive guidance through the evaluation process.¹⁹ The evaluation puts them on notice of any deficiencies and gives the teacher opportunity to respond to the observations and assessments made. School committees and school administrators are cautioned in Namerow that "new teacher evaluations must be full and fair in all three years of the nontenured period". It is clear that Ms. Tanguma's probationary period did not contain the type of evaluative process envisioned by the Namerow decision. It is also evident that the decision on whether she would receive a nonrenewal notice was made without reference to her evaluation. However, as we have indicated, the precedent established by the Board of Regents in the Kagan case constrains us from a conclusion that deficiencies in evaluation process, or the failure of the Superintendent to review existing evaluations, renders the nonrenewal decision invalid.

For the above reasons, the decision of the Providence School Board is affirmed. The School Board is directed to review its procedures to bring the evaluation process and probationary period of Providence teachers in line with the objectives of the Teacher Tenure Law as discussed in this decision.

For the Commissioner

Kathleen S. Murray
Hearing Office

APPROVED:

Peter McWalters, Commissioner

January 27, 2006
Date

¹⁹ See page 9 of the Namerow decision, *supra*.