

Travel of the Case

On November 9, 2005 Jennifer Kittredge, through counsel, filed a request for hearing with the Department of Elementary and Secondary Education. A teacher at the Compass School from 2002-2005, Ms. Kittredge had not been rehired for the 2005-2006 school year. The undersigned was designated to hear and decide this matter on November 14, 2005. The case was heard on February 9, 2006 at which time testimony and documentary evidence were received. The parties chose to submit their legal arguments in writing after their receipt of the transcript, and the record in the case closed on May 1, 2006 upon submission of memoranda.

Jurisdiction to hear this matter arises under R.I.G.L. 16-39-1 and possibly under 16-39-2 as well.

Issues

- Was the nonrenewal of Jennifer Kittredge's annual contract as a teacher at the Compass School valid?
- Was her appeal to the Commissioner of Education timely ?

Findings of Relevant Facts

- Jennifer Kittredge is a certified teacher employed at the Compass School under annual contract during school years 2002 through 2005. Kittredge Ex.1.
- The Compass School is a public charter school which began its operation in August of 2002 and is located in Wakefield, Rhode Island. Tr.p.22;Compass Ex.A.
- On February 28, 2005 Ms. Kittredge received a written notice from Anne I.Veeger, President of the Compass School Council, that the school was unable to offer any automatic renewals of contracts for the upcoming 2005-2006 school year. Compass Ex.A.
- Ms. Kittredge (as well as the entire administrative, teaching and support staff of the school) had received a substantially similar written notice in the two prior years of their employment at the school. She did not interpret the notice as placing her job in jeopardy as she had ultimately had her contract renewed in the prior two years. At the time she received the February 28th notice, she was unaware of any problems with her job performance, although she had never been formally evaluated. Tr. pp. 34-37; 39-40.
- On May 20, 2005 Ms. Kittredge was called to a meeting with Ms. Veeger, another member of the school council, Sylvia Spears, and the school's director Robert Miller. At the meeting she was told that her contract was not going to be renewed and that there were performance-based reasons for the decision. Tr. pp. 37-38, 41.

- Ms. Kittredge did not request that the reasons discussed with her at the May 20, 2005 meeting be put into writing and she did not submit a formal request for a “statement of cause” for her nonrenewal. Tr.pp.41-42, 50; She did not ask for a hearing before the members of the Compass School Council. Tr.pp.41-42.
- At the time of hearing before the Commissioner’s designee, February 9, 2006, the Compass School had been in operation three and one-half (3 ½) years and had no tenured teachers on its staff. Tr.p.22. Of the twelve members of the certified teaching staff in the 2004-2005 school year, five received renewals of their annual contracts for 2005-2006 and six new teachers were hired for that school year. Tr.pp. 23-26.
- No formal evaluation of Ms. Kittredge’s teaching performance was made during her three years as a teacher at the Compass School.
- There are nine seats on the Compass School Council, which acts as the governing body of the school; seven of the seats were filled during the 2004-2005 school year. Tr.p.23.
- Ms. Kittredge filed a request for hearing with the Rhode Island Department of Elementary and Secondary Education on November 7, 2005. The letter of appeal was received by the Department on November 9, 2005. (See letter of appeal)

Positions of the Parties

Jennifer Kittredge

The primary argument advanced on behalf of Ms. Kittredge is that she did not receive a written notice on or before March 1st that her contract would not be renewed. Although she received a written notice, it did not communicate the required information and therefore was not in conformity with the requirements of the statute, R.I.G.L. 16-13-2. The information conveyed to Ms. Kittredge in the February 28, 2005 letter from Anne I. Veeger was that the school was “unable to offer any automatic renewals of contracts for the upcoming 2005-2006 school year”. This generic letter was sent to all staff members. There were no person-specific reasons stated in the February 28th letter and Ms. Kittredge, who had been a teacher since the school’s inception, had no reason to think that it communicated a decision by the Council with respect to her nonrenewal.

Counsel submits that the form of these annual written “notices” at the Compass School is part of a plan to undermine the Teacher Tenure Act by preventing any of the certified staff from attaining tenure. Generic notices are sent to certified teachers, followed by subsequent individual verbal communication of the actual decision and reason(s) in each teacher’s case. In the interim, teachers are lulled into a false sense of security that their job status for the ensuing year is yet to be determined and they need take no action at that time. In response to the argument that the fifteen (15) day period

for requesting a hearing before the full board¹ lapsed, counsel for Ms. Kittredge points out that no written notice of a nonrenewal decision was ever issued to her and no formal statement of cause was ever provided by the Compass School Council. Implicit in these arguments is that the process used by the school circumvents any challenge or review of its nonrenewal decisions.

Counsel points out that even non-tenured teachers are entitled to written reasons for decisions that their annual contracts will not be renewed, even if the reasons need not rise to the level of “good and just cause”. The reasons must be legitimate. In the case of the Compass School, counsel argues that the actual reason for nonrenewal decisions is to prevent teachers from completing their probationary period of three years of service under annual contract. The result of this pattern of conduct is that there are no tenured teachers at the Compass School in spite of the fact that it has been in existence over three and one-half years.

As a final argument, Ms. Kittredge submits that since the February 28, 2005 notice was not valid, and since she successfully completed her three-year probationary period, she has attained tenure. There is no evidence that her teaching was unsatisfactory or that problems with her performance were raised through a professional evaluation process. She submits that May 20, 2005 was the first time any issues with respect to her performance were raised. Implicit in her argument is that these issues were not legitimate and were raised to disguise the real reason for her nonrenewal - to prevent her from becoming a tenured teacher at the school.

Ms. Kittredge requests that she be reinstated and accorded full rights as a tenured teacher.

The Compass School

Counsel for the Compass School presented a preliminary motion to dismiss on the basis that Ms. Kittredge’s November 9, 2005² request for a hearing was untimely.³ Lack of compliance with the statutory deadline was argued and mention was made of the applicability of a fifteen (15) day time limit contained in R.I.G.L. 16-13-4. Specific request was made to supplement argument made at the hearing with respect to timeliness in written memoranda. See transcript pages 59-60. Additional argument with respect to timeliness is contained in the Compass School’s memorandum. The argument presented is that the appeal is untimely and not properly before the Department of Education; that

¹ As we understand counsel’s argument, a statement of cause was not conditioned upon Ms. Kittredge’s request, but, according to the statute, was required to be furnished to her at least one month prior to the close of the school year.

² Ms. Kittredge’s letter of appeal, dated November 7, 2005, was stamped “received” on November 9, 2005. There was some discussion at the time of hearing of the submission of another letter of appeal at a different time, but no evidence of an earlier filing was received. See pp.6-7 of the transcript.

³ As is often the case with appeals before the Commissioner, such motion was made orally at the time of hearing and ruling on the Motion to Dismiss has been consolidated with a ruling on the merits of this appeal.

is, R.I.G.L. 16-13-4 provides that a teacher has only fifteen (15) days to request a hearing and that hearing is by the school board, not the Department of Education.

Additional impediments to hearing before the Department of Education were alleged to exist due to Ms. Kittredge's failure to request a statement of cause pursuant to the statute (16-13-2(a)) and her failure to proceed to have the matter heard by the members of the Compass School Council, which functions as the "full board" under the statute. Counsel submits that her appellate rights ceased when she failed to request a statement of cause. The failure to take any action on the issue of her non-renewal until the following November requires that her appeal be dismissed, counsel argues.

As to the merits, The Compass School argues that only after the completion of three years of teaching does a teacher attain tenured status. In this case, Ms. Kittredge had not yet completed three years and was therefore subject to annual renewal. Ms. Kittredge was effectively notified in writing on or before March 1st that her contract would not be renewed. The February 28, 2005 notice, Compass Exhibit A, provided such notice. Although she did not request a reason, a meeting was later held at which time Ms. Kittredge's nonrenewal was "confirmed" and reasons were discussed with her. The reasons were not required to constitute "good and just cause" as this standard is required only for the termination of tenured teachers.

For the foregoing reasons, Ms. Kittredge's appeal should be denied and dismissed.

DECISION

Motion to Dismiss

A non-tenured teacher whose annual contract is not renewed has the option of requesting a statement of cause⁴, and is further entitled to "a hearing and appeal pursuant to the procedure set forth in Section 16-13-4". The time limits applicable to the nontenured teacher's exercise of these rights, as they are set forth or are incorporated into R.I.G.L. 16-13-2, is "a reasonable time" from the receipt of notice of a governing board's action. As noted in the case of Anthony Maciocio, Jr. v. North Providence School Committee⁵ substantial precedent exists which restricts application of the 15-day time limit to situations involving the dismissal of a tenured teacher. We have not been cited to any reason which would substantiate a departure from such well-settled precedent. Thus, Ms. Kittredge was not required to request a statement of cause as a condition of contesting her nonrenewal, as has been argued. She also was not required to request a hearing before the Compass School Council within a fifteen (15) day time limit. She was

⁴ Many times the notice of nonrenewal sets forth the reasons for the action the governing body has taken, since members of governing bodies seldom vote to make major personnel decisions without a reason or reasons.

⁵ Decision of the Commissioner dated December 9, 2003 (a case involving a tenured teacher's suspension); see page 5 and footnote 6 of that decision.

required to seek a hearing from the governing board of her school within a reasonable time.

Although counsel for the school focused on a failure to comply with a fifteen day statutory time frame, our review of the record indicates that the general issue of timeliness was raised as a defense to the consideration of Ms. Kittredge's claim. Reference was made to the "untimely" filing with the Department of Education, as well as her failure to present the claim to the Compass School Council prior to proceeding to the state level. Although the timeliness defense remains unamplified in this record, it was raised. In response, there has been no explanation provided by Ms. Kittredge for her delay from May 20, 2005 (when Ms. Kittredge learned that her contract would not be renewed) until November 9, 2005 when she filed her appeal with the Department of Elementary and Secondary Education. We infer from the record that by the time of her early November appeal to this department, the Compass School had its staff in place for the 2005-2006 school year. Without explanation, delay in filing this appeal until November 9, 2005 constitutes unreasonable delay, such that it operates as a bar to adjudicating the merits of this claim.

In the event that our finding as to unreasonable delay is found to be in error, an analysis as to the merits of Ms. Kittredge's claim is herein provided. The February 28, 2005 letter from Anne I Veeger, President of The Compass School Council, does not meet the requirements of notice as set forth in R.I.G.L. 16-13-2(a). The February 28, 2005 letter, attached to this decision as Attachment A, notifies Ms. Kittredge that The Compass School "is unable to offer any automatic renewals of contracts for the upcoming 2005-2006 school year". The letter goes on to state "it is unrealistic for The Compass School to be certain of its staffing needs for next year at this time" and notes that "we look forward to a time when we can mutually commit to contracts as appropriate". A fair interpretation of this letter is that decisions on renewal of all staff, including certified teachers, have been deferred until the school can be certain of its staffing needs for the 2005-2006 school year. While uncertainty with respect to staffing levels is a legitimate reason for the nonrenewal of a nontenured teacher's contract, it is still required that a decision be made by the governing body, and communicated to the affected teacher, by the March 1st deadline.

State law provides that the annual contracts of public school teachers will be "deemed to be continuous" (automatically renewed) unless the governing body provides written notice "on or before March 1 that the contract for the ensuing⁶ year will not be renewed". The statement that "we are unable to offer any automatic renewals of contracts" is substantially different from notice that the governing body has voted to nonrenew a teacher's contract. Communication of the fact that the school is "unable" to offer automatic renewals would inform an employee of an underlying reason for a nonrenewal decision by the governing board, not that such a decision has actually been made. If the Compass School Council had made such a decision, that information is not

⁶ The uniform interpretation of this language has been that the contract (for the current year) will not be renewed for the ensuing year.

contained in the February 28, 2005 letter to Ms. Kittredge. The language of the letter creates the impression that such final decisions will be made at some later time.⁷

There is no indication in the letter that any formal action preceded the February 28, 2005 notice- that any vote was taken or even that a meeting was held at which the subject of nonrenewal of certified staff was considered and acted upon. Although the notice is from the President of the Compass School Council, and states that it is sent “pursuant to Rhode Island State Law, Title 16, Section 16-13-2...” one would have to make inferences after referring to the statute to come away with the conclusion that this communication is intended as a nonrenewal notice. Our law requires that notice of nonrenewal be explicit, not dependent upon inferences to be drawn. To be in substantial compliance with R.I.G.L. 16-13-2, the notice must effectively convey the required information.⁸ The February notice (Attachment A of this decision) is defective in this regard and therefore the Compass School has failed to comply with the procedural requirements of the statute in nonrenewing Ms. Kittredge’s contract.

The procedural defect in this case is so substantial that it renders Ms. Kittredge’s nonrenewal invalid. Under the facts here, Ms. Kittredge did not receive effective notice of her non-renewal until her meeting with the Director and two members of the Compass School Council on May 20, 2005. The disadvantages of being called in to receive this information verbally and in person, at such a late point in the school year are self-evident. Her surprise at learning that she would not be renewed, along with receiving heretofore unmentioned, performance-based reasons for such a decision, surely affected Ms. Kittredge’s ability to absorb this information and respond to it in a meaningful way. This is precisely the type of unfair situation, with its lack of procedural protections and late timing, that the protections of the statute seek to address. These procedural irregularities substantially prejudiced Ms. Kittredge and justify invalidating her nonrenewal.⁹

There is an argument in this case that the process used by The Compass School undermines the Teacher Tenure Act. The facts in this record include the fact that Ms. Kittredge was not formally evaluated in any of the three years she served as a teacher at the school. If her situation is the rule (and we have no evidence with respect to whether teachers routinely participate in a formal evaluation process) information that should be highly relevant in making tenure decisions would not be available for Compass School teachers. This, along with the fact that no teacher has yet to achieve tenured status at the Compass School, creates an inference that school officials do not consider its teachers to

⁷ Members of the Compass School Council met with Ms. Kittredge on May 20, 2005 to “reconfirm” her nonrenewal and to discuss the reasons. It is not clear from the record whether even at this later date, the decision on Ms. Kittredge’s nonrenewal was based on a vote or a decision of the School Council. State law requires that the nonrenewal decision be made by the governing board, not the Director, or Superintendent, of a school or school district.

⁸ Substantial compliance for the form of statutory notice has been held to be sufficient, whereas strict compliance governs the time requirements of the statute. See Ugurhan Akturk v. Department of Children, Youth and Families, decision of the Commissioner dated September 25, 1996, pp. 8-9.

⁹ Determinations of whether procedural irregularities invalidate a teacher’s nonrenewal have varied, depending on the facts of each case. See Lehrer v. North Smithfield School Committee, decision of the Commissioner dated August 26, 1997, pp.7-8.

be serving a “probationary period” during their first three years of employment or that administrators are gathering information on which to base future tenure decisions.

Without a meaningful teacher evaluation process, school officials are not prepared to make fair and informed decisions with respect to each teacher’s qualifications for tenure (or contract renewal). Despite the fact that charter schools have unique characteristics and may receive variances from many provisions of Title 16 that would otherwise be applicable (R.I.G.L. 16-77-10), the provisions of Chapter 13 (Teachers’ Tenure) are binding on all charter schools and may not be waived by the Commissioner and Board of Regents. R.I.G.L. 16-77-11. Although the record is insufficient for a conclusion to be drawn that Compass School officials are seeking to avoid applicable state law with respect to teachers’ tenure, the record does raise questions in this regard. For this reason, The Compass School Council is directed to submit a report to the Commissioner which describes its current teacher evaluation process. This report shall be submitted within thirty days of the date of this decision. This step will ensure that appropriate information for decisions with respect to tenure, as well as for annual renewal, will be available to the school’s director and the school’s governing council.

The appeal of Ms. Kittredge is dismissed on the basis of lack of timeliness in taking her appeal to the Commissioner.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

October 23, 2006
Date