

Jurisdiction and Travel of the Case

Jurisdiction is present in this matter under R.I.G.L.16-39-1 and R.I.G.L.16-39-2. This matter concerns a non-tenured teacher who is appealing the decision of the Providence School Board not to renew her contract.

Positions of the Parties

The Petitioner

The petitioner contends that there are no deficiencies in her teaching and that the decision to not renew her contract was therefore arbitrary.

The Providence School Board

The Board contends that there were deficiencies in the petitioner's teaching and that in any event her teaching was not of a caliber that would suffice to negate a reasonable conclusion that the Board could obtain the services of a better teacher.

Findings of Fact

1. The petitioner in this case was a third year non-tenured teacher in the public schools of Providence. She was given timely notice that her teaching contract would not be renewed. The reason for this non-renewal was stated to be that the Providence School Board had concluded that it could obtain the services of a more qualified teacher.
2. The Providence school board granted the petitioner a hearing on her non-renewal. After a hearing, the Board sustained her non-renewal.
3. The petitioner possesses the appropriate certification for her position as a special education teacher. No parental or administrative complaints have been filed against the petitioner. Her demeanor indicates that she is a kind and intelligent person who is concerned about the educational welfare of her students.
4. The petitioner testified that her classroom management "was not that bad."
5. The petitioner was evaluated twice while being employed in Providence. One of these evaluations was cancelled as a result of a grievance hearing. In the only evaluation submitted in this case she received 13 points out of a possible 20 points. This evaluation was not based on an extensive period of classroom observation, but it was made by an experienced and highly qualified educator. (We note here that the applicable collective bargaining agreement seems to have put narrow limits on

the scope of evaluations. Under these circumstances it is hard to fault the evaluator for not having made more numerous and detailed evaluations of this teacher's work, however desirable such evaluations might be, given the fact that an extensive evaluative process was not allowed by the collective bargaining agreement.)

6. From her classroom observations the evaluator concluded that the petitioner was teaching in a way that would be appropriate for a large class ("stand-up teaching") but which was not appropriate for a class which had only three students. The evaluator also concluded that the special education instruction being given by the petitioner was not sufficiently individualized. The petitioner has diminished, but not substantially refuted the force of this observation by pointing out that her class could, at times have as many as eight or ten students in it. The problem here is that there were only three students in the class on the day of the observation.
7. The evaluator was also of the opinion that the book the petitioner was using for her class was too difficult for the class. While this may have been the case, it is hard to fault the petitioner on this point since it appears from her testimony that she did attempt to obtain a different book for her class but that the school district did not have the appropriate book in stock.
8. The experienced evaluator in this case testified that she believed that better teachers than the petitioner were available for employment by the Providence School Board.

Conclusions of Law

The Rhode Island Supreme Court has described the hearing rights of a probationary teacher whose contract is not renewed in these terms:

The fundamental purpose of the hearing is to give a probationary teacher who has already been acquainted with the reasons why a board of education has decided not to renew his contract a full and fair opportunity to persuade and convince the board that it is mistaken in that decision." [Devlin v. Bennit, 213 A.2d 725 (1965) *Id.*] So, too, we believe that § 16-13-2 gives the probationary teacher a chance to question the decision regarding his contract of employment while at the same time maintaining the distinction between the tenured and nontenured teacher.

The Legislature, in affording nontenured teachers an opportunity to learn the reasons why the committee did not rehire them, did by legislative fiat what has been done by judicial fiat, most notably in *Drown v. Portsmouth School Dist.*, 435 F.2d 1182 (1st Cir. 1970), and *Donaldson v. Board of Educ.*, 65 N.J. 2236, 320 A.2d 857 (1974). Both courts, in ruling that a nontenured teacher was entitled to know why he or she was not reengaged, observed that a statement of deficiencies can enable the teacher to embark on a program of self-improvement, correct any false information or rumors, explain away incorrect impressions, and possibly uncover any constitutionally impermissible reasons for nonretention. We would also add that the statement of reasons and hearing provisos promulgated by our Legislature can act as a brake on any committee's desire to indulge in an arbitrary

abuse of the exercise of its discretionary power. It should be emphasized that the § 16-13-2 hearing sought by the teacher casts no burden of proof on the committee. The burden of persuasion remains on the teacher to convince the committee that it was mistaken when the committee reached the conclusion that it did.

While the hearing contemplated by § 16-13-2 is not quasi-judicial in nature, the committee does have a duty to listen to a dissatisfied teacher in an objective manner and fairly consider its original decision. The fact that the General Assembly has mandated a hearing before the full committee carries with it the implicit reasonable hope that those who are heard might be heeded. *Golden Gate Corp. v. Town of Narragansett*, 116 R.I. 552, 359 A.2d 321 (1976).¹

A probationary teacher whose appeal is denied by the school committee may file an appeal with the Commissioner.² The Commissioner has discussed the *standard of review* to be used in such appeals:

Our first view of this matter was that we should limit our review to determining whether the School Committee abused its discretion in deciding not to renew the petitioner's contract. Still, in *Jacob v. Board of Regents, supra*, our Supreme Court stressed that the commissioner on review, was to make a "de novo" decision. We think that this means that the 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 School Committee*, Comm. (620), Aug., 1992)³

The rights of a probationary teacher are defined at R.I.G.L. 16-13-2:

16-13-2. Annual contract basis – Automatic continuation. – (a) Teaching service shall be on the basis of an annual contract, except as hereinafter provided, and the contract shall be deemed to be continuous unless the governing body of the schools shall notify the teacher in writing on or before March 1 that the contract for the ensuing year will not be renewed; provided, however, that a teacher, upon request, shall be furnished a statement of cause for dismissal or nonrenewal of his or her contract by the school committee; provided further, that whenever any contract is not renewed or the teacher is dismissed, the teacher shall be entitled to a hearing and appeal pursuant to the procedure set forth in § 16-13-4.

(b) Nothing contained in this section shall be construed to prohibit or at any time to have prohibited a school committee from agreeing, in a collective bargaining agreement, to the arbitration of disputes arising out of a dismissal or nonrenewal of a non-tenured teacher pursuant to subsection (a) of this section.

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

² R.I.G.L. 16-39-1

³ *Laurie v. North Kingstown School Committee*, Commissioner of Education, March 9, 1992

Under this statute a school committee may elect not to rehire a probationary teacher simply because it believes that it can secure the services of an as yet unidentified better teacher.⁴ The school committee is not required to demonstrate good cause for not renewing a non-tenured probationary teacher's contract. A school committee is not restricted to specific evaluations in making a non-renewal decision concerning a probationary teacher.⁵ "A school district's desire to find a more qualified teacher, as yet unidentified, is a valid reason not to renew a nontenured teacher's contract."⁶ The Commissioner has held 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."⁷

Discussion

The petitioner in this case was evaluated by an experienced evaluator who concluded that there were deficiencies in the petitioner's teaching. The record before us convinces us that the evaluator was not acting out of malice in reaching this conclusion. It must be conceded that the petitioner has succeeded in vitiating some of the force of the sub-par evaluation she received (e.g. the book she was faulted for using in her class appears to have been the only book the school district made available to her.) Still, the fact remains that there is no way we can find, on this record, that the petitioner's classroom performance evinced such a quality of teaching that we would be forced to conclude the Providence School Board was mistaken when it that it concluded that it could hire a more qualified teacher than the petitioner.

Conclusion

The petitioner's appeal must be denied and dismissed.

APPROVED:

Forrest L. Avila, Hearing Officer

Peter McWalters, Commissioner

June 18, 2007
Date

⁴ *Tracy vs. Scituate*, Commissioner of Education, March 1984.

⁵ *Julie D'Souza v. Woonsocket School Committee*, Commissioner of Education, June 3, 2002.

⁶ *Namerow v. Pawtucket School Committee*, Commissioner of Education, November 9, 1999.

⁷ *Laurie v. North Kingstown*, Commissioner of Education, March 9, 1992.