0017-07

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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Rosa Garcia, Gloria Profughi, Patrick Doyle, Eddy Remy, Saysay Kamara, and Patricia DiPrete

v.

Providence School Board

.. ..

DECISION

Held: The Appellants did not receive written notice on or before March 1, 2006 that the Providence School Board had voted not to renew their teaching contracts for the 2006-2007 school year. Written notice was provided to the appellants on March 13, 2006, but it was not timely under the statute for the ensuing school year.

DATE: July 2, 2007

Travel of the Case

On October 5, 2006 counsel for three of the Appellants (Gloria Profughi, Rosa Garcia and Patricia DiPrete) filed notices of their appeal with Commissioner Peter McWalters. The Providence School Board had affirmed its prior decision not to renew their teaching contracts on September 28, 2006. Upon designation of the undersigned as hearing officer, a letter of acknowledgement and request for an agreed-upon date for hearing was sent on October 6, 2006. Thereafter the hearing officer was notified that the parties had agreed to defer hearing on the appeals so that they could be consolidated with three other appeals still pending before the School Board. The Board did not issue its decision in the appeals of Eddy Remy, Say Say Kamara, and Patrick Doyle until February 28, 2007, and on March 8, 2007 appeals on their behalf were filed with the Commissioner and consolidated with the three earlier appeals. All six cases were consolidated and submitted for hearing and decision on the preliminary issue of whether the Appellants had received valid notice of their nonrenewals by the School Board prior to March 1st.

On May 1, 2007 the matter was heard and testimony and documentary evidence were submitted by the parties. On May 21, 2007 legal memoranda were submitted and the record was closed.

ISSUE

> Did the Appellants receive adequate notice of their non-renewal by the Providence School Board on or before March 1, 2006 and, if not, are their non-renewals for the 2006-2007 school year invalidated?

Findings of Relevant Facts:

- The Appellants were employed as non-tenured teachers in the Providence school system during the 2005-2006 school year.[1]

- On or about January 25, 2006 each of the Appellants was sent a written notice from the Senior Executive Director of Human Resources for the Providence school department informing them that the Providence School Board would be presented with a resolution terminating their employment at the end of the 2005-2006 school year. The notice indicated[2] that the School Board would be considering this resolution at its February

[1] The evidence does not reflect that the Appellants were in their third year of teaching under successive annual contracts. It would appear, however, that there is no dispute that all of the Appellants, with the exception of Mr. Remy, would become tenured at the close of the 2005-2006 school year if their contracts were not validly non-renewed.

[2] In addition to providing the Appellants with other information, including the reasons for their proposed non-renewals.

13, 2006 meeting. The notice also informed each of the Appellants that"layoffs that are approved at the February 13th meeting may be rescinded later, and in the past most layoffs have been rescinded". Joint Ex.1-6.

- At its February 13, 2006 meeting the Providence School Board voted unanimously to approve the resolutions non-renewing the Appellants' contracts and terminating their employment at the end of the 2005-2006 school year. PSB Ex.3.

- Each of the Appellants received[3] a written notice dated February 14, 2006 that again notified them that the School Board "will consider" a resolution terminating his/her employment on February 13, 2006. Additional information contained in the February 14th letter included the reasons for "the action of the Board" and the right to appeal "the actions of the Board". The letter to each of the Appellants also noted that "Should changes subsequently occur in the reason(s) given for your termination, you are not automatically assured of recall since recall is based on seniority. Your name will be placed on the recall list according to the area(s) for which you are certified...Be assured that the leadership team is taking every possible step to avoid implementation of these layoffs". Joint Ex.1-6.

- On March 13, 2006 each of the Appellants was sent a corrected notice which informed them that there had been a clerical error in the February 14, 2006 letter and that "The School Board voted on February 13, 2006, not to renew your contract at the end of the 2005-2006 school year". The March 13, 2006 letter affirmed that the remaining text of the February 14th letter was correct. A copy of the minutes reflecting the School Board's vote to approve the resolution was enclosed. Joint Ex.1-6.

- The reason that the February 14, 2006 letter contained erroneous information that the Board had yet to consider the resolutions affecting the Appellants instead of the information that the Board had already voted to approve these resolutions was a clerical error[4]. Tr. pp.46-51.

- The reasons provided to all six Appellants for their non-renewals included the reason that the Board "may desire to find a more qualified teacher, as yet unidentified". Four of the six Appellants were provided with additional reasons for their non-renewals. Joint Ex.1-6.

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[3] There is no dispute that each of the Appellants received the February 14th letters on or before March 1, 2006.

[4] The Board sought to explain this error through testimony that the total number of notices involved in the nonrenewal process in 2006 was in excess of 400 with over 30 different categories of layoffs, depending on the reason (s). Tr.pp.39-40. Evidence was also submitted with respect to the timeline and multiple steps involved in the non-renewal process that year. PSB Ex.1. The process followed by the Senior Executive Director of Human Resources, whose signature is affixed to the letters, was not described in the record. Testimony indicated that the error went undetected until some time after March 1, 2006. Tr.pp.48-49.

Positions of the Parties

Appellants

The Appellants contend that this appeal presents a straightforward issue as to whether or not the Providence School Board provided adequate notice of its decision not to renew the Appellants' teaching contracts. The statute provides the procedure for non-renewal of a teacher's contract and quite clearly states:

> 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; (R.I.G.L. 16-13-2)

Since the statute is clear and unambiguous, its language must be given effect and applied as written to the facts of this case. The facts in evidence indicate that the February 14, 2006 notice was defective in that it did not convey the information required by statute, i.e. that the Appellants' contracts had been non-renewed. It did not notify the Appellants that the School Board had voted on and approved the resolution to non-renew their contracts for the ensuing school year, but only that the Board would consider a resolution to do so. The same communication informed the Appellants that they would be placed on a recall list according to seniority and that the leadership team was taking every possible step to avoid implementation of these layoffs. This February 14, 2006 letter was both erroneous and ambiguous. It was not until March 13, 2006 that the School Board provided the required information, well beyond the statutory date of March 1st. As a result, the Appellants' contracts were automatically renewed for the following year.

Other sources of information argued by the School Board to provide effective notice to the Appellants are insufficient under the statute. The availability of the agenda of the Board's February 13, 2006 meeting and the subsequent posting of the minutes of the meeting on the Board's website on February 28, 2006 do not comply with the form of the notice required by the statute. The courts, including the Rhode Island Superior Court in a 2006 decision involving a terminated East Providence teacher[5] have strictly construed statutes prescribing the process for terminating teachers. There is no duty or obligation on the part of a teacher to determine if the School Board has in fact voted or to seek out information on the outcome of a vote on whether their contracts will be non-renewed. The legislature has determined that the School Board must provide written notice to the teacher and must do so by March 1st.

Although the delay in notifying the Appellants of their non-renewal was due to error, this does not provide relief from the statutory responsibility of the School Board and

[5] Anne Marie Quatrucci v. Rhode Island Board of Regents for Elementary and Secondary Education and East Providence School Committee, 2006 R.I.Super. LEXIS 69

applying the law to these facts, the contracts of each and every one of the Appellants must be deemed continuous. They must be reinstated to their positions with back pay.

Providence School Board

The School Board argues that although the February 14, 2006 notice to the Appellants mistakenly used the future tense (the School Board "will consider" a resolution terminating employment on February 13th), given that the Appellants had already received notices at the end of January notifying them that the Board would act on termination resolutions at its February 13th meeting, they should have known that the meeting had already taken place and that the Board had already voted to terminate their employment. The School Board submits that the written correspondence the Appellants received prior to March 1st fairly and reasonably informed them that the Board had terminated their contracts for the 2006-2007 school year. The February 14, 2006 letter contains an obvious clerical error, the Board argues - a minor, technical defect which resulted from the complexity of the process and the number of teachers involved (over 400). Given that the teachers had been alerted to the prospect of their termination at a meeting scheduled for February 13, 2006, correspondence dated February 14, 2006 was obviously intended to notify them of action that had already taken place. In fact, this was the only reasonable conclusion that one could draw from the two notices each of the Appellants had received before the statutory deadline of March 1st.

The School Board argues that additional text in the February 14, 2006 letter provided "two very strong clues" that the Board had already acted and that its action was adverse to the Appellants. First, the letter stated that the affected teachers had a right to appeal the "actions of the Board"- a remedy obviously available only after the Board had taken action. Secondly, the February letter stated "Should changes subsequently occur in the reason(s) given for your *termination*, you are not automatically assured of recall since recall is based on seniority". The use of the word "termination" should have indicated to each of the non-renewed teachers that their employment would cease at the end of the school year. Thus, despite the mistake in the opening paragraph, the only plausible, logical and intelligent interpretation of the February notice, read in its entirety and taken together with the January pre-termination notice, was that the Board had already terminated the Appellants. The School Board submits that its communications (the January and the February letters taken together) constituted the required written notice under the statute.

If there was any deficiency in the written notice provided to the Appellants, the Board argues that the doctrine of implied notice is applicable to the facts of this case. Under this doctrine, the Appellants are chargeable with having actual knowledge of the Board's vote because the two letters provided them with facts which were so suggestive of the existence of the ultimate fact (their termination) that a reasonably prudent person would have been moved to investigate and ascertain the ultimate fact. Since the Appellants had been informed that the February Board meeting would take place on February 13th, upon their receipt of the February 14th letter during the month when all Providence teachers know that a determination must be made as to which teachers will be

laid off, they should have known that they had been terminated. At the very least, when the Appellants received this communication, with its obvious clerical error and other clues that adverse action had occurred, they should have inquired about the status of their employment with the School Board[6]. Each of the appellants is thus chargeable with actual notice of their termination prior to the March 1st statutory deadline under this doctrine.[7]

Finally, the purpose of the notice requirement is to give the probationary teacher a chance to question the decision not to renew his or her annual contract. Each of the Appellants in fact exercised the right to a hearing before the full Board. Thus, the notice they did receive fulfilled the purpose of section 16-13-2 by allowing them to challenge the decisions to terminate their contracts. Despite its flaws, then, the notice was adequate.

The School Board points out that if the Appellants[8] are successful in their appeal, five of them would attain tenured status in the Providence school system. This would in effect deprive the Providence School Board of the prerogative of making the important decision as to which of its probationary teachers will be granted tenure. The quality of performance of all six of the Appellants was a factor in their non-renewals. The Board submits that any decision upholding their appeals would cause real harm to Providence students in that the district has a clearly-established need for high quality teachers. Reinstatement of the Appellants would place low-performing teachers in a low-performing system, undermining important progress the Providence school department has made to date. These are compelling reasons to dismiss their appeals. If, however, their appeals are upheld and the Appellants are reinstated, the School Board requests that the Commissioner maintain their probationary status.

DECISION

It is clear from the evidence in this record that the staff of the Providence School Department face a daunting task each year in following the statutory process necessary to effectuate the non-renewal of several hundred teachers employed in the system. In 2006 a mistake was made by a member of the Department's support staff in transposing the first paragraph of a preliminary notice that had previously been sent to teachers involved in this process. The record does not indicate what steps of administrative review were followed by the Department after these notices were prepared, but whatever they were, the initial error went undetected. Many, if not most, of the cases in which issues of adequacy or timeliness of statutory notice are raised involve inadvertent errors or mistakes. In situations in which the mistake leads to a failure to comply with statutory requirements, the mistake usually

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[6] This doctrine is, the Board implicitly argues, clearly applicable to Patrick Doyle, the only Appellant who did testify and who, on cross examination, indicated he was familiar with the process that Providence teachers were laid off at a February meeting each year and, in fact, he had previously been laid off under such a process. His testimony that he believed he was still employed upon his receipt of the February 14, 2006 letter is argued to be incredible. One of the arguments of the School Board is that error of the hearing officer precluded additional proof of Mr. Doyle's lack of credibility on this point.

[7] Implicit in this argument is the argument that actual notice is sufficient to substitute for written notice under R.I.G.L. 16-13-2.

[8] With the exception of Eddy Remy

has the foreseeable effect of invalidating the non-renewal. When the non-renewal of tenure-eligible teachers is involved, compliance with every element of the statutory procedure gains great importance.[9] In Rhode Island where the completion of the third year of teaching service under annual contract without the receipt of a valid notice of non-renewal is the "key to tenure"[10] the utmost care is required in following statutory procedures.

We find on this record that the Appellants did not receive timely written notice of their non-renewals. The omission of the fact that the School Board had voted on February 13th to non-renew the contracts of the Appellants in the February 14, 2006 letter was not as minor as the School Board would have it[11]. It was the essential fact required to be communicated by R.I.G.L. 16-13-2 prior to March 1st and was not supplied to the Appellants in writing until March 13, 2006. We agree that the February 14, 2006 notice contained an obvious error, given its reference to an upcoming meeting on February 13th, however there is not one single conclusion[12] that one must draw from the language of this letter, as the Board has argued, but rather a number of possible conclusions, reached after drawing inferences and making deductions. Applying the test of whether the January and February letters, read together, "fairly and reasonably" would inform a teacher that he or she has been terminated by the Providence School Board, we find the notice to be inadequate.

It is true, as argued by the School Board, that the February 14, 2006 letter provided two strong "clues" that termination had occurred- the reference to a teacher's right to appeal "the actions of the Board" and the use of the word "termination" in the fourth paragraph; however, the clues do not necessarily solve the mystery created in the opening paragraph. We do not find, as the Board has argued, that the remaining text of the February letter clarifies "beyond doubt" that the Appellants' employment was to end that academic year[13] Rather than clarify, much of the remaining text generates additional confusion as to the Appellants' employment status, even suggesting that they will remain employed or be re-employed. The letters of four of the Appellants[14] informed them that "The Department will be reviewing its needs over the upcoming months. However, state law requires that we notify you of your employment status for the upcoming school year by March 1st ." This statement implies that the Appellants will be considered for reemployment during "the upcoming months", i.e. before school reopens in September. The notices of all six Appellants inform them that their names will be "placed on the recall list" according to the areas for which they were certified. Although the letter states that there is no "automatic assurance" of recall, the Appellants are urged to notify the district if they become certified in any additional areas. The last sentence of the February 14, 2006 letter states that "the leadership team is taking every possible step to avoid implementation of these layoffs". If there were "clues" that the Appellants had been terminated, amidst the

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[9] See generally Rapp, Education Law Sec.6.06(5)(b)(iii);Sec.6.19(5).
[10] See Jacob v. Board of Regents, 117 R.I. 164, 169 (R.I. 1976).
[11] Tr.pp.14-15
[12] That the Board has approved the resolution terminating employment at the end of the school year.
[13] See memo of the Board at pages 5-6
[14] Those that had multiple reasons for non-renewal.

clues was information inconsistent with the notion that their employment in Providence was coming to an end. They were informed that they could alternately be re-hired or recalled, or that layoffs would be rescinded or avoided.[15] Taken in context, this information obfuscates that which was already unclear. We find that the written notice fails to meet the requirements of R.I.G.L. 16-13-2.[16]

An additional argument advanced by the School Board is that the Appellants had enough information to cause them to inquire as to whether the Board had in fact terminated them. It is argued that under the doctrine of implied notice, they are chargeable with having actual notice of their termination. The two letters they received prior to March 1st, the Board asserts, provided them with facts which were so suggestive of the existence of the ultimate fact (their termination) that a reasonably prudent person would have been moved to investigate and ascertain the ultimate fact. This doctrine of implied notice is set forth in the Rhode Island Supreme Court decision in Hardy v. Zoning Board of Review of the Town Of Coventry, 113 R.I. 375, 321 A.2d 289 (1974), cited in the Board's memorandum. A review of this case indicates that there is another dimension to the doctrine of implied notice that is not present in this appeal before the Commissioner. At page 381 of the decision the Court observes:

> Implied notice has been defined as a factual inference of the possession of knowledge, inferred from the availability of a means of acquiring such knowledge, *when the party charged therewith had the duty of inquiry.*

Hardy v. Zoning Bd. Of Coventry, supra. (emphasis added). As we have indicated, the January and February letters from the School Board would raise questions and generate confusion, but not necessarily lead to one single conclusion- that the Appellants had been terminated. Thus, the letters themselves did not create a single inference of the "ultimate fact". The appellants were not required to dispel the confusion- this was a responsibility of the School Board, which it did, belatedly, by sending a corrective notice to each of the Appellants on March 13, 2006. To charge the Appellants with a duty of inquiry under the circumstances of this case, when the applicable statute places the responsibility of providing adequate written notice squarely on the School Board, would turn the statute on its head. Furthermore even if the doctrine of implied notice were applicable, the weight of authority is that when a statute requires written notice, informal or actual notice is not adequate.[17]

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[15] The likelihood that the leadership team's efforts to avoid layoffs would be successful was increased by the information conveyed to the Appellants in the January 25, 2006 notice: "Layoffs that are approved at the February 13th meeting may be rescinded later, and in the past most layoffs have been rescinded" Joint Ex. 1-6.

[16] No argument has been made that the corrected notice sent to the Appellants on March 13, 2006 constituted timely notice under the statute. The March 1st statutory deadline has been strictly construed in all cases arising under the teacher tenure law.

[17] See Rapp, Section 6.19(4)(a), pp.6-882,883, 892; See Annotation 52ALR4th 301 Sec.7(b) Sufficiency of Notice to Discharge.

Finally, the Board has raised the argument that if it were permitted on cross-examination to ask certain questions of Patrick Doyle, one of the Appellants, it could have established that he did not testify credibly as to his belief that he was still employed even after he received the February 14, 2006 letter. This argument[18] perhaps goes beyond the issue of credibility to whether Mr. Doyle had actual knowledge of the School Board's decision before March 1st. Given our interpretation of the statute's requirement for written notice, we did not find Mr. Doyle's testimony as to his state of mind to be relevant and therefore his credibility, or lack thereof, played no role in this decision. Although there was some confusion as to existing precedent[19], the hearing officer indicated that proof of actual knowledge of the Appellants would be received at the hearing, if this was a theory of the School Board's case (Tr.pp.44-45). None of the Appellants was called to testify by the School Board. The focus of the Board's case was clearly not that the Appellants knew of their termination, but rather that they should have known.

For the foregoing reasons, we find the non-renewals of the Appellants to have been ineffective and thus their annual contracts continued into the ensuing school year, 2006-2007. The parties are directed to confer on an appropriate remedy. If the issue of remedy cannot be settled by agreement, the parties should notify the hearing officer and a hearing will be scheduled on remedy. Since the renewal of the Appellants' contracts, as well as their acquisition of tenure, occurs by operation of law, the Commissioner is without authority to extend the probationary period of the five Appellants who would, according to the School Board's arguments, attain tenured status.

For the Commissioner,

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APPROVED:

_____ July 2, 2007

Peter McWalters, Commissioner Date

[18] Presented as an error by the hearing officer, a matter which would more properly be raised in a review of this decision by the Board of Regents.

[19] In the course of ruling on an objection pertaining to information provided to the Appellants' union, the hearing officer incorrectly recalled the rationale for a Supreme Court decision which overruled the Commissioner's decision in Ciccone v. Cranston School Committee, September 15, 1983. The Commissioner had ruled in Ciccone that the actual notice a teacher had received in attending a meeting at which the School Committee voted to suspend his employment effectively complied with the statute when the written notice was untimely. The Commissioner expressed doubt as to whether actual notice could defeat the statutory requirement to provide written notice in the more recent case of Appeal of Narragansett Teacher Non-Renewal, decision of the Commissioner dated August 24, 1993.