

Travel of the Case:

On November 20, 2006 counsel for John Carr appealed to Commissioner Peter McWalters from the decision of the Pawtucket School Committee. The School Committee had issued a written decision on November 14, 2006 in which it sustained its prior non-renewal of Mr. Carr's contract as a nontenured teacher in the school district. At the request of the Appellant's counsel, hearing was deferred until the transcript of the School Committee's November 13, 2006 hearing became available for review. The appeal was acknowledged and suggested hearing dates provided on February 6, 2007. The parties agreed upon the dates of March 28, 2007 and April 13, 2007 and on those dates hearings were held and evidence submitted by both parties. The record in this matter closed on August 22, 2007, the date of the filing of a reply memorandum on Mr. Carr's behalf.

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

Issues

Was the decision of the Pawtucket School Committee not to renew Mr. Carr's teaching contract made for a valid reason or was it in retaliation for his receipt of workers compensation benefits and/or his extended absence due to a work related injury?

Was the School Committee's finding that its Superintendent had a good faith belief that more qualified teachers are or may be available to fill Mr. Carr's position substantiated?

Did the process utilized in making the decision with respect to Mr. Carr's nonrenewal deprive him of notice and opportunity to correct any perceived deficiencies in his performance?

Was a provision of the collective bargaining agreement violated when the School Committee acted to nonrenew his contract when he was on absent due to a work-related injury?

Findings of Relevant Facts:

- ♦ John Carr was a third-year probationary teacher at Slater Junior High School in Pawtucket during school year 2005-2006. He taught English/Language Arts. Tr.pp.126-127.
- ♦ During the first few months of the 2005-2006 school year, Principal Meredith Caswell concluded, based on her own informal observations, that Mr. Carr's classroom management skills had deteriorated since December of the prior school year when she had recommended him for a third-year contract. Tr. pp.45-50.
- ♦ Ms. Caswell brought her concerns regarding deficiencies in classroom management to Mr. Carr's attention. She asked him to meet with the Assistant Principal Joseph Fleming to

develop better strategies for classroom management. Tr. pp. 47, 49-50. During the month of October, Mr. Fleming met with Mr. Carr about classroom management issues and strategies to address them. Tr. p. 98-99. Despite this, neither he nor Principal Caswell saw any improvement. Tr. pp. 50, 98-100.

- ♦ During the months of October and November of 2005 Ms. Caswell and Mr. Fleming continued to confer about Mr. Carr's classroom management issues and noted his lack of improvement. Tr. pp.50-51, 100.
- ♦ The principal's customary time frame for formal evaluation of non-tenured teachers and written recommendations with respect to tenure is December-January of the school year, but by mid-November she concluded that she had seen enough of Mr. Carr's performance on which to base a decision that she would not recommend him for tenure later in the year. Tr. pp.24-25, 72.
- ♦ On November 17, 2005 Ms. Caswell called Mr. Carr into her office and told him that she would not be recommending him for tenure because she saw no improvement in his classroom management skills. Tr. p.50.
- ♦ During his first year of teaching, 2003-2004, Mr. Carr had been formally evaluated by Principal Caswell. She found that he "met the standard" in all but one or two¹ areas of performance. He did not "exceed the standard" in any of the performance areas which were evaluated. He entered into a "Written Agreement for Improved Performance" which identified a plan for him to obtain more familiarity with the "Balanced Literacy" approach to teaching English. In an update to the Agreement Ms. Caswell noted that this goal was "partially accomplished" and further noted that his classroom management skills appeared to decline. S.C.Ex.1.
- ♦ During the second year of his probationary period, 2004-2005, Principal Caswell found that he "met the standard" in all of the areas of performance evaluated, and noted that he had shown improvement in several areas. S.C.Ex.2. No written plan for improved performance was found to be necessary at that time, i.e. December 20, 2004. Tr.p.65.
- ♦ After his formal written evaluation in December of 2004, problems with classroom management surfaced. After receipt and investigation of complaints about the conduct/activities of Mr. Carr's students when they used the computer laboratory, the Principal determined that he would no longer be allowed to bring his students there and notified him of her decision. Tr. pp.41-44.
- ♦ On a couple of occasions, Mr. Carr sent students who had misbehaved into the corridor where they remained unsupervised, instead of sending them to the Assistant Principal's office pursuant to school policy. Tr. pp.46-47.
- ♦ The principal observed "kids running around, lots of noise, some chaos" and on one occasion, after pulling her car into the school's parking lot, observed students hanging out of the windows of the third floor classroom that Mr. Carr was using at the time. Tr.pp.45-47.

¹ One of the check marks extends from "meets the standard" to "does not meet the standard".

- ♦ Principal Caswell discussed these classroom control issues with Mr. Carr, indicating to him that she was concerned and that she needed to see improvement in his control of the students in the classroom. Tr. p.47; she did not document these concerns in writing. Tr. p.67.
- ♦ A few days after Ms. Caswell met with Mr. Carr on November 17, 2005 to give him a “heads up” that she would not be recommending him for tenure, Mr. Carr was injured during class. From November 23, 2005 until the following May 1, 2006 he was absent due to a work-related injury. Tr. p.163, 169.; He received workers’ compensation benefits from November of 2005 until April 7, 2006. Tr. pp.163-169.
- ♦ At some point prior to February 14, 2006 Ms. Caswell forwarded her recommendation to Superintendent Hans Dellith that Mr. Carr’s teaching contract should not be renewed at the close of the school year. Tr. p.109.²
- ♦ On February 14, 2006 Mr. Carr received written notice that the Superintendent planned to present a recommendation that his contract not be renewed. Tr. p.169; S.C.Ex.3; The School Committee voted on February 14, 2006 not to renew Mr. Carr’s contract and notice of its action was sent to Mr. Carr on February 15, 2006. S.C.Ex.4³.
- ♦ Both Ms. Caswell and the Superintendent were aware at the time they made their respective recommendations that Mr. Carr was absent from school because of a work-related injury and was receiving workers’ compensation benefits. Tr.pp. 75-76, 110-111. On November 13, 2006 the Pawtucket School Committee heard Mr. Carr’s appeal from his non-renewal and learned that he had been absent because of a work-related injury for ninety-six (96) days in the 2005-2006 school year. Appellant’s Ex.B, pp.112-113.
- ♦ At no time during school year 2005-2006 was Mr. Carr formally observed or evaluated. Tr. pp. 67, 170.
- ♦ Article VIII, Section 16 of the collective bargaining agreement in effect between the School Committee and the Pawtucket Teachers’ Union provides that in the event of an on-the-job injury and resulting absence, the teacher “shall have the right to return to his/her original position unless it has been discontinued or the teacher’s absence exceeds two years”. Appellant’s Ex.A.
- ♦ On May 1, 2006 Mr. Carr returned to his teaching position at Slater Junior High School. Tr. pp. 114, 169.
- ♦ Principal Meredith Caswell held the professional opinion that better teachers than Mr. Carr were available for the position he held. She conveyed this opinion and her recommendation that his teaching contract not be renewed to Superintendent Dellith. Tr. pp.53-54, 109.

² The record does not indicate whether the principal’s recommendation was in writing and when in point of time it was made.

³ The School Committee based its action at that time on six reasons, but only one of them related to Mr. Carr’s performance. After hearing Mr. Carr’s appeal from his non-renewal on November 13, 2006, the School Committee sustained its prior decision based only on one reason, “that the Superintendent had a good-faith belief that more qualified teachers are or may be available to fill your position”.

- ♦ Based on Ms. Caswell's recommendation and evaluation of Mr. Carr's performance, Superintendent Hans Dellith held the professional opinion that better teachers would be available for Mr. Carr's position at Slater Junior High School. Tr.p.109. It was for this reason, as well as other reasons outlined in a notice sent to Mr. Carr on February 14, 2006, that the Superintendent recommended the nonrenewal of Mr. Carr's teaching contract. S.C.Ex.3.
- ♦ On February 14, 2006 the Pawtucket School Committee voted not to renew Mr. Carr's teaching contract for another year based on the reasons advanced by Superintendent Dellith. Notice of the School Committee's action, and the reasons, were sent to Mr. Carr on February 15, 2006. S.C.Ex.4.

Positions of the Parties

John Carr

In memoranda submitted on his behalf, counsel for Mr. Carr argues that the evidence establishes that John Carr was and is the best teacher available for the position he held. During the first-year evaluation process, his supervisors made suggestions for improvement in his teaching performance. Mr. Carr followed up on these suggestions and brought his performance in his second year to the level of "meeting the standard" in all evaluated areas. His principal commented at that time that his performance had improved in several areas and she did not, as she had during his first year, require him to enter into a written agreement for improved performance (Form C). Prior to his on the job injury on November 23, 2005 Mr. Carr submits that he had received no indication that his performance had declined in any way.

In measures not captured in the formal evaluation process, Mr. Carr's performance demonstrated his dedication and professionalism. He consistently demonstrated his commitment to Slater students by participating in after-school academic programs, coaching extracurricular sports and chaperoning dances. He routinely called parents of his students on school nights to keep them informed of student progress. None of this extra time, effort, and the dedication that is indicated, is contested by school officials, his counsel submits. There is, additionally, no documentation which was generated in the third year of his teaching at Slater which would support the assessment of his performance as anything other than excellent or an opinion that a better teacher would be available.

Based on these facts, the decision not to renew his teaching contract stands unsupported by a legitimate factual basis. It is thus an arbitrary and capricious decision which, the Appellant argues, should be overturned by the Commissioner pursuant to the case law involving nonrenewal of the contracts of nontenured teachers.

Furthermore, the rationale which does emerge from the evidence is an illegal reason not expressed in the notices he received at the time of his nonrenewal. The true reason for the nonrenewal of his contract was expressed to him verbally, he contends, by both Principal Caswell and Superintendent Dellith in separate comments made to him about his absence from school during 2005-2006. Ms. Caswell, he argues, when pressed for her reasoning in not

seeking his recall in May of 2006, indicated that his ninety-day absence was the reason he would not be returning to Slater the following September. Counsel for Mr. Carr submits that Superintendent Dellith had similarly focused on his absence due to injury on the job in an earlier discussion in mid-April, when he allegedly told Mr. Carr that because he was not “healthy” he was “no good for himself and no good for the school department”. This reason is not legitimately related to the educational process and does not validly support his nonrenewal. It also constitutes, the Appellant submits, illegal retaliation for his asserting rights to compensated leave under the workers’ compensation law.

If there was any doubt as to the role his absence from school and receipt of workers’ compensation benefits played in the decision to dismiss him, his counsel directs us to evidence of certain questions posed during Mr. Carr’s hearing before the Pawtucket School Committee. Counsel for the Superintendent at the November 13, 2006 hearing questioned how Mr. Carr’s retention would be in the best interests of the students, given that his absence due to his work-related injury exceeded ninety (90) days in the 2005-2006 school year. This evidence, coupled with the lack of factual support for the reasons which were provided to Mr. Carr in writing, demonstrate that the written reasons were merely a “pretext”. The true reason, the “primary reason”, for his non renewal was his absence from school as the result of a compensable work-related injury. See page 112 of Mr. Carr’s memorandum.

The process utilized by the Pawtucket School Department in this case has undermined the teacher tenure act. Mr. Carr was not evaluated at any time during his third probationary year and was not provided during that year, or even the previous year⁴, with written notice of any deficiencies. He clearly was not provided with timely, written feedback sufficient to give him a fair opportunity to improve his performance. Furthermore, the Principal has conceded that she determined what her recommendation was going to be with respect to Mr. Carr’s nonrenewal by mid-November of 2005. Thus, had she evaluated him that year, it would have been only because such an evaluation was required of her; it would not have been relevant to her tenure recommendation. Counsel argues that this was not a meaningful and fair evaluation process. It is yet another example of the arbitrary treatment Mr. Carr received.

Finally, it is submitted that Mr. Carr’s nonrenewal effectively deprived him of the right to return to his original position once his medical condition improved to the point that he could work again. Under the collective bargaining agreement, a teacher on workers’ compensation is entitled to “return to his original position” (Article VIII, Section 16), but in this case Mr. Carr’s contract was nonrenewed while he was disabled due to an on the job injury. The nonrenewal of his contract during the period of his eligibility for workers’ compensation protections so limited his right to return to his position that it effectively “destroyed” that entitlement. Because he must make all appeals with respect to the legality of his nonrenewal before the Commissioner, he is not able to seek a remedy for a violation of the contract through the grievance and arbitration process. The explicit remedial provisions of the General Laws prevail in the absence of any specific language in the contract which would enable him to grieve his nonrenewal. Thus, Mr. Carr argues, the Commissioner should accept jurisdiction over this issue and enforce the contract’s provision. Enforcement of this provision would require his nonrenewal to be invalidated.

⁴ He was found to have “met the standard” in all evaluated areas during school year 2004-2005.

For all of the foregoing reasons, the Appellant John Carr requests that the Commissioner overturn the decision of the Pawtucket School Committee to nonrenew his contract.⁵

Pawtucket School Committee

Traditionally, under state law, a nontenured teacher is entitled to a statement of reasons for his/her nonrenewal and a hearing which, according to the ruling of our Supreme Court in *Jacob v. Board of Regents for Education*, 365 A.2d 430 (R.I. 1976) provides an opportunity for the teacher to demonstrate that the reasons described for his/her nonrenewal are based on a mistake or that there exists another, impermissible reason for the nonrenewal decision. The school committee has no burden of proof to demonstrate that there is “good and just cause” for its decision. Counsel for the Committee notes the formidable burden encountered by a nontenured teacher who seeks to challenge his nonrenewal on the basis of a good-faith belief that a better teacher may be available. As set forth in the case of *Kagan v. Bristol-Warren Regional School Committee*⁶ the decision of the School Committee on such a basis is made for a valid reason and is presumed to have a factual basis. The nonrenewed teacher must prove that there is no better teacher available anywhere to fill the position.

Counsel for the School Committee submits that Mr. Carr has not met this heavy evidentiary burden. He has not shown that a better teacher was not available. The existence of the Superintendent’s good faith belief that a better teacher than John Carr would be available to teach English at Slater Junior High School continues after an objective assessment of all of the evidence in this matter. In fact, his good faith belief has been substantiated by evidence that he relied on the recommendation of Principal Meredith Caswell, and that her assessment supports the conclusion not only that a better teacher would be available, but that Mr. Carr had serious performance issues, particularly in the area of classroom management.

In the memorandum submitted on the School Committee’s behalf, the performance history of Mr. Carr is reviewed in great detail, with particular emphasis on how both the Principal and Assistant Principal Joseph Fleming attempted to provide Mr. Carr with feedback on the deficiencies in his performance and help him to improve, both in his delivery of the curriculum and in his classroom management skills. Although both administrators testified that they saw improvement in his second year at Slater, they were consistent in their assessment that after the generally positive evaluation he received on December 20, 2004 his performance deteriorated. It is argued that by the beginning of the 2005-2006 school year, Mr. Carr had become “unable or unwilling to accept direction from Ms. Caswell and Mr. Fleming”. Seeing no improvement by mid-November, Ms. Caswell conferred with Mr. Fleming and they reached a consensus that Mr. Carr should not be recommended for renewal later in the year. Ms. Caswell believed that she had seen enough to make her decision even

⁵ The Appellant does not indicate if he takes the position that the effect of overturning the School Committee’s decision would be to place him in continuous service (tenure) or extend his probationary period for an additional year, given that he taught for only half of his third probationary year.

⁶ Decision of the Board of Regents dated October 12, 1995, affirmed by the Superior Court August 21, 1997 (1997 WL 1526517)

though she had not yet completed a formal evaluation for that year, and notified Mr. Carr of her decision at a meeting on November 17, 2005.

The School Committee points out that Ms. Caswell's assessment was validated by Mr. Carr's performance later on in the year. When he returned on May 1st after an absence of over five (5) months, the same classroom management problems earlier identified persisted and worsened. Evidence of specific incidents in which the students were not in control was submitted by Ms. Caswell and Mr. Fleming and was not contradicted by Mr. Carr. It is clear that the basis for the nonrenewal decision was the desire- in fact the need- to find a better teacher. Although Mr. Carr's extracurricular work is "commendable", the School Committee submits that his ability to perform the primary functions of his job in the classroom was at issue.

Any notion that Mr. Carr's nonrenewal was in retaliation for his extended absence because of a work-related injury is dispelled by the fact that Ms. Caswell's decision was made, and communicated to Mr. Carr, several days before he was injured. While there may be evidence of a dispute which developed toward the end of May of his final year with respect to Mr. Carr's direct communications with individual members of the School Committee about his status, this situation developed well after the School Committee's February 14, 2006 decision not to renew his contract. Neither of these factors influenced the School Committee's vote on the nonrenewal of Mr. Carr's contract.

In summary, the School Committee argues that Mr. Carr has not proven that he was an excellent classroom teacher as he contends he is; he has not rebutted the substantial evidence of deficiencies in his performance that were brought to his attention- both in his formal evaluation and informally throughout his years as a nontenured teacher. He was provided guidance and assistance by Ms. Caswell and Mr. Fleming and sufficient time in which to demonstrate the level of his skills as a teacher. He simply has not met the performance standards that school administrators are looking for in those who are to become tenured teachers in the Pawtucket school system.

DECISION

The record in this matter does not indicate that the Pawtucket School Committee could not find a better teacher than John Carr to fill the English position at Slater Junior High School. This was the burden of proof required of him to overturn the decision of the School Committee presumably made on the basis of a good faith belief that a better teacher was available.⁷ See Kagan v. Bristol Warren Regional School Committee⁸. The Appellant

⁷ The initial decision to nonrenew Mr. Carr's contract was made for several reasons, but the decision was sustained on this single basis when the Committee held its November 13, 2006 hearing in this matter. There is, at least, an initial presumption that the reason stated by the School Committee for its action was the actual reason, although in this appeal Mr. Carr argues that the stated reason was a pretext, a claim which will be analysed later in this decision. See also Tracy v. Scituate School Committee, decision dated March 12, 1984, in which the Commissioner opined that the reason formally stated by a school committee must be "irrebuttably presumed to be the motivating cause for the nonrenewal". This would make it virtually impossible to prove the

struggled in meeting his burden of proof because of the difficulty of proving a negative, i.e. the nonexistence of a better-qualified candidate for the position and because of the uncontradicted evidence in the record that there were recurring shortcomings in his classroom management skills over all three years of his years at Slater. His first-year evaluation notes that Mr. Carr's classroom management skills "appeared to decline" during the third quarter. (S.C.Ex.1) Although it is true that the formal evaluation in Mr. Carr's second year of teaching did not document difficulties with classroom management, the formal evaluation that year was truly just a "snapshot" of his performance and uncontradicted testimony established classroom management problems after his receipt of the formal evaluation up to the end of that year. In his third year of teaching, the adequacy of Mr. Carr's classroom management skills was again an issue both before and after his absence due to a work-related injury. The Appellant's argument that there is insufficient documentation in Mr. Carr's personnel file of deterioration in his classroom management ignores the precedent established in the Kagan case. In Kagan the Superintendent's nonrenewal decision was upheld by the Board of Regents and the Superior Court despite the fact that he made no reference to any information in the Appellants' personnel files- and had no information at all about their performance- prior to formulating his belief that better teachers would be available.

Mr. Carr argues that he had no reason to believe that his performance was anything but excellent once he received his formal evaluation on December 20, 2004- his second year at Slater. His position is that the evaluation process utilized undermined the purposes of the probationary period during which a nontenured teacher should receive feedback, notice of any deficiencies and have opportunity to correct them. This record indicates that Mr. Carr did have notice that his performance was not excellent. His last written evaluation in year two placed his performance in all evaluated areas at the level of "meets the standard". In not one of the areas of assessment was he found to "exceed the standard". The formal evaluative documentation thus does not establish that he was an excellent teacher. The record also indicates that he had informal notice of ongoing deficiencies in classroom management during the second semester of his second year and again at the beginning of his third year. There is credible testimony of both the Principal and Assistant Principal as to their discussions with Mr. Carr and their ongoing efforts to assist him, including providing him with his own classroom in the 2005-2006 school year so that he would not have to travel from room to room during the school day.

While it is true that Mr. Carr was not evaluated during his third year, 2005-2006, the record indicates that Mr. Carr was unexpectedly absent during the entire period when classroom observations are typically scheduled and written evaluations are prepared and shared with the teacher, i.e. during December and January of the year. His absence, albeit because of a job-related injury, prevented the Principal from proceeding with the formal part of the evaluation process that year prior to the deadlines involved. Any noncompliance with a contractual requirement that an evaluation be conducted in each year of a nontenured teacher's employment was, we find, excused by Mr. Carr's unanticipated unavailability in the classroom in order to be formally evaluated.

existence, for example, of a Constitutionally impermissible reason, not likely to have been stated in writing at the time of the teacher's non-renewal.

⁸ Supra.

There is evidence that Principal Caswell short-circuited the required notice period by giving Mr. Carr advance notice on November 17, 2005 of what her recommendation was going to be. We reject Mr. Carr's testimony that the November 17, 2005 discussion never occurred. Given that the Principal's decision was a final one⁹ at that time, it did have the effect of limiting the frame of reference for her decision and would have rendered any formal third-year evaluation irrelevant to the decision-making process.¹⁰ However, under the circumstances in this case we find that the teacher received sufficient informal notice of the specific nature of performance issues throughout an extended period of time and that he had ample opportunity over a period in excess of two years to follow the advice and guidance provided to him. Ms. Caswell's early decision did not unfairly shorten his opportunity to address the problem with his management of his classroom.

To the extent the Appellant is arguing that he was legally entitled to additional time in 2005-2006, and another round of formal evaluation, before Ms. Caswell made up her mind, this argument is rejected. We do not construe the statutory scheme as requiring that the decision on whether the third-year teacher will receive a nonrenewal notice be made at any particular point in the school year except that it must be made "on or before March 1".

Certainly, to the extent that a school district has in place an evaluation system and schedule one would expect that normally it would be utilized to provide those making tenure decisions with as much information as possible. The Appellant argues that the timing of Ms. Caswell's decision and the fact that she had no third-year evaluation prior to making it proves that her decision was arbitrary and capricious. In this case, however, we find that the principal did not act arbitrarily to exclude additional evidence of Mr. Carr's performance as a basis for her final decision. Her conclusion that she had enough evidence of the quality of Mr. Carr's performance at that early point in the 2005-2006 school year was supported by the evidence of an unacceptable decline in his classroom management skills after he was evaluated on December 20, 2004. Despite guidance, Mr. Carr had not demonstrated improvement. This is not a case in which a principal arbitrarily chose to disregard a valid formal evaluation of a teacher or a district sought to distance its tenure decisions from its own evaluation process.¹¹ We do not conclude that the evaluation process or the objectives of the "probationary period" were undermined in this case.

Although Mr. Carr has sought to prove that his nonrenewal was because he missed work while out on workers' compensation, he has not established that it was this reason, rather than the Superintendent's good faith belief that a better qualified teacher might be available. Statements attributed to both the Principal and the Superintendent that Mr. Carr's extended absence due to a work-related injury was the basis for their respective recommendations were simply not proven by a preponderance of the evidence. The reason advanced by the school committee has been substantiated. There is evidence that counsel for the Superintendent sought to raise the issue of Mr. Carr's extended absence on workers' compensation at the November 13, 2006 hearing before the School Committee. There is no

⁹ And her testimony was that she had seen enough of his performance up to that point to make a final decision that she could not recommend Mr. Carr for tenure.

¹⁰ Given the reliance that the Superintendent testified he placed on the Principal's recommendation.

¹¹ See Tanguma v. Providence School Board, decision of the Commissioner dated January 27, 2006.

indication that this information improperly influenced the Committee's decision reaffirming Mr. Carr's nonrenewal, or if it did play a role, that it superceded the valid reason which has been substantiated in this record.

Finally, the contractual provision (Article VIII, Section 16) that entitles a Pawtucket teacher on worker's compensation to return to his/her original position once able to do so has not been violated in this case. Upon Mr. Carr's return to work on May 1, 2006 he immediately resumed his position at Slater Junior School. Mr. Carr's attorney argues that the contract's language should be interpreted to preclude the district from making a decision that would affect the teacher's continuation in his position. This interpretation would conflict with R.I.G.L. 16-13-2 in that it would prevent a district from exercising its statutory right not to renew a nontenured teacher's contract. The teacher's contractual right to return to his original position would become, under the Appellant's construction of the contract, a guarantee of renewal of his annual contract despite the existence of a host of legitimate factors that might support nonrenewal. This construction of Article VIII Section 16 of the collective bargaining agreement is rejected as unreasonable and invalid.

For the foregoing reasons, Mr. Carr's appeal is denied and dismissed.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

March 5, 2008
Date