

State of Rhode Island and
Providence Plantations

Commissioner of Education

Robert Capuano

v.

West Warwick School Committee

DECISION

Held: Mr. Capuano's nonrenewal was based on a valid reason, i.e. the district's belief that it could find a more qualified teacher for the position he held at West Warwick High School. Mr. Capuano has not proven that the district could not find a better qualified teacher for his position. Notice of the reason for his nonrenewal was true and accurate, even though specific deficiencies were cited by both his principal and the superintendent as factors in the recommendations they made with respect to Mr. Capuano's employment.

DATE: December 31, 2009

Travel of the Case

On May 28, 2009 Mr. Robert Capuano initiated an appeal with the Commissioner's office with respect to a decision not to renew his teaching contract that had been issued by the West Warwick School Committee on May 14, 2009. On June 5, 2009 the undersigned hearing officer, designated to hear and decide this appeal, sent an acknowledgement to the parties with a request for an agreed-upon hearing date. The matter was heard by agreement on July 23, 2009 at which time both testimony and exhibits were introduced, including the transcript of Mr. Capuano's hearing before the School Committee. The record in this appeal closed on August 18, 2009 upon receipt of the transcript by the hearing officer.

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

Issue:

Was the decision of the West Warwick School Committee not to renew the teaching contract of Robert Capuano made for a valid reason; did the School committee provide him with a true and accurate notice of the reason for his non-renewal; and does the decision otherwise meet the legal requirements for the nonrenewal of a nontenured teacher?

Findings of Relevant Facts:

- Robert Capuano is certified in special education at the middle/secondary level. During his first year as a teacher in West Warwick (2007-2008), he taught a behaviorally-challenged class of students that had previously been placed out of district. When that program was discontinued in school year 2008-2009, Mr. Capuano was assigned to teach in a collaborative teaching role at West Warwick High School. Tr. pp. 56-58; 94; Appellant's Ex. 1, p.9.
- As part of his teaching assignment in 2008-2009, Mr. Capuano was assigned to teach one resource class and one direct service class of special education students. Tr. p. 57. He was also paired with an English teacher and a math teacher to teach collaborative classes in which he was expected to co-teach in these subjects and to modify curriculum and assignments as needed for special education students. Tr. pp. 57-58.
- In both the English and mathematics classes to which he was assigned, he did not generally perform the duties of a collaborative teacher, and, in particular, failed to modify curriculum, assignments or tests for special education students in those classes. Tr. pp. 18-22; 41-44, 48-50.
- The teachers who were assigned to work with Mr. Capuano in both of his collaborative classes brought their concerns about his failure to co-teach and modify the class work to Principal Wayne Talbot, who in turn discussed these concerns directly with Mr. Capuano. Tr. p. 71.

- Three observations of Mr. Capuano’s teaching performance were made in the course of the evaluation cycle that took place during school year 2008-2009¹. The results of the three observations were then averaged for a final “Teacher Evaluation Report.” On Mr. Capuano’s final evaluation report, he did not meet the standard in four (4) of the (17) indicators. Tr. pp. 60-66: School Committee Ex. 5-8.
- A letter was placed in Mr. Capuano’s personnel file memorializing an incident in which he antagonized a student by pretending to step on his cell phone, after it had been confiscated because the student was using it during class. The student became so upset and angry that he threatened both of the teachers and threw a box of rulers across the room. School Committee Ex. 9.
- On the basis of Mr. Capuano’s performance evaluation, his shortcomings in his role as a collaborative teacher in English and mathematics, and the incident involving the cell phone, Principal Talbot recommended to the Superintendent that Mr. Capuano’s contract not be renewed. Tr. p.80. Superintendent Kenneth Sheehan accepted this recommendation at a meeting in early February, after reviewing Mr. Capuano’s entire personnel file, hearing Mr. Talbot’s reasons and receiving additional input from the district’s Director of Special Education that Mr. Capuano had not fulfilled obligations with respect to the timely filing of students’ Individualized Education Programs. Tr. pp. 92-93; 99-101.
- Superintendent Sheehan notified Mr. Capuano on February 11, 2009 that he would be making a recommendation to the School Committee that his contract not be renewed because of his belief that there were more qualified teachers available for the position. School Committee Ex. 1.
- At its meeting on February 17, 2009 the members of the School Committee voted unanimously not to renew Mr. Capuano’s teaching contract based on the Superintendent’s belief that there were more qualified teachers available for his position. School Committee Ex. 2.
- Following a full hearing on May 11, 2009 held at Mr. Capuano’s request, the West Warwick School Committee voted unanimously to sustain its previous action on the basis that Mr. Capuano had been serving as a non-tenured teacher and “there are more qualified teachers available for his position.” School Committee Ex. 4.

¹ Only one of two required evaluation cycles was conducted during the 2008-2009 school year. There was really no explanation as to why the second required evaluation was not conducted. Tr. pp. 83, 98.

Positions of the Parties:

Appellant Robert Capuano

The Appellant challenges the legality of his nonrenewal on the grounds that he did not receive a statutory notice that meets the requirements of R.I.G.L. 16-13-2. Citing the Commissioner's ruling in the time-tested case of Germani v. Providence School Committee² he argues that the reason provided to him – the district's belief that a better qualified teacher was available for his position- is not consistent with the reasons identified by the Superintendent in his testimony. In response to specific questions posed to him at the time of hearing³, Superintendent Sheehan identified the two factors that prompted him to make the recommendation that he did to the School Committee with respect to Mr. Capuano's non-renewal. Specifically, Mr. Sheehan stated that Mr. Capuano did not do the job that was required of him within the collaborative setting and in his interactions with students he had "exacerbated" rather than "de-escalated" situations that developed within the classroom⁴. These specific reasons were not expressed in any of the notices that had been sent to Mr. Capuano and given the defective notice, his non-renewal should be invalidated.

West Warwick School Committee:

Counsel for the School Committee notes that the Appellant called no witnesses on his own behalf to rebut the presumption that a more qualified teacher for his position could be found. He thus has not met the burden of proof that must be met by a non-tenured teacher who challenges his non-renewal. The Committee also pointed out that the Germani case involved tenured teachers and implicitly argued that although defects in the notice to a tenured teacher may undermine the burden that the School Committee has to establish good and just cause and to establish that adequate notice of such was provided to the teacher, not so in the case of a non-tenured teacher. In non-tenured teacher cases the School Committee had a duty (which it fulfilled) under Jacob v. Board of Regents for Education, 117 R.I. 164 (R.I. 1976) only to listen objectively and to fairly reconsider its original decision. The West Warwick School Committee has provided Mr. Capuano with all of substantive and procedural rights to which he is entitled.

DECISION

It does not appear that Mr. Capuano disputes any of the facts on which the Superintendent based his recommendation that his teaching contract not be renewed. He does, however, assert that from a procedural perspective, Superintendent Sheehan and the West Warwick School Committee were obligated to specify these underlying facts, rather than

² Decision of the Commissioner dated March 30, 1984. All of the teachers in Germani except for one were tenured teachers, but the principle for which the case is cited- accuracy and truthfulness of the reason provided to the teacher- applies to both tenured and non-tenured teachers.

³ See pp. 99-101 of the Transcript of the July 23, 2009 hearing.

⁴ The Superintendent was evidently referring to the cell-phone incident described in the findings of fact.

simply notify Mr. Capuano of their conclusion that a better qualified teacher could be found for the position. We find it implicit in decisions that have confirmed the “desire to find a better qualified teacher”⁵ as a valid reason for non-renewal that such reason is sufficiently specific and that school committees are not required to state the factual underpinnings for this conclusion in the statutory notice provided to the non-renewed teacher. Decisions based on the “availability of a better qualified teacher” have historically been based on facts related to the performance of the individual non-tenured teacher, on superior qualifications of an already-identified candidate, on the caliber of candidates in the applicant pool or based merely on a presumption that there is always a better-qualified teacher available for the position. (See Kagan and McGhee v. Bristol/Warren Regional School Committee⁶). In each of these situations, the conclusion – that a better qualified teacher is available – is a legally – sufficient reason.

In Mr. Capuano’s case the Superintendent testified before the West Warwick School Committee on May 11, 2009 that his recommendation was based on his review of Mr. Capuano’s personnel file and information about the pool of applicants for special education positions with the district. Superintendent Sheehan was entitled to draw upon the knowledge that he gained from this process, as well as other information that had been provided to him about Mr. Capuano’s performance. It was the Superintendent’s option to make his recommendation to the School Committee based on specific facts he knew about Mr. Capuano’s performance or based upon his conclusion that a better qualified teacher would be available to fill this position. He chose the latter. Thus notice of the reason for his recommendation was both truthful and accurate and has been supported by underlying facts as established in the hearing at this level.

Similarly, the School Committee’s notice of the reason for its decision, both before and after the hearing it conducted on May 11, 2009 has not been shown to be untruthful or inaccurate. It is true that at the May 11, 2009 hearing before the West Warwick School Committee some of Mr. Capuano’s specific performance deficiencies became the subject of testimony. This occurred after the Superintendent had testified as to his belief that a teacher better qualified than Mr. Capuano could be secured for his position and after the Appellant raised the issue of his performance in the prepared statement he read to the members of the School Committee. Mr. Capuano stated to the Committee that had he been provided with the complete set of evaluations required under the contract, they would have shown that his performance improved throughout the school year. He requested an additional year to continue this improvement in his teaching. The testimony the School Committee went on to receive that evening does not demonstrate that its reason for non-renewing Mr. Capuano’s contract varied from the reason previously provided in the written notice sent to him, but rather that members of the School Committee sought to ascertain what some of the underlying facts of case were. Members of the School Committee sought to find an explanation as to why Mr. Capuano had received one cycle of evaluation rather than two as required under the collective bargaining

⁵ or as it is sometimes stated, the “belief that a better qualified teacher could be found.”

⁶ 1997 WL 1526517 decision of the Superior Court dated August 21, 1997.

agreement⁷. In the testimony he elicited, counsel for the Administration sought to support the Superintendent's recommendation that Mr. Capuano had called into question. As indicated in the recent decision of Hannon v. West Warwick School Committee⁸ we do not read the decision of the R.I. Supreme Court in the Jacob case as confining the members of the School Committee to the role of good listeners and constraining them from asking relevant questions. Also, even though the hearing provided by a school committee to a non-tenured teacher is not "quasi-judicial in nature" under Jacob, it would be illogical to prohibit the administration's legal counsel from presenting evidence at such a hearing that supports the Superintendent's recommendation when it is challenged.

All of the facts adduced at the School Committee hearing with respect to Mr. Capuano's performance deficiencies and the role they played in the Superintendent's recommendation clearly pertained to the ultimate issue of whether or not the district could find a better qualified teacher for the position he held. There is no evidence that the reason in the formal notice provided to him under the statute was not the true and accurate reason for his non-renewal.

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

For the Commissioner

Kathleen S. Murray
Hearing Officer

Approved:

Deborah A. Gist
Commissioner of Education

Date: December 31, 2009

⁷ This is a contractual issue that is intertwined with the issue of Mr. Capuano's non-renewal. From the record it does not appear that providing Mr. Capuano with a second evaluation cycle during 2008-2009 would have changed either the Superintendent's recommendation or the School Committee's decision in this matter.

⁸ Decision of the Commissioner dated December 4, 2009.