

State of Rhode Island
and
Providence Plantations

Commissioner of
Education

Cece G. Monemou

v.

Providence School Board

DECISION

Held: The nonrenewal of the Appellant's teaching contract was valid, despite the fact that he was not formally evaluated at any time during the school year. The burden of proof required Mr. Monemou to prove that a more qualified teacher could not be found. He did not meet this burden of proof. He did prove that the district failed to conduct a formal evaluation of his teaching performance during his first year as a regular teacher, but despite this, the record does not indicate that his nonrenewal was without a sound factual basis, or otherwise arbitrary, capricious, unfair or discriminatory.

DATE: March 2, 2011

Travel of the Case

On November 30, 2010 counsel for Cece G. Monemou filed an appeal from the decision of the Providence School Board to terminate his employment at the E-Cubed Academy, a small public high school in the city of Providence. The undersigned was assigned to hear this matter, and an acknowledgment of the appeal was forwarded to the parties on December 7, 2010. The matter was heard by agreement on January 5, 2011, at which time both parties presented testimony and documentary evidence. The record closed on February 4, 2011, at which time the hearing officer received closing memoranda.

Jurisdiction to hear this appeal arises under R.I.G.L. 16-13-4 which provides non-tenured teachers whose contracts are non-renewed or those in “continuous service” with a right of appeal to the department of elementary and secondary education.

Issues

Was the decision of the Providence School Board not to renew Mr. Monemou’s contract made for a valid reason?

Was the decision of the Providence School Board mistaken, arbitrary, capricious, or unfair?

Did the fact that Mr. Monemou was not formally evaluated during school year 2009-2010 invalidate the decision not to renew his teaching contract?

Findings of Relevant Facts:

- Cece G. Monemou, who has an extensive background as an educator, was appointed as a regularly-employed teacher of chemistry and physics at E-Cubed Academy in October of 2009. Tr. pp.16-18.
- From the time of his appointment, he had ongoing problems with classroom management that were attributed to both the presence of some disruptive students and to Mr. Monemou’s teaching style, which was lecture-based. Tr. pp. 21, 24, 33, 35-36, 53-55, 65-66, 105-107, 111, 127.
- The principal of the school, Regina Winkfield, and the assistant principal discussed these classroom management issues with Mr. Monemou, and frequently went in to his classroom to help him maintain control. Tr. pp. 53-55.
- Ms. Winkfield also asked the teacher leader of science (Alexander Major) to help Mr. Monemou with his lesson plans and instructional strategies. Mr. Major provided Mr. Monemou with templates for lesson plans, feedback on Mr. Monemou’s own lesson plans, and modeled instruction for him. Tr. pp. 107-110, 120.
- Both Ms. Winkfield and Mr. Major observed Mr. Monemou conducting student labs in chemistry without taking safety precautions, i.e., using goggles and lab coats. They

brought these safety issues to Mr. Monemou's immediate attention. Tr. pp. 44-46; 113-114.

- Mr. Monemou was also found to be conducting experiments without agreements signed by all participating students and their parents. The signed agreements indicated that students had been informed of safety guidelines and agreed to follow them. After being reminded that he needed to obtain lab agreements for all of his chemistry students, Mr. Monemou indicated that was unable to do so. Tr. pp. 60-62; 113-116.
- In spite of the assistance and interventions provided to Mr. Monemou, administrators observed that the effectiveness of his instruction and the level of student engagement did not substantially improve. PSB Ex.2; Tr. pp. 131, 135. In February, forty-seven (47%) per cent of his students were failing overall. Tr. p.72.
- The principal testified that nine (9) graphing calculators (valued at \$100.00 each) were lost by students in Mr. Monemou's class without any report being made.¹ PSB Ex. 1;Tr. pp. 63-64;
- Principal Winkfield e-mailed Dr. Tomas Ramirez, Assistant Superintendent for Human Resources in the Providence School Department, of her concerns with respect to Mr. Monemou on February 15, 2010, and later met with both him and Superintendent Brady to discuss his non-renewal. PSB Ex.1 and 2; Tr. pp. 69, 141-142.
- Pursuant to the collective bargaining agreement in effect between the School Board and the Providence Teacher's Union, non-tenured teachers are to be formally evaluated on an annual basis according to the "Teacher Evaluation Handbook," which was last revised in October of 2003. Joint Ex. A and B.²
- Mr. Monemou had one formal observation on January 26, 2010. His second scheduled observation was canceled due to the fact that when Ms. Winkfield went to his classroom on the date scheduled (February 2, 2010), he was conducting a test. She did not re-schedule the second observation or prepare a written evaluation pursuant to the "Teacher Evaluation Handbook". She explained that she did not do so because in her mind Mr. Monemou had broken Protocol 5 by giving a test on the date mutually agreed upon for his second observation and, based upon other concerns relating to his teaching and classroom management, she had come to the conclusion that he was not good for students and felt that a better teacher was available. She had also decided at that point to pursue Mr. Monemou's non-renewal. Tr. pp.81-85.
- On February 25, 2010, the Providence School Board approved a resolution terminating the Appellant's employment at the end of the 2009-2010 school year because of its desire to find a more qualified teacher, as yet unidentified. PSB Ex. 4.

¹ Mr. Monemou testified that only three (3) graphing calculators were lost and that two (2) were subsequently recovered. Mr. Major's testimony verified the Principal's testimony on this point. Tr. p. 127-129.

² The evaluation system in place in Providence public schools during the 2009-2010 school year did not conform to the Board of Regents "Educator Evaluation System Standards"; however, this is of no import in this dispute because the newly-promulgated standards did not become effective until May 11, 2010.

Positions of the Parties

Appellant Cece G. Monemou

Counsel for the Appellant submits that his employment was summarily terminated and that he was not provided with the benefits of the evaluation process, both in its formal elements and in terms of the helpful feedback it would have provided him. He notes that he did not assume his position as a teacher of chemistry and physics at E-Cubed Academy until after the first semester was well underway, and he immediately sought to adjust his teaching methods³ to the needs of his students. He acknowledges that there were issues with disruptive students, and testified that he actively sought the assistance of the administration in appropriately addressing the behavior problems he faced in his classroom. When it was suggested to him that his teaching style might be a factor, he willingly followed the suggestions of Mr. Major to change the format of his classes.

Other than classroom management issues, principal Regina Winkfield had never raised any performance issues with him, and that is the reason for his being taken by surprise when he received a February 19, 2010 notice that there was a recommendation for the non-renewal of his contract. He claims that the process used was not that in place in his district. Had the evaluation process for non-tenured teachers been followed by the administration at E-Cubed Academy, he would have had two formal observations, a post-observation conference, and a written narrative identifying specific concerns and providing him with helpful feedback and a meaningful opportunity to address performance issues. As it was, without the benefit of the evaluation process, he nonetheless improved his teaching effectiveness to the point at which the percentage of students passing his classes increased from forty-seven (47%) percent in February to sixty-eight (68%) percent by the end of the school year.

Mr. Monemou's counsel points out that simply because he was conducting a test on the day Ms. Winkfield mistakenly thought that a follow-up observation had been agreed to, the principal aborted the evaluation process entirely in violation of Mr. Monemou's rights. In place of the evaluation to be conducted by Ms. Winkfield, the district acted upon reports that had been made to her from Mr. Major, who was not in a position to evaluate the Appellant's teaching performance. As a result, Mr. Monemou did not receive the written evaluation required under the contract, was not accorded the process designed to inform a probationary teacher of issues that needed to be addressed, and was not provided the opportunity to improve.

The Appellant submits that the case of Claire Jacob v. Board of Regents, 365 A.2d 430 (R.I. 1976) is controlling. The R.I. Supreme Court indicated in the Jacob case that the hearing provided to a non-tenured teacher gives him or her the opportunity to convince a

³ Mr. Monemou had extensive experience and utilized different instructional strategies when he taught students in his home country of Guinea.

school committee that the decision not to renew the teacher's contract is mistaken or is based upon a constitutionally impermissible reason for non-retention. Implicitly the Appellant argues that a decision not based on an evaluation cannot be reliable and should be overturned. The record shows that Ms. Winkfield acted abruptly and used information not generated by the evaluation process to terminate his employment even as Mr. Monemou struggled with an especially challenging class. Faced with the Appellant's challenge, she then had to bolster her case with Mr. Major's testimony as to his observations of Mr. Monemou's performance. This flawed procedure resulted in an erroneous decision not to renew his teaching contract. As to a constitutionally-impermissible reason for his non-retention, the Appellant notes that complaints had been made about his foreign demeanor and accent. Although he argues that this is "of concern," (memorandum at page 6) he does not explicitly argue that his foreign ancestry played any role in the district's decision.

The remedy requested is that the Commissioner overturn the School Board's decision not to renew his contract. Mr. Monemou requests that he be given the opportunity to improve his professional skills (as either a regular teacher or a substitute) since this opportunity to improve is required by law.

Providence School Board

Counsel for the School Board describes Mr. Monemou's burden of proof in this appeal: he must prove that the School Board was mistaken in its decision, i.e., that the Board could not find a better teacher if it sought to do so, or that its non-renewal decision was arbitrary and capricious because it was devoid of a factual basis⁴. The district notes that the "desire to find a more qualified teacher" is a reason that has been validated in several decisions of the Commissioner, and explicitly affirmed by the Superior Court in its 1997 decision in Kagan and McGhee v. R.I. Board of Regents.⁵ The School Board thus had a legitimate reason in taking the action that it did. Mr. Monemou has not addressed the concerns that caused Ms. Winkfield to recommend that his contract not be renewed. It is these concerns that make her recommendation, and the School Board's decision, reasonable rather than arbitrary or capricious. Instead, counsel for Mr. Monemou focuses on the principal's failure to complete the evaluation process and argues that this, in and of itself, invalidates the district's decision to terminate him.

The district has several responses to the claim that it failed to conduct an evaluation of Mr. Monemou. First, the reason that Ms. Winkfield did not complete the formal evaluation that she initiated was because Mr. Monemou "attempted to do an end run around the formal evaluation process." (memorandum at page 6) On the date of the second scheduled observation, Mr. Monemou was conducting a test when the principal appeared at his classroom. His claim that he expected a "post observation conference" to precede the second

⁴ Memorandum of the Providence School Board at pages 5-6.

⁵ 1997 R.I. Super.LEXIS 69.

observation by his principal is not credible, given that Protocols 6 and 7 of the Teacher Evaluation Handbook describe only one post-observation conference after two scheduled observations (and this was consistent with Principal Winkfield's practice). If Ms. Winkfield did not follow proper evaluation procedures, her failure to do so constitutes a contractual violation that should have been addressed by the grievance procedure in the contract.

Although an incomplete evaluation process may give rise to a grievance, it does not affect the outcome in this case because Providence administrators had garnered sufficient information on Mr. Monemou's performance outside of the formal evaluation process. There is no precedent that limits a school district to the results of a formal evaluation in making personnel decisions. What is required, however, is that a sufficient factual basis exists to support the decision. In Mr. Monemou's case, even though Ms. Winkfield never completed a formal evaluation, she had the benefit of her own observations, reports from her assistant principal, and the astute observations of the science teacher leader, Mr. Major, in making her recommendation. The conclusion reached by her in mid-February of 2010 was that substantial deficiencies in Mr. Monemou's teaching performance "were evident outside the formal evaluative process".⁶ The district proceeded to introduce evidence of these deficiencies through testimony at the hearing and by Mr. Monemou's own admissions. This evidence substantiates the factual basis that supported both Ms. Winkfield's recommendation and the School Board's decision not to renew Mr. Monemou's contract. This same evidence insulates the School Board's decision from the claim that it was arbitrary, capricious, discriminatory or unfair.

The sole motivation for the Board's decision with respect to Mr. Monemou was to find a more qualified teacher to teach physics and chemistry at E-Cubed Academy. There is no evidence that a discriminatory reason motivated any of the administrators or that they gave improper consideration to Mr. Monemou's national origin in terminating him. For these reasons, the School Board's decision must be sustained.

DECISION

The failure of a school system to utilize the teacher evaluation process it has in place to make retention decisions is of concern. Past decisions involving non-tenured teachers whose non-renewal is based on the desire to find a more qualified teacher have emphasized that there is an expectation that such decisions will take into account information generated during a full and fair evaluation process. See Namerow v. Pawtucket School Committee;⁷

⁶ The School Board did not simply rest on the presumption that there was a factual basis for the non-renewal of Mr. Monemou, but rather submitted proof on the nature and extent of performance deficiencies that supported their conclusion that a teacher more qualified than Mr. Monemou would be available. See the discussion of case law that there is a presumed factual basis for the conclusion that a more qualified teacher is available in appeals involving the non-renewal of a non-tenured teacher at pages 6-9 of the Commissioner's decision in Tanguma v. Providence School Board, January 27, 2006.

⁷ Decision of the Commissioner dated November 9, 1999.

Tanguma v. Providence School Board; ⁸ Carr v. Pawtucket School Committee.⁹ The utilization of an evaluative process provides comprehensive information to those making very important, and sometimes difficult, decisions. It also furnishes feedback to teachers. This feedback is necessary to guide improvement during the formative years of those entering the profession. Use of an established process also prevents unfairness in that it identifies the standards against which a teacher's performance will be measured and how a determination will be made as to whether or not a teacher has met those standards.

We take administrative notice of recently promulgated Board of Regents regulations entitled "Educator Evaluation System Standards,"¹⁰ the stated purpose of which is to "assure the high quality educator evaluation that is at the core of the (district) performance management system". Guided by the Rhode Island Department of Elementary and Secondary Education, statewide efforts to develop a model teacher evaluation system are well underway. The expectation underlying these initiatives is that a comprehensive district educator evaluation system will ensure educator quality within the district and throughout our state. The presumption is that, upon implementation of the evaluation system, annual evaluations will be conducted and will "support meaningful renewal and tenure decisions" (Standard 4 (e)).

Mr. Monemou did not prove that Providence could not find a better teacher to teach chemistry and physics to E-Cubed Academy students.¹¹ However, he did prove that the established evaluation process was not utilized in the decision not to renew his teaching contract. He argues that this is cause to overturn the School Board's decision and reinstate him. Given the heightened importance given to educator evaluations as set forth in the Board of Regents' Educator Evaluation System Standards, further discussion of his argument is warranted.

There are cases in which the failure to utilize the teacher evaluation process could render a non-renewal decision arbitrary and capricious, especially if there is little else in the way of factual support for the decision or there are other indications that the decision was made arbitrarily. Mr. Monemou's appeal does not present one of these cases. This is not a situation in which a principal arbitrarily chose to disregard a valid formal evaluation or a district seeks to distance its decision from its own evaluation process¹². Ms. Winkfield provided a reasonable explanation as to why she did not complete Mr. Monemou's formal evaluation after he was unprepared for her second observation scheduled by mutual agreement for February 2, 2010. Although we cannot agree that she was excused from

⁸ Decision of the Commissioner dated January 27, 2006.

⁹ Decision of the Commissioner dated March 5, 2008.

¹⁰ Effective May 11, 2010

¹¹ This was his burden of proof as a non-tenured teacher whose non-renewal was because of the desire to find a more qualified teacher. See Kagan and McGhee v. Bristol/Warren Regional School Committee, decision of the Board of Regents, October 12, 1995; R.I. Superior Court 1997 WL 1526517.

¹² See Tanguma v. Providence, supra.

completing the evaluation under the circumstances here, her departure from the formal evaluation process does not invalidate the decision that she made.

There was ample information on Mr. Monemou’s performance outside of the formal evaluation process on which Ms. Winkfield relied in making her recommendation to Superintendent Brady in mid-February. Counsel for Providence summarizes these facts in arguing that there was a substantial factual basis for Mr. Monemou’s nonretention. Ms. Winkfield could legitimately take into account facts of which she had already become aware in her role as principal, e.g. Mr. Monemou’s ongoing classroom management problems¹³ and his disregard of protocols in failing to use safety equipment with students participating in chemistry labs. The principal had already become aware of what she viewed as material deficiencies in Mr. Monemou’s performance and felt his non-renewal was warranted prior to conducting a second formal observation. When he was not prepared for the second scheduled observation on February 2, 2010, the principal felt the Appellant was trying to do an “end run” around the evaluation process and so decided to terminate that process and proceed with the information she already had. Even without a formal written evaluation, Mr. Monemou had been made aware of what the specific issues with his teaching performance were. He had also been provided with substantial assistance from Mr. Major, the science teacher leader, to address these deficiencies. The record indicates that, despite these efforts, he met with limited success.

On the record in this matter, we find that the non-renewal decision was not arbitrary, capricious, or otherwise unfair to the Appellant, but in fact was a valid exercise of the School Board’s authority. Our decision should not be construed as supporting a disregard for formal evaluation procedures, and we emphasize the expectation that personnel decisions will have a firm basis in the comprehensive educator evaluation systems currently being developed.

For these reasons, the Providence School Board’s decision is sustained and the appeal is denied and dismissed.

For the Commissioner,

Kathleen S. Murray

March 2, 2011

Date

Deborah A. Gist

¹³ The principal testified that she was frequently present in Mr. Monemou’s classroom trying to work on these issues almost immediately after he was appointed as a regular teacher at E-Cubed Academy in mid-October, 2009.