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ARMED OR AUXILIARY SERVICES UNITED STATES — WORLD WAR II — TEACHER — RETURNED HONORABLY DISCHARGED — DESIRED TO RESUME TEACHING POSITION — BOARD OF EDUCATION — GOOD AND JUST CAUSE TO TERMINATE CONTRACT OF TEACHER EMPLOYED TO TEACH DURING ABSENCE OF SOLDIER WHO WOULD HAVE PERFORMED DUTIES HAD HE NOT BEEN ABSENT IN WAR SERVICE — SECTIONS 4842-10, 4842-12 G.C.

SYLLABUS:

If a teacher employed in the public schools has left his teaching position to serve in the armed or auxiliary services organized to prosecute World War II and has returned honorably discharged from such service and, under authority of Section 4842-10, General Code, desires to resume his teaching position, such condition constitutes good and just cause for the termination by the board of education of the contract of a teacher who has been employed by the board of education to perform the teaching duties which would have been performed by the absent soldier had he not entered such war service, within the meaning of that term as used in Section 4842-12, General Code.

Columbus, Ohio, August 17, 1944

Hon. Robert M. Betz, Prosecuting Attorney
Gallipolis, Ohio

Dear Sir:

I am in receipt of your request for my opinion which reads as follows:

“The Centerville Local Board of Education, this county, has asked me to request your opinion as to the consequences of their granting limited, or continuing, contracts to teachers who are now taking place of teachers in the armed services.

The provisions of G.C. 4842-10 indicate that a teacher in limited service, upon his return, is entitled to resume his contract status held prior to entering military service. However, it is necessary, under the provisions of G.C. 4842-8, to grant the replacement teachers a limited contract of 3, 4 or 5 years. Now, in the event that the soldier-teacher should return before the beginning of the next school year, the Board would be in the embarrassing position of having two teachers under contract for the same teaching position.

Their question is whether or not they have the power to terminate the contract of one of those teachers under the provisions of either General Code 4842-12 or General Code 4842-13."

Under the terms of Section 4842-7 and related sections of the General Code, each board of education is authorized and directed to enter into contracts for the employment of all teachers in the public schools of their respective districts. Dependent upon conditions as to qualifications and experience of the teacher and to some extent upon the recommendation of the superintendent of schools, such contracts may be contracts limited as to time or continuing contracts which are to remain in force and effect until the teacher resigns, elects to retire or is retired pursuant to Section 7896-34, General Code, or until the contract is terminated or suspended as provided by law. Further provision is made by the terms of Section 4842-8, General Code, to the effect that in some cases, particularly in school districts of under 800 pupils and in other districts where the recommendation of the superintendent of schools so provides, limited contracts which may or should be granted are further classified as to the time for which they shall be or may be granted, dependent in some instances on subsequent employment or re-employment of the teacher, as well as the recommendation of his superintendent. In some cases, as you state, the law provides that such limited contracts shall be granted for three, four or five years as the case may be.

Assuming that a teacher is employed under the provisions of law mentioned above, whether on a limited contract or a continuing contract, and while serving under such contract enters the "armed service" of the United States, as the term "armed services" is defined in Section 486-16a of the General Code of Ohio, and later returns from such armed service with an honorable discharge, his contract status would then be governed by the provisions of Section 4842-10, General Code, the pertinent part of which provides as follows:

"Any teacher who leaves a teaching position to serve in the armed services or the auxiliaries thereof organized to prosecute world war II, upon returning honorably discharged from such service, shall resume the contract status held prior to entering military service, subject to passing satisfactorily a physical examination. Such contract status shall be resumed at the first of the school semester or the beginning of the school year following return from the armed services. The term 'armed services' shall be construed according to the definition thereof as provided in

section 486-16a of the General Code.”

From the foregoing it is readily discernable that in case a teacher who might be under contract as such, of whatever kind or type, should leave a teaching position to serve in the armed services of the United States or the auxiliaries thereof organized to prosecute World War II and later returns honorably discharged therefrom it would thereupon become the duty of the board of education who had employed him in the first instance to restore him to the contract status he had held prior to his entering military service providing he satisfactorily passes a physical examination. Under such circumstances the question might arise as to whether there is an obligation on the part of the employing board of education not only to make room among the teacher personnel for the soldier-teacher, but as well to pay the compensation of both the soldier-teacher and the teacher who, at the time of the return of the soldier-teacher, had been engaged to perform the teaching duties which the soldier would have performed had he not been in the service.

Section 4842-12 of the General Code contains the following provisions:

“The contract of a teacher may not be terminated except for gross inefficiency or immorality; for wilful and persistent violations of reasonable regulations of the board of education; *or for other good and just cause.*”

(Emphasis mine.)

For the purpose of this opinion I am assuming that the teacher employed to perform the work of the soldier-teacher was neither grossly inefficient nor grossly immoral and that he has not been guilty of wilful and persistent violation of the reasonable regulations of the board.

The question then remains as to whether, under the circumstances set forth in your request, “other good and just cause” for removal exists. To a consideration of such proposition I shall later revert.

Section 4842-13, General Code, also contains certain provisions with respect to the authority to make reductions in the number of teachers employed. Such section reads:

“When by reason of decreased enrollment of pupils, or by reason of suspension of schools or territorial changes affecting the district, a board of education decides that it will be necessary

to reduce the number of teachers, it shall have full authority to make reasonable reduction. But, in making such reduction, the board shall proceed to suspend contracts in accordance with the recommendation of the superintendent of schools who shall, within each teaching field affected, give preference to teachers on continuing contracts and to teachers who have greater seniority. Teachers, whose continuing contracts are suspended, shall have the right of restoration to continuing service status in the order of seniority of service in the district if and when teaching positions become vacant or are created for which any of such teachers are or become qualified."

It does not seem to me that Section 4842-13 of the General Code is applicable under the circumstances contained in your request. Such section could hardly be construed to grant authority to remove either the returning soldier-teacher or the teacher who has been employed in his stead.

Reverting now to the provisions contained in Section 4842-12, General Code, the question becomes: Does the language therein contained authorize the termination of the contract of the teacher who had been employed by reason of the fact that the former teacher was in the armed services?

When we eliminate the inapplicable language of such section it becomes:

"The contract of a teacher may not be terminated except for * * * other good and just cause."

The word "other" as used in such section patently means a good and just cause other than those just mentioned in the section, namely, gross inefficiency, gross immorality, or wilful and persistent violations of reasonable regulations of the board of education.

The term "good and just cause" has been defined in some of the adjudicated cases. In the case of *Nephew v. Wills*, 298 Mich. 187, the court stated that:

"Under statute prohibiting discharge of employee in classified service except for specified reasons 'or other good cause', 'good cause' includes any ground which is put forward by authorities in good faith which is not arbitrary, irrational, unreasonable or irrelevant to the duties with which such authorities are charged, and is not limited to some form of inefficiency or of misconduct on the part of the person dismissed."

In the case of *Davis v. School Committee of Somerville*, 307 Mass. 305, it was stated that:

“Good cause for dismissal of teacher includes any ground which is put forward by committee in good faith and which is not arbitrary or irrelevant to maintaining an efficient school system.”

In *Cummer, et al. v. Butts*, 40 Mich. 322, the court construed the term “good cause”, as used in the contract authorizing the termination of a contract for “good cause” upon sixty days notice, and held that “any revocation in good faith was sufficient”.

In *Houghton v. School Committee of Somerville*, 306 Mass. 542, it was held that a termination of a teacher’s contract for the reason that she had married in violation of a rule of the board of education to the effect that if a female teacher married such act was tantamount to a resignation, was a termination for “good cause”.

In *Quick v. Southern Churchman, Inc.* 171 Va. 265, the court had occasion to construe the terms “just cause” and “good cause” with respect to the termination of a contract which could be terminated, according to its terms, for good or just cause upon thirty days notice to the employe. The court there said:

“It is obvious that ‘just cause’ or ‘good cause’ is not synonymous with legal cause. The right to cancel exists independently of the contract. One can terminate any contract for legal cause. No extension of time is required after a notice therefor. On the other hand, ‘just cause’ or ‘good cause’ can not be reduced to a legal certainty. To be effective, it must relate to the circumstance relied upon. The grounds upon which it is based must be reasonable, and there should not be an abuse of the conferred right. It must be a fair and honest reason, regulated by a good faith on the part of the party exercising the power. It limits the party to the exercise of good faith, based upon just and fair grounds as distinguished from an arbitrary power. To this extent, it includes causes outside of legal causes.”

It is elemental that a board of education can enter into such contracts only as it has been authorized by law and that the statutes in existence at the time of the entering into the contract are a part of the contract. It is also elemental that under the authority of law to employ teachers granted to boards of education, a board of education has no authority to

employ more teachers than are necessary for the operation of the school. Stating the matter otherwise, a board of education has no authority to employ teachers when there are no schools in which the teachers may be employed.

It would seem, therefore, that Section 4842-10, *supra*, is part and parcel of each teacher's contract. Under authority of such section the board of education must be held to agree that if a teacher, during the life of the contract, enters the armed services, he is excused from performance of the contract during the time he is in such armed service and that the board of education, upon his being honorably discharged, is bound to permit him to resume his teaching duties under the terms of such contract, upon compliance with the conditions precedent therein set forth. On the other hand, such statute being a part of the teacher's contract, the teacher who accepts a contract of employment to a teaching position which has become vacant by reason of the fact that the former teacher had entered the armed services would enter into a contract which may or may not be terminated by the happening of the condition, subsequent, namely, the return of the soldier-teacher.

Such condition, it seems to me, necessarily follows by reason of the fact that such statute is a part of each teacher's contract. It would, therefore, seem to me that under the terms of the statutes above quoted, the return of the absent soldier-teacher constitutes good and just cause for the termination of the teacher's contract who had been employed in lieu of a soldier who is in the armed services, within the meaning of that term as used in Section 4842-12 of the General Code.

Specifically answering your inquiry, it is my opinion that if a teacher employed in the public schools has left his teaching position to serve in the armed or auxiliary services organized to prosecute World War II and has returned honorably discharged from such service and, under authority of Section 4842-10, General Code, desires to resume his teaching position, such condition constitutes good and just cause for the termination by the board of education of the contract of a teacher who has been employed by the board of education to perform the teaching duties which would have been performed by the absent soldier had he not entered such war

service, within the meaning of that term as used in Section 4842-12, General Code.

Respectfully,

THOMAS J. HERBERT

Attorney General