

317

TEACHER—HEARING—WHERE TEACHER TAUGHT FOUR CONSECUTIVE YEARS IN SCHOOL DISTRICT, THEN RESIGNED AND WAS EMPLOYED FOR A YEAR BY ANOTHER BOARD OF EDUCATION—UPON RETURN TO BOARD OF ORIGINAL EMPLOYMENT, UNDER CONTRACT FOR ONE YEAR, SUCH TEACHER WAS NOTIFIED ON OR BEFORE MARCH 31, SERVICES WERE TO BE DISCONTINUED AT THE END OF SCHOOL YEAR—TEACHER NOT ENTITLED TO HEARING BEFORE BOARD AS PROVIDED BY SECTION 4842-8, G. C.

SYLLABUS:

A teacher who has taught in a certain school district for four consecutive years and who resigns his position and is employed for a year by another board of education, then returns to the board which originally employed him and is tendered and accepts a contract for one year, and is notified by said board on or before the 31st day of March of that year that his services are to be discontinued at the end of the school year covered by his contract, is not entitled to a hearing before said board as provided by Section 4842-8 of the General Code.

Columbus, Ohio, June 21, 1945

Hon. Earl Henry, Prosecuting Attorney
Cambridge, Ohio

Dear Sir:

I have before me your communication relative to the right of a teacher to a hearing under Section 4842-12 of the General Code, as a condition to the termination of his employment as a teacher. You have attached to your letter a somewhat extensive synopsis of the history of this teacher's employment and the situation leading up to the order of the board of education upon which he demands the right to a hearing.

Briefly summarized, it appears that B.-M.- was employed as a teacher in the Madison Township Local School District during the school years 1939-1940, 1940-1941, 1941-1942 and 1942-1943.

On March 17, 1943, said teacher filed with the Madison Township Board of Education his resignation in the following words, to wit:

"To the honorable members of the Board of Education, Madison Township:

Please consider my resignation from Winterset school, effective the 30th day of April, 1943.

Respectfully,

(signed) B.-M.-

March 17, 1943."

The above resignation was accepted by the board of education by resolution, which recited that it was accepted "as of April 30, 1943, at which time the position will be vacant." During the following school year, to wit, 1943-1944, the said B.-M.- was employed as a teacher in the Londonderry Township Local School District.

On September 15, 1944, the county superintendent made the following recommendation to the Madison Township Board of Education:

"By virtue of Senate Bill No. 99, I hereby nominate the following teacher for the upper room of the Antrim School for the school year 1944-45: B.-M.-."

Thereafter, said Madison Township Board of Education adopted the following motion by a vote of 3 to 2:

“Motion by Caldwell second by Harford to employ B.-M.- as teacher of Antrim grammar room for remainder of school term 1944-45 on condition that Winterset is not closed.”

Pursuant to said employment, B.-M. assumed the duties of teacher of Antrim grammar room and up to the time of your letter was actively engaged in finishing said term as said teacher.

In March, 1945, said board of education served upon said B.-M.- the following notice:

“At the last meeting of the Madison Rural Board of Education, the clerk was authorized to notify you of the following motion which was made and passed.

The position now filled by B.-M.- be declared vacant and the service of B.-M.- be discontinued at the close of the 1944-1945 school term.

Howard Caldwell

Clerk.”

In response to said notice, said board of education received the following communication from said B.-M.-:

“Lore City, Ohio
April 2, 1945

To the Board of Education,
Madison Rural School District,
Rt. No. 1, Winterset, Ohio.
Attention: Howard Caldwell, Clerk

In accordance with Sec. 4842-12 of the General Code of Ohio I hereby demand an opportunity to appear before your board and offer reasons against the termination of my contract as teacher in the above named school district.

I further request that the hearing be public and that the Board of Education shall provide for a complete stenographic record of the proceedings and a copy of such record be furnished to me.

Respectfully submitted,

B.-M.-.”

It will be observed that the action taken by the board as embodied in its notice of March, 1945, to the teacher in question, appeared to contemplate nothing except that the position which he held was to become vacant and that his services would be discontinued at the close of the 1944-1945 school term. There is nothing in this notice that gives evidence of any intention on the part of the board of canceling his contract during that school year. It is true that it is stated that "the position now filled by B.-M.- be declared vacant" but this language is coupled with the further declaration that the services of said teacher "be discontinued at the close of the 1944-1945 school term." As these two declarations are connected and without punctuation separating them, the notice can only be construed as a declaration of the board's intention that he was not to be re-employed. The fact, however, that he now demands a hearing before the board and an opportunity to "offer reasons against the termination of my contract as teacher in the above named school district," raises the implication that he considers that he has a longer tenure than the year 1944-1945. I assume that he predicates his demand on the theory that he now has a continuing contract and that the board is undertaking to terminate it in violation of his rights. This leads to an examination of the statutes relative to a continuing contract between a board of education and a teacher.

Section 4842-7, General Code being part of the new school code adopted by the 95th General Assembly and effective September 16, 1943, provides that contracts for the employment of teachers shall be of two types: limited contracts and continuing contracts. A limited contract is defined as one which shall be for a term of not to exceed four years. A continuing contract is one which shall remain in full force and effect until the teacher resigns, elects to retire, or is retired pursuant to Section 7896-34 of the General Code (teachers' retirement system) or until it is terminated or suspended as provided by law.

Section 4842-8, General Code, reads as follows:

"Teachers eligible for continuing service status in any school district shall be those teachers qualified as to certification who within the last five years have taught for at least three years in the district, and those teachers who, having attained continuing contract status elsewhere, have served two years in the district, but the board of education, upon the superintendent's recommen-

dations, may at the time of employment or at any time within such two-year period declare any of the latter teachers eligible.

Upon the recommendation of the superintendent of schools that a teacher eligible for continuing service status be re-employed, a continuing contract shall be entered into between a board of education and such teacher unless the board by a three-fourths vote of its full membership rejects the superintendent's recommendation. However, the superintendent may recommend re-employment of such teacher, if continuing service status has not previously been attained elsewhere, under a limited contract for not to exceed two years but upon subsequent re-employment only a continuing contract may be entered into.

Provided, however, that on or before September 1, 1941, a continuing contract shall be entered into by each board of education with each teacher holding a professional, permanent or life certificate who, at the time of the passage of this act, is completing five or more consecutive years of employment by said board.

A limited contract may be entered into by each board of education with each teacher who has not been in the employ of the board for at least three years and shall be entered into, regardless of length of previous employment, with each teacher employed by the board who holds a provisional or temporary certificate.

Any teacher employed under a limited contract and ineligible for a continuing contract shall at the expiration of such limited contract be deemed re-employed under the provisions of this act for the succeeding school year at the same salary plus any increment provided by the salary schedule unless the employing board shall give such teacher written notice on or before the thirty-first day of March of its intention not to re-employ him. Such teacher shall be presumed to have accepted such employment unless he shall notify the board of education in writing to the contrary on or before the first day of May, and a contract for succeeding school year shall be executed accordingly. Provided, however, that in school districts of under eight hundred pupils, the following contract system shall control:

- a. Beginning teachers, who have not previously been employed as a teacher in any school shall be hired for one year.
- b. New teachers, who have had at least one year's experience as teachers in other schools, shall be employed for a period of time commensurate with their past experience at the discretion of the hiring board of education, provided that no such contract shall be for more than five years.
- c. Upon re-employment after the termination of the first contract, the new contract shall be for not less than two years nor

more than five years provided that the teacher's educational qualifications have been fulfilled and the teacher's work has been satisfactory.

d. Upon re-employment after the termination of the second contract, the teacher's contract shall be for five years and subsequent renewal thereof shall be for five year periods, or the board of education may at any time grant a continuing contract."

Your letter makes reference to the second proviso contained in the section above quoted, relating to a contract system which is to control in school districts of under 800 pupils, from which I assume that the school district in question falls within that classification. That proviso in so far as it relates to "beginning teachers" clearly could not apply to the teacher in question. If he is to be regarded as a "new teacher" as defined in paragraph (b), he would certainly not thereby have any basis for a claim to a continuing contract as a matter of right, since the statute expressly provides that a "new teacher" is to be given a contract for a limited period "at the discretion of the hiring board." I do not consider that the rights of the teacher in question turn upon his status as falling within either of those classes. It has been held by this office that the provisions contained in said Section 4842-8, relative to school districts of under 800 pupils, relate only to beginning teachers and new teachers as therein defined, and that the earlier provisions of said section apply to all teachers, regardless of the size of the district, who have the qualifications that make them eligible for continuing contract status. See 1942 Opinions Attorney General, page 368. See also *State ex rel. Bishop v. Board of Education*, 139 O. S., page 427.

It seems evident from the factual statement which I have given above that the teacher in question having served as a teacher in Madison Township Local School District for four consecutive years had attained to a "continuing service status" under the first paragraph of Section 4842-8 supra, and that upon the recommendation of the superintendent of schools (the county superintendent) that he be "re-employed," the board would have been obliged to enter into a continuing contract with him unless by a three-fourths vote of its full membership it rejected the superintendent's recommendation. The teacher, however, at this point tendered his resignation effective April 30, 1943, which presumably was the close of the school year then current, and his resignation was accepted by the board.

He thereby clearly waived and relinquished his eligibility for a continuing contract, and accepted employment elsewhere. It appears to me that he put himself very much in the position of relator in the case of State, ex rel., Ford v. Board of Education, reported in 141 O. S., page 124, where the court held:

“A certificated public school teacher, having been employed by a school board for more than five consecutive years, who, after the effective date of the Ohio Teachers’ Tenure Act in 1941, voluntarily accepted a contract for the balance of the school year and at about the same time tendered her resignation operative at the close of such year, which resignation was accepted, is concluded thereby and is not thereafter entitled to a writ of mandamus directing such board of education to issue her a continuing contract under the first proviso of Section 7690-2, General Code.”

In the course of the opinion in this case Judge Zimmerman, speaking for the court said:

“When relatrix accepted without protest the limited contract of September 29, 1941, and likewise tendered her resignation, she covenanted with the respondent board that her services as a teacher would finally end, so far as the board was concerned, on June 20, 1942, and she should be bound by such conduct.

Instead of demanding a continuing contract and standing on such demand, relatrix deliberately pursued another course, the effect of which was to relieve the board of education from tendering the continuing contract provided by statute.”

That was a case where under the terms of Section 4842-8 supra, particularly the third paragraph thereof, she would have been entitled to a continuing contract without any recommendation of the superintendent or any consent of the board, but the court held that her action in tendering her resignation and accepting a limited contract amounted to a complete waiver of her rights.

In the case which we have under consideration, there was no absolute right to a continuing contract merely because B.-M.- had served for at least three years of the last five in Madison Township District. The right to a contract would only arise if he were recommended by the superintendent and the board of education did not reject the recommendation by a three-fourths vote. As a matter of fact, the year following his resignation he was recommended by the superintendent for a short term contract for

the school year 1944-1945 then about to begin, and was employed by the board for the remainder of the school year 1944-1945, on condition that "Winterset is not closed." The fact that he entered upon his duties pursuant to such employment shows an acceptance on his part of the contract which was tendered.

Another point that should be observed in this connection is that the statute giving this authority to the superintendent which is binding upon the board unless overruled by three-fourths of its entire membership, speaks not of "employment" but of "re-employment", and "re-employment" as the word is used repeatedly in said Section 4842-8 appears to have reference to the continuation of a teacher in a position which he already holds. Several times the word is used, with the added phrase, "after the termination of the first contract," or words of like effect. After B.-M.- had gone into another district and later returned to Madison Township, he was quite properly recommended by the superintendent not for "re-employment" but for "employment."

His present demand for a hearing before the board and an opportunity to present reasons against the termination of his contract shows that he claims to be serving under an entirely different type of contract from that which the board made for him and which he accepted. I am unable to see any basis for such claim. Even if he had been entitled to a continuing contract when he returned to Madison Township after having resigned and having been absent for one year, the simple fact remains that he did not receive a continuing contract but was granted and accepted a one year contract. If he was entitled to a continuing contract, and the board refused to give it to him, his remedy obviously would have been an action in mandamus to compel the board to give him the continuing contract.

Section 4842-12 relates to the procedure by a board of education which desires to terminate a contract which it has entered into with a teacher. This section lists certain causes and provides for a written notice to be served on the teacher with the specification of the grounds for such termination. It further provides that upon the demand of the teacher he may have a hearing before the board and an appeal from its final action to the Common Pleas Court. The whole section necessarily contemplates that there is an attempt by the board to interrupt and break off the contract

before its time of expiration. The section certainly was never intended to apply to a situation such as the one here presented, where the board simply notified the teacher that on termination of his contract his services would no longer be required.

In the light of the foregoing, it is my opinion that B.-M.- is not entitled to claim the right to a hearing before the Board of Education of Madison Township School District.

Respectfully,

HUGH S. JENKINS

Attorney General