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1. TEACHER CONTINUING CONTRACT—STATUS IN ELEMENTARY TEACHING FIELD—MAY OBTAIN LEAVE OF ABSENCE—EXPIRATION OF LEAVE—SHALL RESUME CONTRACT STATUS HELD PRIOR TO LEAVE INCLUDING SENIORITY CREDIT.
2. REDUCTION IN NUMBER OF ELEMENTARY TEACHERS IN SCHOOL DISTRICT—CONTRACTS SUSPENDED IN ACCORDANCE WITH RECOMMENDATION OF SUPERINTENDENT OF SCHOOLS—PREFERENCE TO TEACHERS WHO HAVE CONTINUING CONTRACTS AND GREATER SENIORITY.
3. ELEMENTARY TEACHERS' CERTIFICATES VALID FOR TEACHING ANY AND ALL SUBJECTS IN GRADES ONE TO EIGHT INCLUSIVE—SEPARATE TEACHING FIELDS IN SUCH GRADES NOT RECOGNIZED—SECTIONS 4842-10, 4842-13, 4857-1 G. C.

## SYLLABUS:

1. A teacher having a continuing contract status in the elementary teaching field may, under the provision of Section 4842-10, General Code, obtain a leave of absence, and upon return to teaching service at the expiration of such leave, shall resume the contract status which he held prior to such leave, including his seniority credit.

2. When it becomes necessary to reduce the number of elementary teachers in a school district, as provided in Section 4842-13, General Code, a board of education in making such reduction shall proceed to suspend contracts in accordance with the recommendation of the superintendent of schools, who shall give preference to the teachers having continuing contracts and to teachers who have greater seniority.

3. Under the provisions of Section 4857-1, General Code, elementary teachers' certificates are valid for teaching any and all subjects in grades one to eight inclusive, and the law does not recognize any separate teaching fields in such grades.

Columbus, Ohio, September 3, 1952

Hon. Forrest D. Pfalzgraf, Prosecuting Attorney  
Monroe County, Woodsfield, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

“There are four elementary public school teachers claiming to have the legal right to be employed as public school teachers for the school year 1952-1953 in G. Local School District.

“Teacher ‘P’, a man, has a life elementary certificate with 115 semester hours college credit, 34 years of teaching experience in the elementary grades and all in G. Local School District.

“Teacher ‘K’, a man, has an eight year elementary professional certificate with 107 semester hours college credit, 27 years of teaching experience in the elementary grades, and all in G. Local School District.

“Teacher ‘C’, a man, has a life elementary certificate with 107 semester hours college credit, 32 years of teaching experience in the elementary grades, and all in G. Local School District. The last two school years (1950-1951, 1951-1952) Mr. C. was employed and taught in said district as a Veterans Administration Farm teacher, but said Veterans teaching has now terminated.

“Teacher ‘E’, a lady, has a life elementary certificate with 82 semester hours college credit, 26 years of teaching experience in the elementary grades, and all in G. Local School District. Three years (1914-1917) outside of district but in the county, 1 year (1924-1925) outside of district but in county, 1 year (1925-1926) in another district and outside of county, and did not teach (1917-1924).

“All of the above named four teachers have a continuing contract with the above named board of education. And in the entire school district for the school year (1952-1953) there will only be need for three elementary teachers. And all the above named teachers have taught in the above named school district in a school or schools which had all the grades.

“For the school year 1951-1952, teacher ‘P’ taught the third, fourth and fifth grades; teacher ‘K’ taught the sixth, seventh and eighth grades, and teacher ‘E’ taught the first and second grades.

“Teacher ‘E’ taught in grades one and two in above named school district for the past twenty consecutive years. However, from the Fall of the year 1931 and through the first half of the year 1939, ‘E’ taught grades one to four, inclusive; and from the Fall of the year 1939, including the first half of the year 1952 ‘E’ taught only grades one and two, inclusive.

“The questions which I desire to submit are as follows:

“1. Did Teacher ‘C’ lose his seniority in the elementary teaching field by the teaching of adults in the Veterans Administration Farm Program?

“2. Specifically, which of the four teachers enumerated above is the Superintendent of schools legally compelled to give preference in making his recommendation to the board as provided in Section 4842-13 of the General Code, and the board obligated to employ?

“3. And in order for administrative guidance, I would appreciate a ruling as to whether or not there can be several teaching fields in the teaching of elementary grades?”

It is evident from the facts given as to the four teachers that your question turns mainly on the status of “C”, who, if given credit for his thirty-two years of teaching, is plainly one of the three who has the largest number of teaching years to his credit unless he has lost his seniority by having engaged in other service than public school teaching during the last two years. In other words, from your statement it appears that “P” has thirty-four years of teaching experience, “K” has twenty-seven years, “C” thirty-two years and “E” twenty-six years.

Your letter does not make it entirely clear whether “C” has thirty-two years, independent of the two years during which he taught as a Veterans Administration Farm teacher. However, it would make no difference as to his comparative standing whether that two years is included in or is in addition to the thirty-two years of teaching. As I see it, the real question resolves itself into this: Did “C”, by dropping out of his school for two years, and serving in the Veterans Administration, lose his seniority credit which he had accumulated?

Your letter does not state the procedure by which “C” was released from his regular service in the school to do the teaching service for the Veterans Administration, but since it is clear that he is regarded as being back in the public school and as still having his continuing contract status, I must assume that he did not resign as a teacher but took a leave of absence of some sort. Resignation would completely terminate his right to a continuing contract. This is evident from a reading of Section 4842-7, General Code, which provides in part:

“\* \* \* A continuing contract shall be a contract 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, or until it is terminated or suspended as provided by law, and shall be granted only to teachers holding professional permanent or life certificates. \* \* \*” (Emphasis added.)

A procedure for obtaining a leave of absence is set out in Section 4842-10, General Code, which reads in part as follows:

“Upon the written request of a teacher, a board of education may grant a leave of absence for a period of not more than

two consecutive school years for educational or professional or other purposes, and shall grant such leave where illness or other disability is the reason for the request. Upon subsequent request, such leave may be renewed by the board. \* \* \* Upon the return to service of a teacher at the expiration of a leave of absence, he shall *resume the contract status which he held prior to such leave.* \* \* \* (Emphasis added.)

I am informed by the State Department of Education that teaching service for the Veterans Administration, such as is referred to in your letter, is usually provided by contract with the school district in which such service is provided, and the action of the board of education in releasing a teacher for that work would amount to a grant of leave of absence, as effectively as if granted strictly under the procedure indicated by Section 4842-10, *supra*.

I conclude, therefore, that "C", notwithstanding his absence from teaching in the public schools for two years, is now back in the service as a teacher, and is entitled to whatever credit he may have earned by way of seniority, based on years of service. Section 4842-13, General Code, reads as follows:

"When by reason of decreased enrollment of pupils, return to duty of regular teachers after leaves of absence, 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." (Emphasis added.)

"Seniority" as used in this statute and others relating to public service, is not defined. The general meaning of the term is stated in Webster's New International Dictionary, as follows:

"The status secured by length of service for a company to which certain rights, such as promotion, attach."

I do not deem it necessary for the purpose of this opinion, to define "seniority" more exactly. If we consider that "C" had thirty-two years

of service credit, either including or excluding two years with the Veterans Administration, he still has more service credit than teacher "E", who has only twenty-six years service credit.

Accordingly, I am of the opinion that in the case you present the three teachers who are entitled to be retained, applying the rule laid down in Section 4842-13 *supra*, are teachers "P", "K" and "C", unless the provision of that section in reference to "teaching fields" requires a different conclusion. In other words, does the statute contemplate or require the establishment in elementary schools of departmental teaching or "teaching fields," occupied by specially trained teachers? An examination of the statutes relative to certification of teachers negatives such a proposition. Section 4857-1, General Code, provides in part:

"Teacher's(s') certificates of statewide validity shall be issued pursuant to law or in accordance with standards, rules and regulations authorized by law. The grades of certificates shall be designed as temporary certificates, provisional certificates, professional certificates, permanent certificates. Each of such grades of certificates may be issued in each or any of the following types:

"(1) Kindergarten-primary, valid for teaching in kindergarten, first, second and third grades.

"(2) Elementary, valid for teaching *in grades one to eight inclusive*.

"(3) High school, valid for teaching the *subjects named therein* in grades seven to twelve, inclusive. \* \* \*"

(Emphasis added.)

It is evident from a reading of this section that the statute does not prescribe separate teaching fields in the elementary grades. A certificate for elementary teachers as stated in the statute is valid for teaching in grades one to eight, and no suggestion is made of different fields which the teacher may enter in teaching the elementary grades. There is a striking difference in this respect, from the provisions as to high school certification. There, the certificate is limited to "teaching the subjects named therein."

It is obvious that a teacher who is certified for elementary teaching may be assigned to teaching any or all of the subjects which might be in the prescribed curriculum for the elementary grades. Accordingly, the discretion which appears to be lodged in the superintendent by Section 4842-13, *supra*, in considering seniority "within each teaching field," has no application to elementary schools.

Specifically answering your question it is my opinion :

1. A teacher having a continuing contract status in the elementary teaching field may, under the provision of Section 4842-10, General Code, obtain a leave of absence, and upon return to teaching service at the expiration of such leave, shall resume the contract status which he held prior to such leave, including his seniority credit.

2. When it becomes necessary to reduce the number of elementary teachers in a school district, as provided in Section 4842-13, General Code, a board of education in making such reduction shall proceed to suspend contracts in accordance with the recommendation of the superintendent of schools, who shall give preference to the teachers having continuing contracts and to teachers who have greater seniority.

Respectfully,

C. WILLIAM O'NEILL

Attorney General