

978

“NEW TEACHER”—RE-EMPLOYED IN SCHOOL DISTRICT OF UNDER EIGHT HUNDRED PUPILS—CONTRACT IS FOR PERIOD OF AT LEAST TWO YEARS, NOTWITHSTANDING ACTION OF BOARD OF EDUCATION TO ATTEMPT A LIMIT OF ONE YEAR PERIOD—SECTION 4842-8 G. C.

SYLLABUS:

Where pursuant to the provisions of Section 4842-8 of the General Code relative to the re-employment of a “new teacher” in a school district of under eight hundred pupils, the board of education has re-employed such new teacher, his contract is by operation of the law for a period of at least two years notwithstanding the action of the board in attempting to limit it to a period of one year.

Columbus, Ohio, June 1, 1946

Honorable Robert M. Betz, Prosecuting Attorney
Gallipolis, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"On August 29, 1944, The Raccoon Local Board of Education, this county, employed F as a Vocational Agricultural teacher for ten (10) months, contract expiring June 30, 1945. On May 29, 1945, the Board employed F for an additional term of one (1) year, contract expiring June 30, 1946. At a meeting of the Board held on March 26, 1946, it was determined that F would not be re-employed for the coming school year, and he was so notified in writing.

F was a new teacher, as defined by Paragraph (b), Section 4842-8 G. C.

The action of the Board taken on May 29, 1945, by which F was employed for an additional period of one (1) year was based upon the Board's determination that F's work as a teacher had been unsatisfactory. However, this determination was not entered on the minutes of the meeting of the Board held on May 29, 1945.

F claimed that, notwithstanding the action of the Board taken May 29, 1945, by which he was employed for one (1) year, he was entitled to a two (2) year contract, and that his employment cannot be discontinued until the end of the 1946-47 school year. The Board claims that, F accepted employment for one (1) year, and his work not having been satisfactory, his employment terminates June 30, 1946.

I would appreciate it if you will advise me whether or not the action of the Board taken March 26, 1946, is effective to terminate F's employment as a teacher."

Section 4842-8, General Code, contains provisions relative to teachers eligible for continuing service status and also as to those who do not have such status but with whom limited contracts may be made. Said section further provides as follows:

"Any teacher employed under a limited contract shall at the expiration of such limited contract be deemed re-employed under the provisions of this act 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 June, and a contract for the 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."

(Emphasis supplied.)

While your letter does not so state, I am assuming that the district in question is one having less than eight hundred pupils. It will be noted that in such a district a special contract system is to control. "Beginning teachers" who have not previously been employed in any school shall be hired for one year. New teachers who have had at least one year's experience as teachers in other schools are to be employed for such time as the board of education may determine not exceeding five years.

Your letter describes the teacher in question as a "new teacher," from which I would understand that he had had at least one year's experience in other schools. You state that he had been employed by the board in question on August 29, 1944, for a period of ten months, his contract expiring June 30, 1945. Section 4842-7, General Code, defines "year" as applied to the term of service as a teacher, as meaning not less than one hundred and twenty days within a school year. Hence, the original

period of service of the teacher in question was for a "year" within the meaning of the law. His rights thereafter are to be determined by a consideration of paragraph "c" relating to re-employment.

It appears clear that when this teacher's first contract came to a termination there was no obligation resting upon the board of education to re-employ him. Furthermore, as it was held in opinion No. 818, rendered March 20, 1946, the board of education was not under obligation to give him written notice on or before the 31st day of March prior to the expiration of his first contract that it did not intend to re-employ him.

However, it appears from your letter that the board on May 29, 1945, did decide to re-employ this teacher. The question is whether the board can exercise its discretion *to re-employ* a teacher and at the same time limit the term of his employment to a shorter period than that which the law says must be given him "upon re-employment." The statute appears to me to make it perfectly clear that upon re-employment after the termination of the first contract the new contract *shall be* for *not less than two* years. It is true that the language of the statute setting this minimum of two years proceeds with the words: "provided that the teacher's educational qualifications have been fulfilled and *the teacher's work has been satisfactory.*" You state that his work had not been entirely satisfactory to the board. That would have been ample reason for their refusal to re-employ him but in my opinion it furnishes no reason or ground for reducing the term of his employment below the minimum fixed by law. These words of qualification as to the satisfactory character of the teacher's work appear to me merely to give the board a reason and excuse for not re-employing the teacher. If we should consider that they give the board the privilege of cutting the minimum term described by the law, then the provision of the law relative to this minimum would be meaningless.

It is accordingly my opinion, in specific answer to your question, that where pursuant to the provisions of Section 4842-8 of the General Code relative to the re-employment of a "new teacher" in a school district of under eight hundred pupils, the board of education has re-employed such new teacher, his contract is by operation of the law for a period of at least two years notwithstanding the action of the board in attempting to

limit it to a period of one year. I do not consider that the fact that he accepted employment and entered on his work or that his further service was unsatisfactory will have the effect of limiting the term of his contract to one year.

Provision is made in Section 4842-12, General Code, for termination of the contract of a teacher for gross inefficiency or immorality, for willful and persistent violations of the reasonable regulations of the board "or for other good and just cause." If the board considered that it had reasons based upon any of the grounds contemplated by this statute for removing the teacher in question it might proceed under that statute with the filing of charges and a hearing as therein provided.

Respectfully,

HUGH S. JENKINS
Attorney General