

OPINION NO. 72-038

Syllabus:

A teacher who will return from an educational leave of absence and is not yet eligible for continuing service status, is entitled only to limited service status and is not entitled to a contract if the school board, acting upon the superintendent's recommendation, gives him written notification on or before the thirtieth day of April of its intention not to re-employ him.

To: Henry P. Mittelkamp, Putnam County Pros. Atty., Ottawa, Ohio
By: William J. Brown, Attorney General, May 12, 1972

Your request for my opinion, in pertinent part, reads as follows:

"I would like to have your opinion on whether or not one of our local school boards is required to re-hire a teacher in the following situation:

"The teacher in question was employed by the board and taught in the local school for three years while holding a provisional certificate. He was offered, and executed, a one year contract for the 1971-1972 school year. However, he requested a leave of absence for the 1971-1972 school year to complete his master's degree. The board granted the leave of absence.

"This teacher now demands that he be given a contract for the 1972-1973 school year. However, the school board has notified the teacher that it does not intend to re-employ him for the 1972-1973 school year.

"Section 3319.13, Revised Code, provides in part as follows: '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.' The language quoted was cited as authority for the proposition that the board has a mandatory duty to re-hire any teacher who wishes to resume teaching in the same school after his leave of absence has expired, whether or not such teacher had acquired tenure prior to such leave."

I am informed that the teacher in question still holds a provisional certificate, and that he was notified by the school board early in April of its intention not to re-employ him for the school year of 1972-1973.

Section 3319.13, Revised Code, quoted in your question, requires that the teacher, who returns from a leave of absence, resume the contract status which he held prior to his leave of absence. Under Section 3319.08, Revised Code, the contract status of a teacher falls into one or the other of two separate types, limited service and continuing service. That Section reads in relevant part as follows:

"Contracts for the employment of teachers shall be of two types, limited contracts and continuing contracts. A limited contract for a superintendent is a contract for such term as authorized by section 3319.01 of the Revised Code, and for all other teachers for a term not to exceed five years. A continuing contract is a contract which shall remain in effect until the teacher resigns, elects to retire, or is retired pursuant to section 3307.37 of the Revised Code, or until it is terminated or suspended and shall be granted only to teachers holding professional, permanent, or life certificates. This section applies only to contracts entered into after the effective date of this act."

Since this teacher held only a provisional certificate prior to his leave of absence, he is not yet eligible for continuing service status. Hence, he is entitled to resume only limited service status.

But a teacher who is entitled only to limited service status, and is not yet eligible for continuing service, is not entitled to a contract if the school board, acting upon the superintendent's recommendation, gives him written notification on or before the thirtieth day of April of its intention not to re-employ him. Section 3319.11, Revised Code, provides, in pertinent part, as follows:

"Any teacher employed under a limited contract, and not eligible to be considered for a continuing contract, is, at the expiration of such limited contract, deemed, re-employed under the provisions of this section at the same salary plus any increment provided by the salary schedule unless the employing board, acting on the superintendent's recommendation as to whether or not the teacher should be re-employed, gives such

teacher written notice of its intention not to re-employ him on or before the thirtieth day of April. Such teacher is presumed to have accepted such employment unless he notifies the board in writing to the contrary on or before the first day of June, and a written contract for the succeeding school year shall be executed accordingly. The failure of the parties to execute a written contract shall not void the automatic re-employment of such teacher."

(Emphasis added.)

This procedure applies even though the teacher is on leave of absence when the notice that he will not be rehired is given to him. Section 3319.13, supra, gives him the right to resume limited contract status "upon his return to service", but does not, by its terms, give him the right to return to service the next year. Hence, this Section does not imply that the teacher cannot be given notice while he is on a leave of absence.

Even if the teacher were to be given a contract for the 1972-1973 school year, thus making him eligible for continuing service status, he would still not be entitled to demand a contract for the school year of 1973-1974. This would depend initially upon the recommendation of the superintendent, and even that recommendation could be rejected by a three-fourths vote of the full membership of the school board. Section 3319.11, supra, provides in another part:

"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, * * *

"Upon the recommendation of the superintendent that a teacher eligible for continuing service status be re-employed, a continuing contract shall be entered into between the board and such teacher unless the board by a three-fourths vote of its full membership rejects the recommendation of the superintendent. * * *"

In specific answer to your question it is, therefore, my opinion, and you are so advised, that a teacher who will return from an educational leave of absence and is not yet eligible for continuing service status, is entitled only to limited service status and is not entitled to a contract if the school board, acting upon the superintendent's recommendation, gives him written notification on or before the thirtieth day of April of its intention not to re-employ him.