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EDUCATION, BOARD OF — FAILURE TO GIVE TEACHER WRITTEN NOTICE OF INTENTION NOT TO REEMPLOY HIM—WITHIN TIME LIMITED—RESULT—AUTOMATIC REEMPLOYMENT FOR SUCCEEDING YEAR—PROVISO, IF EMPLOYED IN SCHOOL DISTRICT WHERE LESS THAN 800 PUPILS—IN THAT CASE, TERM OF AUTOMATIC REEMPLOYMENT WILL BE FOR MINIMUM PERIOD SPECIFIED FOR REEMPLOYMENT IN DISTRICT — SECTION 4842-8 GC — SECTION 3319.11 RC.

SYLLABUS:

Under the provisions of Section 4842-8, General Code, Section 3319.11, R.C., the failure of the board of education to give to a teacher written notice of its intention not to reemploy him, within the time limited, will result in his automatic reemployment for the succeeding year; unless he is employed in a school district having fewer than 800 pupils, in which case the term of his automatic reemployment will be for the minimum period specified for reemployment in such district.

Columbus, Ohio, September 21, 1953

Hon. Hugh I. Troth, Prosecuting Attorney
Ashland County, Ashland, Ohio

Dear Sir:

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

“If a school board has failed to give the 30 day notice as requested by O. G. C Sec. 4842-8, of their intention not to rehire a teacher, is the new contract period for the next year only, or is he automatically rehired for a three year term like that which just terminated?”

Section 4842-8 of the General Code, in so far as pertinent reads 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 of its intention not to re-employ him or her on or before the thirtieth day of April or thirty days prior to the termination of such teacher’s school year, whichever date occurs the earlier. 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 added.)

It may be noted that a "limited contract" is defined by Section 4842-7, General Code, as being "one for a term not to exceed five years." It may be noted further that as to teachers, generally, there is no minimum term fixed by law for a limited contract with a teacher. The latter part of the section above quoted provides for certain definite terms for teachers in school districts having less than 800 pupils. It will be observed that in these smaller districts, a beginning teacher may be employed for one year; a new teacher for not more than five years; and upon reemployment of either a beginning teacher or a new teacher, the contract must be for not less than two nor more than five years, and upon subsequent reemployment, the teacher's contract must be for five years.

In the first paragraph of Section 4842-8 supra, provision is made for an automatic reemployment in case the board of education fails within the time limited, to give written notice to a teacher of its intention not to reemploy him. And there follows the provision that unless the teacher shall fail to notify the board in writing to the contrary, on or before the first day of June, then he shall be deemed to have accepted such automatic reemployment. Then follow the words, "and a contract for the *succeeding school year* shall be executed accordingly."

This last quoted phrase might appear to lead to the conclusion that this automatic reemployment would require in all cases, a new contract for one year only. But we must not overlook the fact that in the next sentence the statute proceeds, by a proviso, to the effect that in school districts of less than 800 pupils a "different contract system shall control." If the terms set out in this proviso are to be given effect, it appears that the term of the automatic renewal which in the case of teachers generally, would be for only one year, is enlarged in favor of those teachers who have been employed in the smaller districts. In other words, if the situation in question arises as to a "beginning teacher" or a "new teacher" and he is automatically reemployed by reason of the failure of the board to notify him that he is not to be retained, then his reemployment would appear to fall within the terms of paragraph (c) and he would be entitled to a contract for two years. Furthermore, if he has already been reem-

ployed under paragraph (c) then his automatic reemployment would appear to be for a term of five years, as provided in paragraph (d).

The precise question which you have submitted has not, as far as I can find, been presented to the courts, however, the Supreme Court has in several cases dealt with this provision of the statute in question as to automatic reemployment of a teacher. The case of *State ex rel. Rutherford v. Board of Education*, 148 Ohio St., 242, was an action in mandamus to compel the board of education of the city of Barberton to tender the relator a limited contract for the school year 1946-1947. It is stated that the relator had been employed under a limited contract in that school for the year 1945-1946 and that the board had failed to give him notice that he was not to be retained in the manner and within the period set forth in Section 4842-8 supra. The court held as shown by the second syllabus:

“A teacher employed under a limited contract shall automatically be deemed re-employed for the ensuing school year, where his board of education has failed to give him on or before the 31st day of March in the year of his employment a written notice of its intention not to re-employ him for the succeeding year, as permitted by Section 4842-8, General Code, which notice was authorized by a resolution expressing a determination of such intention.”

The statute at that time required notice to be given the teacher on or before the 31st day of March. The court affirmed the judgment of the Court of Appeals granting a writ of mandamus. It will be observed that the relator only asked for a contract for one year, and the court granted his prayer for such one year contract. This was strictly in accordance with the language of the first paragraph of the section under consideration, which stated that a contract for the succeeding school year should be executed. Manifestly, under the circumstances the teacher could not have his contract renewed for a longer term because he was not teaching in a school district having less than 800 pupils, but rather in a school district in a city which had upwards of 25,000 population, and certainly more than 800 pupils.

The court in the course of its opinion had no occasion to consider what would have been the situation if the teacher had been a teacher in one of the smaller districts covered by the proviso. As a matter of fact, at the time of the decision there never had been any judicial determination that the provision as to automatic reemployment applied to these smaller districts.

In the case of *State ex rel. Foster v. Board of Education*, 151 Ohio St., 413, this question of the applicability of this provision of the statute to a district having less than 800 pupils was first raised, and the court held:

“1. Under the provisions of Section 4842-8, General Code, any teacher employed under a limited contract shall at the expiration of such limited contract be deemed re-employed unless the employing board of education shall give such teacher written notice on or before the thirty-first day of March of its intention not to re-employ him.

“2. This requirement as to notice is applicable irrespective of whether a school district has fewer than eight hundred pupils.”

This was also an action in mandamus brought in the Court of Appeals of Perry County, in which the relator showed that he had had two two-year periods in the employ of the respondent board of education, and that on June 8, 1948, he was notified that he would not be reemployed. He alleged that under the provisions of Section 4842-8, General Code, he was automatically re-employed for five years, by reason of the failure of the respondent to give him the required notice on or before March 31st of that year. The question, therefore, was squarely presented to the court, whether this statutory procedure did or did not apply to school districts having fewer than 800 pupils. The court affirmed the order of the Court of Appeals, granting the writ prayed for.

I do not consider that the two decisions above referred to are in any way inconsistent with each other. In the first case, the court apparently took it for granted that the renewal would be for one year, and made the order accordingly. In the second case, the court, while not directly discussing the difference between the larger and smaller districts as affected by the provision for notice, did use language which I believe clearly indicates that the court recognized that there was a difference. At page 415, of the opinion the court said:

“The respondent contends that the lettered paragraphs of the section provide a separate, complete and unrelated plan for the employment of teachers in school districts having fewer than eight hundred pupils.

“A careful study of the quoted language together with the context has convinced this court that these paragraphs are an integral part of the section and relate to the matter of *term* alone.

No mention is made concerning an exception to the earlier unambiguous provision that '*any* teacher employed under a limited contract shall at the expiration of such limited contract be deemed reemployed under the provisions of *this act* * * * unless the employing board shall give such teacher written notice on or before the thirty-first day of March of its intention not to reemploy him.' ”
(Emphasis by the court.)

I feel that I am quite justified in reaching the conclusion that was indicated by these two decisions and holding that in any case in which the teacher is not entitled, if reemployed, to a definite minimum term, his automatic reemployment effected by the statute will be only for the succeeding year, whereas, if under the statute his reemployment is to be for a definite minimum term his automatic reemployment will be for that same term.

Accordingly, it is my opinion and you are advised that under the provisions of Section 4842-8, General Code, Section 3319.11 RC, the failure of the board of education to give to a teacher written notice of its intention not to reemploy him within the time limited, will result in his automatic reemployment for the succeeding year, unless he is employed in a school district having fewer than 800 pupils, in which case the term of his automatic reemployment will be for the minimum period specified for reemployment in such district.

Respectfully,

C. WILLIAM O'NEILL
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