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PRINCIPAL, SUPERVISING—EMPLOYED BY BOARD OF EDUCATION FOR THREE YEAR TERM—SALARY TO BE RECEIVED ENSUING YEAR SHALL BE DETERMINED AND PRINCIPAL ADVISED ON OR BEFORE JULY 1 OF EACH YEAR—BOARD WITHOUT AUTHORITY TO PAY ANY SALARY OR OTHER COMPENSATION FOR THAT YEAR IN EXCESS OF SUCH AMOUNT—EXTRA COMPENSATION MAY BE ALLOWED FOR EXTRA DUTIES FOR SUCH TIME AS THEY ARE REQUIRED.

## SYLLABUS:

A board of education having employed a supervising principal for a three year term, is required on or before the first day of July of each year, to determine and advise such principal of the salary he is to receive during the succeeding school year, and the board is without authority to pay said principal any salary or other compensation for that year in excess of the amount so determined, unless additional duties over and above the regularly appointed duties of such principal are imposed by the board, for which additional duties extra compensation may be allowed, but only for such time as they are required.

Columbus, Ohio, May 13, 1947

Hon. M. J. Cofer, Prosecuting Attorney, Pike County  
Waverly, Ohio

Dear Sir:

You have submitted for my opinion, the following question:

“Can a board of education employ a Supervising Principal for a three year term, at a fixed salary, and before the expiration of two years of the contract, increase the salary for the remainder of the contract period, without assigning the Supervising Principal any additional duties or revising the contract?”

Prior to 1941, boards of education were authorized to appoint teachers for terms of not less than one year nor more than four years. Section 7690-1, General Code then in force, provided that the board should fix the salaries of teachers, which might be “increased but not diminished during the term for which such appointment is made.” It would appear that under the statutes then in effect, the making of a contract of employment with a teacher would carry with it the fixing of a definite salary. It

seems that voluntary raises of salary without the imposition of new duties would under the then existing law, have been within the power of the board. That proposition will be referred to later herein.

The provision above noted authorizing the board to increase but not diminish the salary of a teacher during the term of his contract was a feature of the law for many years, at least as far back as 1873, when a comprehensive school code was enacted (70 O. L., 195).

The General Assembly by an act passed May 15, 1941 (119 O. L., 451), introduced an entirely new feature into the law, concerning the tenure of teachers. In that act, which was codified as Sections 7690-1 to 7690-8, inclusive, General Code, contracts with teachers were divided into limited contracts and continuing contracts, the former being those for definite terms of years, while the latter when granted, were to continue in force until the teacher resigns, elects to retire or is retired under the provisions of the teachers retirement law, or until the teacher is removed by the board pursuant to charges as provided in the law. It is evident that a contract with a teacher whose tenure is thus to be of indefinite duration, could not stipulate in advance the salary the teacher was to receive throughout the duration of his contract. Accordingly, an entirely different system of contracting was introduced and made to apply to all teachers whether on limited or continuing contracts. All of these provisions were carried into the school code of 1943, which was an attempt at codification of all the statutes relating to schools (120 O. L., 475). In order to arrive at the apparent intention of the General Assembly as to the employment of teachers, the fixing of salaries and changes in such salaries, it seems necessary to set forth parts of Sections 4842-7, 4842-8 and 4842-9 of the General Code, as follows:

“Section 4842-7. The board of education of each city, exempted village and local school district shall enter into contracts for the employment of all teachers and shall fix their salaries *which may be increased but not diminished during the term for which the contract is made* except as provided in Section 4842-9 of the General Code. Such boards of education *may include in such contract duties beyond the regular duties and for such additional duties the salary of the teacher may be supplemented*. Such boards of education may discontinue at any time the assignments of special duties beyond the regular classroom teaching duties and *the supplemental salary allowed for such additional duties shall be discontinued upon relief from such additional duties.* \* \* \*

The term 'teacher' as used in this act shall be deemed to mean and include all persons certified to teach and who are employed in the public schools of this state as instructors, principals, supervisors, superintendents or in any other educational position for which the employing board requires certification."

(Emphasis added.)

"Section 4842-8. 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."

"Section 4842-9. Each board of education shall cause notice to be given annually not later than July 1 to each teacher *who holds a contract valid for the succeeding school year*, as to the salary to be paid such teacher during such year. Such salary shall not be lower than the salary paid during the preceding school year *unless such reduction be a part of a uniform plan affecting the entire district. But nothing herein shall prevent increases of salary after the board's annual notice has been given.*"

(Emphasis added.)

It will be noted that Section 4842-7 requires the board of education of each city, exempted village and local school district to "enter into contracts for the employment of all teachers" and "shall fix their salaries, which may be increased but not diminished during the term for which the contract is made except as provided in Section 4842-9 of the General Code." The sentence which follows, relating to a provision for extra duties and for a supplemental salary for such additional duties, was not in the school code originally, but was added by the 96th General Assembly (121 O. L., 623). The importance of this new provision will be referred to later on. Attention is also called to the provisions of Section 4842-8, whereby a teacher who is employed under a limited contract shall at the expiration of the same be "deemed re-employed" at the same salary, plus any increment provided by the "salary schedule," unless the board shall give the teacher written notice on or before March 31, of its intention not to re-employ him. Also, note that "such teacher shall be presumed to have accepted such employment unless he shall notify the board 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.”

The salary schedule referred to here, is provided for in Section 4842-9, wherein it is provided that the board of education shall cause notice to be given not later than July 1st to each teacher *who holds a contract valid for the succeeding school year*, as to the salary to be paid him during such year.

If we will observe the sequence of these several steps, it appears that on or before the 31st day of March, the board must decide whether it will retain a teacher who is holding under a limited contract which is expiring, and give him notice if he is *not* to be re-employed. In the absence of such notice, he is automatically re-employed, and he has until the first day of June to decline. Thereupon, if he does not decline, a contract is to be entered into. Not until the first of July, however, is the board required to decide, and advise the teacher what salary he is to receive. Up to the time of receiving this notice, the teacher may not know just what salary he is to receive. However, he has the assurance by the provisions of the law that he is to receive at least the salary which he received in the preceding year.

Obviously, therefore, the General Assembly did not contemplate that the teacher's contract should in itself contain a definite agreement as to salary. The effect of the contract could be nothing more than an assurance to the teacher that he could continue in service and that he would receive at least his former salary. The question of what he is to receive is left for future determination, not by contract but by the will of the board.

It will be further noted that in accordance with the provisions of Section 4842-9 the salary which the board finally advises the teacher he is to receive, shall not be *lower* than the salary paid during the preceding school year *unless* such reduction is a part of a uniform plan affecting the entire district. This is apparently the exception noted in the language of Section 4842-7, where it is provided that the salary of a teacher may be increased *but not diminished* during his term, except as provided in Section 4842-9.

I deem it a matter of importance that the second sentence of Section 4842-7, *supra*, was not in the school code as originally enacted. As that

section and Section 4842-9 read prior to the amendment, the reiteration of the language giving the board the right to increase salaries after the contract was made, and even after the salary schedule had been promulgated, would leave the impression that the board might grant increases and bonuses without limitation and without requiring any additional services as a consideration therefor.

It appears therefore, that the purpose in adding the authority for granting a supplemental salary for extra services, and providing that such *extra compensation should cease when the extra service was no longer required* could have been nothing else than to curb the power of the board to grant increases in the nature of gratuities. If, therefore, we hold, as I think we must, that the board is without authority to raise the salary of a teacher without imposing new duties, it is still within the power of the board to change the salary from year to year, during the term of a limited contract. For example, if we assume that a teacher who is holding under a limited contract and receiving \$1800 per annum, is advised that he is to be re-employed for three years and a contract is accordingly entered into, the board may adopt a salary schedule fixing his salary for the forthcoming year at \$2,000 and he will receive that salary for that year; on or before July 1st of the next year the board may fix his salary for the coming year at \$2500 and then, before the beginning of his third year may, as a part of a uniform plan affecting the entire district, reduce his salary to \$1800 for the third year.

Increases thus made in full conformity to the law would not be regarded as bonuses or gratuities, but in my opinion, when once fixed and the teacher has been advised thereof, would constitute a legal and enforceable obligation on the part of the board.

This, in my opinion, is as far as the board of education can lawfully go in exercising the authority given by Section 4842-7 supra, to increase the salary of a teacher during the term of his contract. I do not think that the board has authority during the course of any year to raise the salary of a teacher beyond that fixed by its schedule for that year. Such a raise would be a mere gratuity, based upon no consideration, and not within the intent of the law. It appears to me that by necessary implication the authority given by the late amendment of Section 4842-7 to add an extra compensation over and above the regular scheduled salary so

long as extraordinary duties are imposed, marks the limit of the power of the board to grant and pay such additional compensation.

You have called my attention to the case of *Ward v. Board of Education*, 21 O. C. C., 699. This case arose while Section 4017, Revised Statutes, was in force. That section so far as pertinent, read:

“Each board of education shall have the management and control of the public schools of the district with full power to appoint a superintendent and assistant superintendent of the schools, a superintendent of buildings, janitors, and other employes, and fix their salaries, and shall fix the salaries of the teachers, which salaries may be increased but shall not be diminished during the term for which the appointment is made.”

In that case the board of education had employed a superintendent to serve out an unexpired term which had a year and a half to run, at a stipulated salary of \$1800 a year. After serving for about two months, the board by resolution increased the salary of the superintendent to \$2500 a year for the remaining period of his employment, reciting as their reason:

“Whereas, said superintendent, J. I. Ward has shown most remarkable ability in efficiency as superintendent of our public ward schools, and is entitled to more pay for his services; \* \* \*”

The superintendent continued for some time to receive the increase in salary, but before the end of his term was demoted to a teaching position and his salary was reduced to the original sum of \$1800. Thereupon, after serving out his term of employment, having accepted the reduced salary, he sued for the balance which he claimed to be due him under the \$2500 salary figure. The trial court denied his claim to recover, and the circuit court sustained its judgment, holding as shown by the third paragraph of the syllabus:

“Although Rev. Stat. Sec. 4017, authorizes boards of education to increase the salaries of public school teachers during the term for which they are appointed, where a teacher has been appointed for a definite term at a fixed salary, an increase of such salary during such term without a change of duties and with no new contract, will not give such teacher a right of action to recover therefor.”

I do not consider it necessary to go at length into the opinion of the court. I do, however, quote what seems to be a summary of the court's reasoning as found on page 706 of the opinion, as follows:

"The statute conferring the power upon the board of education to promise and pay may be so far valid as to justify the board in paying in pursuance of such promise. But the statute conferring the power does not necessarily impose a correlative duty. We think that promises made by such board are still subject to the ordinary rules as to consideration being necessary to make them obligatory. An individual has the power to make such naked promises, and may legally perform them, but he cannot be compelled to do so. *The statute puts the board on the same footing as the individual or natural person in this respect.*"  
(Emphasis added.)

I have no quarrel with the reasoning of the court in that case in stating that the board of education had the power to make "naked promises" and to perform them having in mind the law as it then stood; but it seems evident that the law now contemplates an entirely different approach to the question of a teacher's contract and his salary, and notwithstanding the similarity of the language of the law as it then stood and the present law relative to increase of salary during the term of the contract, this provision appears to me to have taken on a new meaning and to have required a different application.

Accordingly, and in specific answer to your question it is my opinion that a board of education having employed a supervising principal for a three year term, is required on or before the first day of July of each year, to determine and advise such principal of the salary he is to receive during the succeeding school year, and that the board is without authority to pay said principal any salary or other compensation for that year in excess of the amount so determined, unless additional duties over and above the regularly appointed duties of such principal are imposed by the board, for which additional duties extra compensation may be allowed, but only for such time as they are required.

Respectfully,

HUGH S. JENKINS,  
Attorney General.