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TEACHERS—LIMITED CONTRACTS—MADE WITH BOARDS OF EDUCATION IN DISTRICTS THEREAFTER MERGED—SECTION 4831, 4831-1 G. C.—CONTRACTS BINDING ON BOARD OF EDUCATION OF MERGED DISTRICT—EXCEPTION, WHERE NUMBER OF TEACHERS REDUCED—SECTION 4842-13 G. C.

SYLLABUS:

Where limited contracts with teachers have been made by boards of education in districts which were thereafter merged pursuant to the provisions of Sections 4831 and 4831-1, General Code, such contracts are binding upon the board of education of such merged district, except that in case it becomes necessary by reason of such merger to reduce the number of teachers, such reduction shall be made in the manner set forth in Section 4842-13, General Code.

Columbus, Ohio, April 9, 1951

Hon. Howard G. Eley, Prosecuting Attorney  
Darke County, Greenville, Ohio

Dear Sir:

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

“On July 25, 1950, five school districts of Darke County, Ohio, were merged into one district. Teachers’ contracts were

issued by the original boards of education of the respective districts in May and June of 1950. All districts, prior to the merger, had enrollments of less than 800 pupils, and contracts were issued under paragraphs (a), (b), (c) and (d) of Section 4842-8 General Code. As a result of the merger, enrollment of the newly created district is more than 800 students. Therefore, other portions of Section 4842-8 General Code apply to the teachers' contracts.

"The question is: Can the new board honor the limited contracts issued by the respective boards of education prior to the merger? Since the new board of education did not issue contracts to the teachers of the new district, what is the present contractual status of the teachers for the school year 1951-52?"

The merger to which you refer, of the five school districts into one district, was presumably accomplished under the provisions of Sections 4831 and 4831-1 of the General Code, by action of the county board of education. Section 4831-1 dealing with the creation of a new school district out of parts or all of several districts, provides in part as follows:

"A county board of education may create a new local school district from one or more local school districts or parts thereof, and in so doing shall make an equitable division of the funds and indebtedness between the newly created district and any districts from which any portion of such newly created district is taken.  
\* \* \*"

Of course, there is no opportunity for an equitable division of the funds and indebtedness where whole districts and not parts of districts, are brought together and merged into one district, but manifestly the funds and indebtedness of the several districts involved would be merged and would become the property and the obligation respectively, of the newly created district.

These provisions as to the assumption of the indebtedness of the constituent districts at once suggest that not only direct indebtedness but also any contractual obligations incurred by the several districts which are merged, would immediately become the obligations of the new district. This brings us directly to the question of the position of the board of the new district with reference to outstanding contracts with teachers made by the constituent districts.

Section 4834, General Code, provides in part, as follows:

"The board of education of each school district shall be a

body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, \* \* \*

Section 4842-7, General Code, provides in part:

“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. \* \* \*

The same section divides teachers' contracts into two classes: “limited contracts” and “continuing contracts,” and by the terms of Section 4842-8, General Code, both are defined. I do not consider it necessary to go into detail as to the definition of a continuing contract. Briefly stated, it contemplates a certain period of previous teaching service as well as certain teaching qualifications, and results in an indefinite tenure for the teacher. The limited contract does not require either of these qualifications.

Your letter does not indicate whether or not in adjusting the teaching force to the consolidated district it is necessary to dispense with some of the teachers employed in the former districts. If there is a place in the new district for all of the teachers who have thus been employed and whose contracts still have time to run, it would appear that there is no possible conclusion except that such teachers are entitled to have their contracts respected by the board of the consolidated district. This seems to me to be inherent in the very nature of a contract. In the absence of some provision in the contract itself or some provision of the law under which it is made, a contract between a board of education and a teacher is just as binding as any contract between two individuals.

Where one board of education has succeeded to the property and rights and indebtedness of one or more other boards, it certainly succeeds **also to the obligations of outstanding contracts** made by such other boards, including contracts with teachers. On the assumption, however, that the merger to which you refer may result in a surplus of teachers, a question arises as to what is the duty of the new board and what teachers must suffer if they cannot all be used. Section 4842-13 is intended to meet this situation. That section 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.)

The entire content of this section is predicated on the recognition that the new board is faced with binding contracts made by the boards of the constituent districts. It will be noticed that the task of making the adjustment is placed upon the board, on the recommendation of the superintendent of schools, and that the superintendent is required to consider each teaching field affected and within that field to give preference to teachers having continuing contracts and to teachers who have greater seniority.

There is here an evident intent to give a preference to teachers having continuing contracts over those having limited contracts, but regard must also be had to the provision requiring the superintendent to adapt the preference to “each teaching field,” and it is conceivable that there might be in some field a teacher with only a limited contract, but who was quite essential to that particular field. In any case the matter of seniority is to have a part. It would be impossible to lay down an absolute rule for the government of the superintendent in any given case, because we would not have all the facts before us, and I do not see that your inquiry involves a consideration of that question.

Section 4842-14, General Code, contains provisions relating to the same subject whereby the rights of teachers holding continuing contracts which have been suspended have certain definite rights as to reinstatement. That section reads as follows :

“If an entire school district or that part of a school district which comprises the territory in which a school or schools are situated is transferred to any other district, or if a new school district is created, the teachers in such districts or schools employed on continuing contracts immediately prior to such transfer, or creation shall, subject to the limitations imposed by section 4842-13 of the General Code, have continuing service status in

the newly created district, or in the district to which the territory is transferred.”

There is no specific provision of law so far as I can find defining the exact status of teachers holding limited contracts, or providing specifically for their reinstatement.

There is nothing, however, in either of the sections last quoted that gives the board of education the right to abrogate these contracts and employ other teachers. The power to “suspend” is certainly not equivalent to the power to abrogate or destroy a contract.

Your letter indicates that these districts prior to the merger, had less than 800 pupils, and accordingly the contracts outstanding had been issued under paragraphs a, b, c and d, of Section 4842-8, which section provides a somewhat different basis for the employment of teachers in these small districts from that contemplated in the larger districts. I do not consider that the size and character of these districts has any bearing on the question. My conclusions are based on the simple proposition of the sanctity of a contract and the obligation of the board of education to honor and abide by such contracts except to the extent that the statute authorizes a departure. Of course it is to be understood that a teacher entering into a contract must do so in the light of the law as it existed at the time the contract was made, and must take it subject to such reserved rights as the statute gives to the board making the contract.

The only provision in the law so far as I know, whereby a contract with a teacher may be terminated by a board of education without the consent of the teacher, is that found in Section 4842-12, which provides in part as follows:

“The contract of a teacher may not be terminated except for gross inefficiency or immorality; for wilful and persistent violations of reasonable regulations of the board of education; or for other good and just cause. \* \* \*”

This section further proceeds to outline the steps which the board must take by way of giving opportunity for hearing before such contract may be terminated. In this connection it may be noted that Section 4842-11 provides that no teacher shall be permitted to terminate his contract, except under certain prescribed conditions, without the consent of the board, and a penalty is imposed on a teacher who violates this restriction in that

his teacher's certificate may be suspended for a limited period and he would therefore be deprived of his right to teach.

I note an opinion of my immediate predecessor rendered on December 13, 1950, being No. 2592, holding as follows:

"The board of education of a school district newly created under authority of Section 4831, General Code, is not required, under the provisions of Section 4842-14, General Code, to recognize the validity of the contract of a teacher who is completing the second year of a five-year limited contract theretofore executed by the board of education which was abolished as an incident to the creation of such new district."

The then Attorney General appears to have reached the conclusion that because Section 4842-14 supra, provides only for the preservation of the rights of teachers having a continuing service status and makes no reference to teachers having limited contracts, the status and rights of teachers so employed under limited contracts in schools transferred to a newly created district were not intended by the legislature to be preserved in such new district, and he therefore concluded that the board of education was authorized to disregard their contracts. With that conclusion I am unable to agree, and therefore feel compelled to overrule that opinion.

Accordingly, it is my opinion and you are advised that where limited contracts have been made by boards of education in districts which were thereafter merged pursuant to the provisions of Sections 4831 and 4831-1, General Code, such contracts are binding upon the board of education of such merged district, except that in case it becomes necessary by reason of such merger to reduce the number of teachers, such reduction shall be made in the manner set forth in Section 4842-13, General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General