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1. EDUCATION, BOARD OF—LOCAL SCHOOL DISTRICT—LESS THAN 800 PUPILS—“BEGINNING TEACHER”—“NEW TEACHER”—CONTRACT FOR REEMPLOYMENT—TERMS, ONE, THREE, FIVE YEARS—SECTIONS 4842-8, 7690-2 G. C.
2. CONTRACT TERMINATION THREE YEARS—REEMPLOYMENT MUST BE FOR PERIOD OF FIVE YEARS.
3. TEACHER UNDER CONTRACT, A SUPERVISING PRINCIPAL, MAY BE TRANSFERRED BY BOARD OF EDUCATION AT ANY TIME TO A TEACHING POSITION—NO AUTHORITY TO REDUCE SALARY UNLESS REDUCTION PART OF UNIFORM PLAN AFFECTING ENTIRE DISTRICT—SECTION 4842-9 G. C.

SYLLABUS:

1. Where the board of education of a local school district which contains less than 800 pupils, had employed a “beginning teacher” or a “new teacher,” as defined in Section 4842-8, General Code, for a period of one year beginning July 6, 1942 and ending July 1, 1943, and at the termination of such employment, upon the recommendation of the county superintendent, undertook to reemploy such teacher, the contract of reemployment was required by Section 7690-2, General Code, then in force, to be for not less than three years nor more than five years, and accordingly, said teacher was entitled to hold said contract for a period of three years notwithstanding the contract by its terms was for one year only.

2. At the termination of such period of three years a contract of further reemployment must under the provisions of Section 4842-8, General Code, be for a period of five years.

3. Under the provisions of Section 4842-9, General Code, a teacher with whom a contract has been made and who pursuant to such contract holds the position of supervising principal may be transferred by the board of education at any time to a teaching position, but the board of education would have no authority to reduce the compensation provided for by his contract or by the schedule of salaries theretofore adopted by the board of education unless such reduction was a part of a uniform plan affecting the entire district. (Opinion No. 1099 of July 23, 1946, approved and followed.)

Columbus, Ohio, April 10, 1947

Hon. John S. Phillips, Prosecuting Attorney, Ross County
Chillicothe, Ohio

Dear Sir:

Your request for my opinion reads as follows.

“The board of education of one of the rural school districts in Ross County containing less than 800 pupils employed a supervising principal, whom we shall call ‘A’, for a period of one year, beginning July 6th, 1942 and ending July 1, 1943. On March 1, 1943, upon recommendation of the county superintendent, ‘A’ was reemployed for a 2 year period, beginning July 1, 1943 and ending July 1, 1945. On March 26, 1945, upon further recommendation of the county superintendent, ‘A’ was again employed on a one year’s contract, beginning July 1, 1945 and ending July 1, 1946. On August 20, 1945, without consulting the county superintendent, the board extended this contract for another year, with the intention of having it terminate on July 1, 1947, at a salary of \$2700.00.

Under this fact situation, we were recently called upon to analyze the status of A’s employment with the board in view of the provisions of Section 4842-8 as the same existed and applied on March 1, 1943, the date he entered into the second contract, and came to the conclusion that as ‘A’ was first hired for one year, then his second contract should have been for three years, and that his third should have been for five. In other words, irrespective of the terms of the contracts, A could justifiably maintain that he was now serving the first year of a *five* year contract, at a salary of \$2700.00, being the amount set forth in his last contract.

We would like to inquire, first, if this interpretation were correct, it being our opinion that such a conclusion is warranted by the decision of the court in the case of State, ex rel. Rose v. Board of Education, 74 O. App. 63.

The second phase of our inquiry pertains to a construction of Section 4842-9. The board contemplates transferring A, who

holds the position of supervising principal, but who actually serves as superintendent, to a teaching position. In this event, could the board reduce A's salary to a figure commensurate with the highest paid in the district for that type of position, or would the board be obligated to pay A the salary set forth in his last contract, no uniform reduction plan affecting the entire district being contemplated?"

Referring to your first question, it appears from your statement of facts that the teacher in question had been employed in a rural school district containing less than 800 pupils for a period of one year beginning July 6, 1942 and ending July 1, 1943; that on March 1, 1943, upon the recommendation of the county superintendent he was reemployed for a *two year* period ending July 1, 1945; that on March 26, 1945, upon further recommendation of the county superintendent, he was reemployed on a *one year* contract.

Until September 16, 1943 when the new school code took effect, Section 7690-2, General Code, was in force and relative to the employment of teachers in a district containing less than 800 pupils, contained the following provision:

"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 three 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."

This statute was superseded by Section 4842-8, General Code, which contained substantially identical provisions as to districts of that class,

except that the provision relating to reemployment after the initial period of employment was changed to a minimum of two years instead of three years as in the earlier statute. It would appear, therefore, that the rights of this teacher would be governed by the provisions of Section 7690-2 rather than by those of Section 4842-8, so far as the first reemployment of the teacher in question is concerned, since the former section was in force when that contract was entered into.

It will be observed from a reading of the statute that at the end of the first period of employment, which in the case of a beginning teacher is fixed at one year, and in the case of a new teacher at not exceeding five years, the board of education, *if it decides to reemploy such teacher*, must employ him for not less than three years nor more than five years. At the termination of the original contract of employment the board of education was under no obligation whatsoever to reemploy the teacher in question, nor if the board had decided not to reemploy him was it required to give him any notice of such intention. See Opinion No. 818, rendered March 20, 1946.

Accordingly, when the board in the instant case did decide to reemploy this teacher, it must be held to have done so with knowledge of the law which prescribed the period of the contract which it was authorized to make. Furthermore, the statute would be read into the contract. In legal effect this reemployment contract extended his service to July 1, 1946.

In a further opinion which was rendered June 1, 1946, being No. 978, it was held:

“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.”

The above statement of the law was of course based upon Section 4842-8, which as I have already pointed out, became effective September 16, 1943. The same holding must govern the present case, excepting that the statute in force when this case arose entitled the teacher, if reemployed, to a contract of not less than three years.

The fact that the teacher in question accepted the contract as offered him by the board and entered upon his work will not be held to constitute a waiver of his right which the law gave him, to a contract for three years. This proposition is clearly stated in the case of *State, ex rel. Rose v. Board of Education*, 29 O. O., 104. The decision was by the court of appeals of Gallia county. In that case the two teachers involved, who had taught in the district for one year, were reemployed for one year and entered into contracts accordingly. The court held that under the provisions of Section 7690-2 supra, they were entitled, if the board saw fit to reemploy them, to contracts for three years and their applications for writs of mandamus to that effect were allowed.

Referring to the claim of the board of education in that case, that the acceptance by a teacher of a yearly contract when he was entitled under the law to a minimum of a three year contract, constituted a waiver, the court held:

“The acceptance of employment from year to year is not inconsistent with claiming the benefits of the teachers’ tenure act.” Commenting on this proposition the court said:

“The acceptance of employment from year to year is not inconsistent with claiming the benefits of the tenure act. There has been no abandonment on the part of the teachers of the beneficial statutory provisions provided for them and in no way can the respondent board maintain that it has been misled or prejudiced by the teachers teaching under the only contract of employment the board was willing to grant. The board of education created the condition it now complains of as constituting a waiver on the part of the teacher.”

Your letter states that “on March 26, 1945, upon further recommendation of the county superintendent, ‘A’ was again employed on a one year contract beginning July 1, 1945 and ending July 1, 1946.” In view of the fact that his contract of March 1, 1943 was by reason of the law in effect for three years, this latest action of the board was a mere gesture and of no actual effect. However, you further state that “on August 20, 1945, *without consulting the county superintendent*, the board extended this contract for another year, with the intention of having it terminate on July 1, 1947, at a salary of \$2,700.00.” This statement introduces a number of uncertain factors, and for want of further facts I can hardly undertake to determine the present status of the teacher. I

can only point out the provisions of law which appear to me to supply the answer. I direct attention to Section 4842-6 of the General Code, which provides in part:

“ * * In local school districts, no teacher or principal shall be employed unless nominated therefor by the superintendent of schools of the county school district of which such local school district is a part; provided, however, that, by a majority vote of the full membership of such board, the board of education of any local school district may, after considering two nominations for any position made by the county superintendent, re-employ a person not so nominated for such position.”*

(Emphasis added.)

Whether the superintendent had presented two nominations which the board had considered and rejected, does not appear from your statement, but it seems clear as a matter of law that until that had been done, the board was without authority to reemploy the teacher in question without the recommendation of the superintendent, in which case he is occupying his position without any valid contract. If it should be the fact that the county superintendent had made two nominations to fill the position in question, that the board had declined to employ either of those nominees and had then undertaken to reemploy “A” on a one year contract, their action would have resulted, under the provisions of Section 4842-8, (d) in giving him a contract for five years from July 1, 1946.

Coming to your second question, I note the provisions of Section 4842-9, General Code, which reads as follows:

“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.)

That section was under consideration in my opinion rendered July 23, 1946, being No. 1099. In the situation there under consideration, two school districts had been consolidated and a teacher holding a continuing service status in one of such districts and serving under a five year contract which had not expired, was transferred from a position of supervising principal to a teaching position, and it was held that it was within the

authority of the board to so transfer him, but that his salary as fixed prior to the making of his contract, could not be reduced below the amount so fixed. That opinion, I believe, furnishes a direct answer to your second question, and you are referred to it for a discussion of the underlying principles.

In specific answer to your questions it is my opinion:

1. Where the board of education of a local school district which contains less than 800 pupils, had employed a "beginning teacher" or a "new teacher", as defined in Section 4842-8, General Code, for a period of one year beginning July 6, 1942 and ending July 1, 1943, and at the termination of such employment, upon the recommendation of the county superintendent undertook to reemploy such teacher, the contract of reemployment was required by Section 7690-2, General Code, then in force, to be for not less than three years nor more than five years, and accordingly said teacher was entitled to hold said contract for a period of three years notwithstanding the contract by its terms was for one year only.

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Respectfully,

HUGH S. JENKINS,
Attorney General.