

1099

SCHOOL DISTRICTS—TWO CONSOLIDATED INTO ONE—TEACHER, CONTINUING SERVICE STATUS—FIVE YEAR CONTRACT, UNEXPIRED—MAY BE TRANSFERRED TO LESSER ADMINISTRATIVE POSITION OR TEACHING POSITION—SALARY THERETOFORE FIXED SHALL NOT BE REDUCED.

SYLLABUS:

When two school districts have been consolidated into one, a teacher holding a continuing service status in one of such districts, and serving under a five year contract which has not expired, may at any time be transferred to a lesser administrative position or to a teaching position, provided that his salary theretofore fixed shall not be reduced.

Columbus, Ohio, July 23, 1946

Honorable Forrest E. Sidener, Jr., Prosecuting Attorney
London, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“A question has been raised concerning the authority of a superintendent to recommend the demotion of a teacher and the authority of a board to approve the demotion when the teacher is acting as a high school principal and before his contract expires.

The specific example is as follows: April 29th, two districts were consolidated. Previous to that time one of the district boards concerned in the consolidation rehired a supervising principal for a five-year period. He was notified of the action. The teacher in question, had a continuing contract. According to O. G. C., Section 4842-14, the teacher in question, has continuing status as a teacher in the new school. The only question involved here now appears to be whether or not the teacher in question, may be demoted from his position as principal to that of a teaching job (subject to certification limitations) before the end of the present five-year contract, or will any action to demote be held in abeyance until the end of the five-year term?"

I note from your statement that the supervising principal of one of the schools which has been taken into the consolidated district was under a five year contract prior to the consolidation and has a continuing service status.

Section 4842-14, General Code, would seem to apply to this situation. 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."

It will be observed that the provision of this section is that the teachers employed on continuing contracts immediately prior to the transfer shall have continuing service status in the new district. This does not mean, however, that they are necessarily entitled to the precise position which they occupied prior to the change.

Continuing service status is defined by Section 4842-7, General Code, as meaning merely that a teacher employed under a continuing contract has that status. By the same section, a continuing contract is described as a contract which shall remain in full force until the teacher resigns, elects to retire, or is retired or until it is terminated or suspended as provided by law.

All persons employed in the schools, whether teachers or principals, supervisors, assistant superintendents or as other administrative heads are nevertheless regarded in the law as teachers and they hold their contracts *as teachers* and not otherwise. It is true they may be assigned at the time of their employment or thereafter to some administrative duty or position, but they have no definite tenure in a particular position, their tenure being only as teachers.

Accordingly, it seems to me clear that the teacher specifically referred to in your communication who at the time of the consolidation was under a contract as a supervising principal in one of the districts would clearly have a right to retain his continuing service status in the consolidated district and to continue his position *as a teacher* unless under the circumstances described in Section 4842-13, General Code, the board of education decides that it is necessary to reduce the number of teachers, in which case by the provisions of that section preference would have to be given to teachers on continuing contracts and teachers who have greater seniority. I do not understand from your letter that that situation is involved here.

Section 4842-9, General Code, 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.

A teacher employed as assistant superintendent, principal, supervisor or other administrative head may be transferred to a lesser administrative position or to a teaching position upon recommendation of the superintendent of schools and approval of the board of education. A teacher employed as superintendent may be transferred to another position by a majority vote of the board of education. In no event shall the salary of any teacher so transferred be fixed at a rate lower than the highest paid in the district for the type of position to other teachers with similar training and experience.”

It will be noted that this section provides that in case a teacher holding some administrative position is transferred to a lesser administrative position or to a teaching position on recommendation of the superintendent,

the salary of any teacher so transferred shall not be paid at a lower rate than the highest paid in the district for other teachers with similar training and experience. On the face of it, this provision might seem to give authority not only to transfer a principal to an inferior position during the school year, but also to reduce the salary upon which he had begun the year. However, I do not consider that that result can follow if we give effect to the language of the entire section. The board of education is not restricted as to the time when it may make this transfer. It appears that it may do so either at the beginning or during the course of the year. But as to the salary of the teacher so transferred attention must be given to the provision of the first portion of said Section 4842-9. There it is provided that the board of education must, *not later than July 1* of each year, give notice to each teacher who holds a contract, as to the salary to be paid him *during the succeeding year*. Furthermore, such salary cannot be lower than the salary paid him during the preceding school year unless such reduction is a part of a uniform plan effective in the entire district. It follows, therefore, that when a teacher has attained to a continuing service status his salary can never be decreased unless, as stated, it is part of a uniform plan affecting the entire district, although his duties and his position may be shifted at the will of the board on the recommendation of the superintendent.

Accordingly, in specific answer to your question, it is my opinion that when two school districts have been consolidated into one, a teacher holding a continuing service status in one of such districts, and serving under a five year contract which has not expired, may at any time be transferred to a lesser administrative position or to a teaching position, provided that his salary theretofore fixed shall not be reduced.

Respectfully,

HUGH S. JENKINS
Attorney General