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TEACHER—EMPLOYED UNDER TEMPORARY CERTIFICATE FOR ONE YEAR—NOTIFIED BEFORE 31 DAY OF MARCH, INTENTION OF BOARD NOT TO REEMPLOY HER—JULY 3 TEACHER WAS TENDERED CONTRACT UPON SALARY FIXED BY BOARD, LESS THAN RECEIVED UNDER FORMER EMPLOYMENT—IF SUCH CONTRACT ACCEPTED TEACHER CAN NOT CLAIM RIGHT TO RECEIVE SAME SALARY RECEIVED UNDER FORMER EMPLOYMENT—SECTION 4842-9 G. C.

SYLLABUS:

A teacher who has been employed by a board of education for one year under a temporary certificate and who was notified before the 31st day of March of that year of the intention of the board not to reemploy her, but who is thereafter, to-wit on the 3rd day of July, tendered a contract for the succeeding year upon a salary fixed by the board which is less than she had received under her former employment, cannot if she accepts such contract, claim the right under Section 4842-9, General Code, to receive the same salary that she had received under her former employment.

Columbus, Ohio, December 3, 1945

Hon. Harley Meyer, Prosecuting Attorney
Logan, Ohio

Dear Sir:

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

“At the regular monthly meeting of the Board of Education of the Ward Local School District of this County, held on March 28, 1946, the following motion was passed: ‘That all teachers with temporary certificates be notified by the clerk, with a written statement, their services will not be needed for the year 1946-1947.’

The clerk duly notified all of the teachers holding temporary certificates of the passage of this motion.

At the same meeting a motion was passed as follows: ‘That the State Schedule be used as a base for the payment of teachers salaries beginning with the school term 1946-1947 and that all teachers be paid fifteen per cent (15%) above said schedule with a minimum salary of \$135.00 per month, * * *

At a special meeting held July 3, 1946, upon the recommendation of the County Superintendent of Schools, teachers for the year 1946-1947 were hired, including one who had taught in the district in 1945-1946 under a temporary certificate.

This particular teacher in the year 1945-1946 received a salary of \$172.00 per month. Under the new schedule for 1946-1947 she is now receiving \$145.00 per month.

The teacher contends that under Sec. 4842-9 of the General Code, her salary for the present school year cannot be less than that received for the year 1945-1946. The Board of Education contends that such reduction is a part of a uniform plan affecting the entire district.

The Board desires your opinion as to whether or not, under the circumstances related above, they must pay the 1945-1946 salary.”

Provisions relating to certification of teachers as a condition precedent to their right to teach or to be compensated for teaching, are found in Sections 4857, et seq. of the General Code. Section 4857-1 divides certificates into four grades, to-wit, temporary certificates, provisional certificates, professional certificates and permanent certificates.

Section 4857-7 makes the following provision for temporary certificates:

“The superintendent of public instruction may establish standards, rules and regulations below those set for provisional certificates by which he may grant temporary certificates valid for one year of the types provided for by law, and by which he may renew the same for like periods. He may at his discretion receive applications for such temporary certificates only upon the request of a school superintendent and upon evidence of a scarcity of suitable teachers otherwise certified.”

Section 4857-9 provides in part as follows:

“No person shall receive any compensation for the performance of duties as teacher in any school supported wholly or in part by the state or by federal funds who has not obtained a certificate of qualification for the position as provided for by law and which certificate shall further certify to the good moral character of the holder thereof. * * *”

It will be noted that the temporary certificates are only to be issued in the discretion of the superintendent of public instruction upon the request of a school superintendent, and on evidence of a scarcity of suitable teachers otherwise certified, and that such temporary certificates are valid for one year only. Your inquiry relates to a teacher who had been employed during the school year of 1945-1946 upon such temporary certificate, and it appears from your letter that on March 28, 1946 the board of education provided by resolution that all teachers with temporary certificates should be notified by the clerk, in writing, that their services would not be needed for the year 1946-1947, and that notice of the board's action was duly given to the said teachers.

Section 4842-8 provides in part 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 on or before the thirty-first day of March of its intention not to re-employ him. * * *”

From your statement that the clerk “duly notified” all of the teachers holding temporary certificates of the passage of the resolution above

referred to, I assume that such notice was given before the 31st day of March and therefore was in full compliance with the provision of the statute last above quoted.

Your letter does not indicate whether the district in question has more or less than eight hundred pupils. In opinion No. 818 which I rendered on March 20, 1946, it was held:

“In a school district of under 800 pupils, a teacher who has been employed by the board of education either as a beginning teacher or as a new teacher, is not entitled to a written notice on or before the 31st day of March of the last year of his contract that the board does not intend to reemploy him, and the failure to give such notice does not amount to a reemployment of such teacher.”

If the school district to which you refer has less than 800 pupils, the action of the board in deciding not to hire the teacher in question did not have to be communicated to the teacher by the 31st day of March, and there is no provision of law requiring such notice to be given at any time, and the board was under no obligation to tender her a new contract.

Accordingly, regardless of the size of the district, we may inquire whether the teacher in question had any right to claim under her new employment the salary she had formerly received by reason of the provision of Section 4842-9 which, so far as pertinent, 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. * * *”

It will be observed that the benefits of this provision are only to a teacher “who holds a contract valid for the succeeding school year.” The teacher in question certainly did not, up to the first day of July, hold a contract that was valid as to the succeeding school year. It is true that this section requires the board to cause such notice to be given not later than July 1 to *those who are entitled to the notice*. It appears from your letter that the teachers for the year 1946-1947 were not hired until July

3, 1946. Whether those teachers, if any, who were entitled to notice, were given notice not later than July 1st of the previous action of the board fixing a salary schedule, does not appear from your statement of facts.

I note your statement that the board of education contends that the reduction was a part of a uniform plan affecting the entire district. The facts given in your letter are insufficient to enable me to determine the accuracy of that claim, nor am I advised what is meant by the "state schedule." If as a matter of fact there was a uniform reduction in the salaries of the teachers, and the teacher in question suffered no discrimination, then she would have no ground for complaint.

Accordingly and in specific answer to your inquiry, it is my opinion that a teacher who had been employed by a board of education for one year under a temporary certificate and who was notified before the 31st day of March of that year of the intention of the board not to re-employ her, but who is thereafter, to-wit on the 3rd day of July, tendered a contract for the succeeding year upon a salary fixed by the board which is less than she had received under her former employment, cannot if she accepts such contract, claim the right under Section 4842-9, General Code, to receive the same salary that she had received under her former employment.

Respectfully,

HUGH S. JENKINS
Attorney General