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LEGAL NOTE

APPEALS COURT DECISION ON NON-RENEWAL OF TEACHERS WITHOUT PROFESSIONAL STATUS

Laurano v. Superintendent of Schools of Saugus & Others
SJC 10856, Decided April 28, 2011

INTRODUCTION

In a very brief decision known as a “Rescript,” the Supreme Judicial Court has rejected a school nurse’s claim that she was entitled to reemployment for a third year based on alleged deficiencies in her non-renewal notification. In so holding the Supreme Judicial Court clarified non-renewal procedures which were put into question by the Appeals Court in the Hull case. See School Committee of Hull v. Hull Teachers’ Association, 69 Mass. App. Ct. 860 (2007). In Hull, the committee failed to comply with the teacher evaluation procedures contained in a contract.

The nurse had worked for two consecutive school years and was notified on June 8, 2009 that she would not be reemployed for the 2009-2010 school year. A recent statutory amendment treats nurses like teachers for purposes of acquiring professional status. It does not appear in the published court record that any further statement of cause or reasons for her non-renewal was provided.

DISCUSSION

As you all know, the provisions of Section 41 of Chapter 71 govern the reappointment of school personnel without professional status. The statute states, in relevant parts, that an educator:

“without professional teacher status shall be notified in writing on or before June 15th whenever such person is not to be employed for the following school year.”

As a result of the Appeals Court decision in School Committee of Hull v. Hull Teachers’ Association, 69 Mass. App. Ct. 860 (2007), Laurano argued that she was entitled to a written notice of intent to dismiss with an explanation of the grounds for dismissal in sufficient detail to permit her to respond, and that she should have been given an opportunity within ten days after receiving the notice to review the decision with the principal or superintendent. This process, outlined in Section 42 relative to dismissal of staff with professional status, was the source of

some ambiguity following the Appeals Court decision in Hull. There, the Appeals Court used the term “dismissed” in connection with the historically recognized “non-renewal” process. The conflation of terms led to some confusion about whether a statement of grounds must be provided to non-renewed teachers without professional status.

The Supreme Judicial Court distinguished Hull from the typical non-renewal case. The Hull case suggested to many lawyers that the court was prepared to efface the difference in meaning between the words “non-renewal” and the word “dismissal.” In Laurano, the Supreme Judicial Court observed that teachers without professional status are employed from year to year. The process of automatic reappointment in the absence of a specific notification of non-renewal is simply a device which relieves school districts of the burden of communicating with every single non-PTS teacher in the district. Teachers without professional status have no guarantee of re-employment unless the June 15th notification date (or an earlier date if set by contract) passes without action by the district. In very clear language the court said:

The decision not to rehire a teacher on the expiration of his or her term of employment cannot be equated to dismissal of a teacher during his or her term of employment.

Citing Downing v. Lowell, 50 Mass. App. Ct. 779 (2001), in which the Appeals Court ruled that a principal is not entitled to procedural due process/dismissal protection upon the expiration of his agreement, the Supreme Judicial Court in Laurano reasoned there was a clear distinction between a dismissal and a non-renewal. As the school nurse in the Saugus case “was not dismissed from her position, [when she was not renewed for a third year of service] ... she was not entitled to the safeguards provided in G.L. c. 71, §42.” Thus, Laurano was not entitled to notice, a statement of reasons and an opportunity to meet with the principal or superintendent as §42 provides for professional status teachers.

CONCLUSION

This decision will assist school districts wrestling with the non-renewal process. In many districts since the Hull decision administrators have attempted to craft a statement of reasons to support a non-renewal notification believing, we think correctly, that the express language in the Hull case required such action. The Saugus issues turned on a simple and traditional notification of non-renewal without a statement of reasons. We believe that, based on this new decision from the Supreme Judicial Court, the previous confusing decision from the Appeals Court in Hull has been properly limited to circumstances where the evaluation process has been violated.

We are of the opinion that districts may return to the historical practice of tendering non-renewal notifications to teachers without professional status simply by stating that the teacher will not be renewed for the following school year.

Please call us if you have any questions or consult with local counsel concerning the interplay of this decision and your collective bargaining agreement.