

STATE OF NEW HAMPSHIRE

BOARD OF EDUCATION

Recommendation of the Hearing Officer

Teacher and Tamworth School Board

Case No. SB-FY-11-07-001

Procedural Background

A request for review by the State Board of Education was received at the New Hampshire Department of Education on July 16, 2010. A hearing schedule was issued on July 22, 2010 for the purpose of an appeal of the non-renewal of Media Specialist, _____ by the Tamworth School Board. A Pre-Hearing Conference was held on August 5, 2010 and an Order was issued on August 6, 2010. At this preliminary meeting, _____ was present with James Allmendinger, Esq., New Hampshire National Education Association Staff Attorney. Matthew Upton, Esq. was present for the School Board. At the Pre-Hearing Conference, it was decided that there was no substantial disagreement on the facts of the case. There was no suggestion that the Appellant was non-renewed for cause. That being the case, the hearing would be held, limited to argument on matters of law.

Memoranda of law, dated August 23, 2010, were received from the parties. The hearing consisting of oral arguments went forward on August 25, 2010 with presentations and submissions by both parties. The appealing party, _____ submitted Exhibits 1 through 60, to be referred to as T. Exs. The School District submitted Exhibits A through C and Exhibits Adm. 1 through 4. All were accepted into evidence except for Exhibit A, screens from a Power Point presentation. That exhibit was not admitted as it was not available to the School Board at the June 22, 2010 School Board hearing. The School District's Exhibits are referred to as S.D. Exs.

There was no dispute on the burden of proof and the application of that burden of proof. In non-renewal cases, such as this, the appellant must prove that the local School Board's decision is "clearly erroneous." RSA section 189:14-b,II.

Overview of the Case

_____ had been the full-time library media specialist and technology teacher at the Brett School in Tamworth since 1995. Prior to that, he had served in that role on a part-time basis

since 1988, according to _____ resume, T. Ex. No. 5. Then, on April 13, 2010, _____ was notified in writing that his position was being reduced from a full-time (100 percent) position to a part-time (60 percent) position for the 2010-2011 school year, (S.D. Ex. Adm. No. 1). The letter, signed by Superintendent McIntire informed Appellant, that because of his longevity, he was entitled to a hearing before the Tamworth School Board and informed him how the hearing might be requested. *Id.* _____ requested a hearing and the specific reasons for the reduction of his position, RSA 189:14-b, and he received an answer from the Superintendent Jay McIntire, on June 18 stating the reason was that the full-time position had not been included in the budget for the upcoming year. *Id.*

The hearing in Tamworth was requested pursuant to RSA section 189:14-a II and was held on June 22, 2010. It resulted in the Decision by the Tamworth School Board, dated July 6, 2010, upholding the original decision (S.D. Ex. C). According to the Decision, the School Board had relied heavily on the action taken at the 2010 Tamworth School District Annual Meeting, especially the Meeting's choice to reinstate some programs and to keep other budget cuts in place. The Decision did not inform the Appellant of his rights under New Hampshire law. Specifically complained of, he was not informed of his right to a hearing before the State Board of Education (Ed 204.01(d)).

According to a document entitled Tamworth School Board Chairperson Report (S.D. Ex. Adm. No. 2A-C), some time before the 2010 School District Meeting in early 2010, the Tamworth School Board had appointed a Restructuring Task Force that gathered data and made recommendations for changes in structure and staffing that were considered when drawing up the 2010-2011 budget (*Id.*) The School Board was facing continued declining enrollment and other circumstances (*Id.*) Among the cuts recommended in the reorganization plan for the KA Brett School were decreases to 3 days a week for the programs in Library Media, Art, Music, Physical Education and Guidance (S.D. Adm. No. 2C) resulting in reductions from full-time to part-time program specialists (*Id.*). The consequent budget went before the citizens at the Tamworth School District Annual Meeting held on March 3, 2010. At that meeting, the citizens of Tamworth overrode the recommendations for cuts and voted to restore monies to the many of the programs but not the Library Media program (S.D. Adm. No. 3).

Discussion

Appellant asserts that the Tamworth School Board's decision is defective because:

1. it does not articulate the facts and the law considered by board members in reaching its decision, Rule Ed 204.02(e) (23), requiring the decision shall "list the pertinent facts and conclusions of law found by the school board in arriving at its decision." The Appellant opines

that the decision is so brief as to be arbitrary and erroneous as a matter of law.

2. The Appellant next raises that the Decision does not advise the educator of his right to seek review of the Tamworth School Board's decision by the State Board of Education (Id. at (24)).

3. Nor, the Appellant argues, has the Tamworth School Board specified how it intends to meet related state curriculum requirements without a full-time Library Specialist and so cannot rightly reduce _____ to a part-time position. Further, it is stated that a change in this position requires impact negotiations before the reduction from a full-time to a part-time position can take place.

The Tamworth School Board has responded that the facts and rationale for its non-renewal decision have been supplied to the Appellant and, even though they are simple and minimal, they are sufficient to meet the letter of the law. The reasons are budgetary and the Tamworth School Board looked to the will of the voters expressed at the 2010 School District Meeting, when it made its final decisions to restore funding to some programs and not restore funding to the library media program. It based its original decision to reduce the position was a financial decision exercising collective judgment. There is no suggestion of unsatisfactory performance.

The move to reduce the several program positions came out of the reorganization plan that involved budgetary matters (S.D. Ex. Adm. 2b) and was developed and brought before the voters at the School District Meeting of March 3, 2010. The appellant would imply that the School Board had avoided its duty as to budgetary matters substituting the will of the voters for its own decision. However, it is clear that the decision to reduce the position held by _____ was made by the Tamworth Board prior to the School District Annual Meeting (S.D. Ex. Adm. 2c) and nothing occurred at the meeting to cause the School Board to change its mind and restore Appellant's position. The School Board's answer to _____ regarding its reasons is sparse but clear.

The Tamworth Board has noted correctly that an appeal of a non-renewal decision is not the context in which a teacher can raise the possibility that Tamworth will be unable to meet curriculum standards without a full-time media specialist naming it as a deficiency in a School District's non-renewal process. Similarly, the Appellant is neither in the correct posture or forum to insist that the effect of the reduction in force be bargained. That is best brought before the NH Public Employee Labor Relations Board (PELRB) and is not within the jurisdiction of the State Board of Education.

Ed 204.01(d) provides that a School Board's hearing decision shall contain notice of the non-renewed teacher's right to appeal to the state school board. The parties agreed to that fact and

that is an omission that might be considered serious had _____ failed to timely file for review and been denied appeal and so access to remedy. The parties differ as to the consequence of that error. Appellant sees reason to reverse the School Board's decision, while the School Board points to the fact that Mr. Perkins filed timely and that there has been no showing that the Appellant was harmed by the error, citing *Couture and Hebert*, 93 NH 378 (1945), a case in which termination of employment was to be in writing to be effective. However, the worker in question took actions that demonstrated he understood he had been terminated even without written notice of termination. As in this case, the error was made but it is insubstantial where corrective action was taken, the appeal, showing knowledge without the employer providing information about the right to appeal. The court considered that no harm resulted from the employer's error itself. The same holds true in this case.

The standard of review in non-renewal cases is high. The members of the district school board are officers of the school district (RSA 197:14), "...The long and short of the matter is that the school board is the managing ... board of the school district." *Ashley v. Rye School District*, 111 NH 54, 55 (1971), citing *Amey v. Pittsburgh School District*, 95 NH 386 (1949). The standard set in the statute reflects the deference given school boards in carrying out their duties. "The state board of education shall uphold a decision of a local school board to nonrenew a teacher's contract unless the local school board's decision is clearly erroneous." RSA 189:14-b,II.

The Appellant must demonstrate that the decision reached by the Tamworth School Board was clearly erroneous, that the Tamworth School Board was wrong in reaching its decision. The hearing officer's opinion that another decision might better be reached, is not sufficient to meet the standard, where no clear error was made by the Tamworth School Board.

Recommendation of the Hearing Officer

It is recommended that the New Hampshire State Board of Education uphold the Tamworth School Board's decision in this matter.

Signed this 14th day of December, 2010.

Gail C. Morrison, Hearing Officer

