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Procedures for the Nonrenewal of Nontenured Teaching Staff Members

By Anthony P. Sciarrillo

The following sets forth the Board's obligations and the procedures on the nonrenewal of nontenured teaching staff members.

Written Notice

In general, on or before May 15th of each year, each nontenured teaching staff member shall receive a written offer for employment for the following year or a written notice from the Chief School Administrator ("CSA") that such employment will not be offered. (*N.J.S.A.* 18A:27-10.) Failure to notify a nontenured teacher of nonrenewal by May 15th (or sooner if required by Board policy or the collective bargaining agreement) creates an automatic offer of employment which the teacher must accept in writing by June 1st. (*N.J.S.A.* 18A:27-10-12.)

New Contract

If the nontenured teacher has already accepted the offer of employment, then a new contract is created for a full year. That teacher acquires vested rights in the new contract. The Board would then be liable for the teacher's full salary and benefits that would have normally been accrued during that year (except tenure and reinstatement). (*Payne* 76:543, *aff'd*, 76:554, *aff'd* 77:1301; *Chianese*, 76:804, *aff'd* St. Bd. 77:1279.)

However, a Board may terminate a new contract pursuant to the termination notice provisions set forth in the contract. (*Bitzer*, 76:376, *aff'd* St. Bd. 76:381.) If proper notice is given to the nontenured teacher pursuant to the termination clause of the contract, i.e. thirty (30) days notice or sixty (60) days notice, then the Board is only liable for the teacher's salary for that thirty (30) or sixty (60) day period. (*Bates*, 77:241.) Therefore, even if late notice is defective, the Board may terminate the new contract with the nontenured teacher pursuant to the termination clause of the contract.

CSA's Recommendation

Under *N.J.S.A.* 18A:27-4.1, the CSA shall make recommendations for renewal or nonrenewal of an employee's contract. A nontenured employee who is not recommended for renewal by the CSA shall be deemed nonrenewed. (*Id.*) And, "prior to notifying the employee of the nonrenewal, the CSA shall notify the board of the recommendation not to renew the employee's contract and the reasons for the recommendation." (*Id.*) (➔)

Note that under *Velasquez v. Brielle Board of Education*, (97 N.J.A.R. 2d (EDU) (August 6), *aff'g on different grounds* Comm'r 96 N.J.A.R. 2d (EDU) (April 4)), a board of education may reappoint an employee without the CSA's recommendation by a recorded roll call majority vote in favor of the employee at the informal hearing. A board of education may alternatively decide not to vote and let the recommendation for nonrenewal made by the CSA stand without a vote. (*Id.*)

Reasons for Nonrenewal

In *Donaldson v. Board of Education of North Wildwood*, (65 N.J. 236, 320 A.2d 857 (1974)), the court held that a board of education was required to provide a nontenured teacher with a statement of reasons for non-renewal. The court noted the following:

The board's determination not to grant tenure need not be grounded on unsatisfactory classroom or professional performance, for there are many unrelated but nonetheless equally valid reasons why a board, having had the benefits of observation during the probationary period, may conclude that tenure should not be granted.

(*Id.* at 859.)

N.J.S.A. 18A:27-3.2 states the following:

Any teaching staff member receiving notice that a teaching contract for the succeeding school year will not be offered may, within 15 days thereafter, request in writing a statement of the reasons for such nonemployment which shall be given to the teaching staff member in writing within 30 days after the receipt of such request.

Board Hearing

The employee may also request, within ten (10) calendar days of the employee's receipt of the statement of reasons, an informal appearance before the Board (commonly known as a "Donaldson" hearing). (*N.J.A.C.* 6A:32-4.6.)

Following this *Donaldson* hearing request, an informal appearance before the Board must be scheduled within thirty (30) calendar days from receipt of the Board's statement of reasons. (*N.J.A.C.* 6A:32-4.6(b).) This hearing is not intended to be "adversarial" but an opportunity to permit the staff member to convince the Board to offer reemployment. (*N.J.A.C.* 6A:32-4.6(c).)

The Board is required to provide the employee with written notice of the date, time and location of the informal hearing and the employee may be represented by his or her legal counsel or another individual of his or her choosing. (*N.J.A.C.* 6A:32-4.6(e) & (f).) Within three (3) days of the informal hearing, the Board shall notify the affected employee in writing of the Board's determination. (*N.J.A.C.* 6A:32-4.6(i).)

Summary

In a practical sense, the nonrenewal process usually follows the following steps:

1. The immediate supervisor advises the teacher that there will be a recommendation for nonrenewal.
2. The Superintendent advises the teacher in writing that he will be recommending nonrenewal to the Board.
3. The Superintendent advises the Board of the recommendation for nonrenewal and the reasons for same (the staff member receives a Rice Notice advising that the Superintendent will be making that recommendation in a private session of the Board).
4. After making the recommendation to the Board, the Superintendent writes a letter confirming the nonrenewal to the teaching staff member.
5. Once the teaching staff member receives the letter from the Superintendent, the teaching staff member has fifteen (15) calendar days to request a statement of reasons.
6. The statement of reasons must be sent to the teaching staff member within thirty (30) days of the request.
7. Once the teaching staff member receives the statement of reasons, the teaching staff member has ten (10) days to ask for a hearing before the Board.
8. Once the Board has the hearing, the Board has three (3) days to advise the teaching staff member of its final determination.

The information provided here is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the Education Law Group at edlawgroup@lindabury.com.