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Non-Renewals of Non-Tenured Staff Members

By Jeffrey R. Merlino

The following sets forth the Board of Education's obligations and the procedures for the non-renewal of non-tenured staff members.

Notice by May 15

On or before May 15th of each year, every non-tenured staff member continuously employed by the Board since the preceding September must receive a written offer for employment for the following year or a written notice from the Superintendent that there will not be a recommendation to the Board for re-employment. (*N.J.S.A.* 18A:27-10) The May 15th deadline also applies to non-tenured administrators such as Principals, Business Administrators, and Assistant Superintendents. Failure to notify a non-tenured staff member of non-renewal by May 15th (or sooner if required by Board policy or the collective bargaining agreement) creates an automatic offer of employment which the employee can accept in writing by June 1st. (*N.J.S.A.* 18A:27-10-12)

Deemed New Contract

If the non-tenured staff member accepts an automatic offer of employment by June 1st, then a new contract is created for a full year. This means that the employee acquires vested rights in a new contract. The Board is then liable for the employee's 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)

A Board may still terminate the new contract pursuant to the termination notice provisions set forth in the contract or collective bargaining agreement. (*Bitzer*, 76:376, *aff'd* St. Bd. 76:381) If proper notice is given to the non-tenured employee 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 salary for that thirty (30) or sixty (60) day period. (*Bates*, 77:241) Therefore, if the Superintendent does not provide notice of non-renewal by May 15th (or sooner), then the Board may be required to terminate the new contract and be obligated to pay the non-tenured staff member beyond June 30th.

Superintendent's Recommendations

Under *N.J.S.A.* 18A:27-4.1, the Superintendent makes the recommendations for renewal or non-renewal of an employee's contract. A non-tenured employee who is not recommended for renewal by (*cont'd* ▶)

the Superintendent shall be deemed non-renewed. (*Id.*) Prior to notifying the employee of the non-renewal, the Superintendent shall notify the Board (or committee thereof) of the list of non-renewals and the reasons for the Superintendent's positions. (*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 Superintendent'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 position for non-renewal made by the Superintendent stand without a vote. (*Id.*)

Reasons for Non-Renewal

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 non-tenured staff member 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 the 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 non-employment which shall be given to the teaching staff member in writing within 30 days after the receipt of such request.

Donaldson Hearing

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

Following this *Donaldson* request, an informal hearing 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)) The Board is not required to formally vote after the informal hearing. If it does not vote, the Superintendent's recommendation stands. However, after the informal hearing, the Board can override the Superintendent's recommendation not to renew, and can vote to offer the employee a new contract. The motion must pass by a recorded roll call majority vote of the full membership of the Board.

An employee can challenge the Board's decision not to renew the contract only if the reason for the non-renewal is arbitrary and capricious. Improper reasons include retaliation for a workers compensation claim, or illegal discrimination based on age, gender, race, religion disability, national origin, ethnic background, or sexual orientation. The venue for challenges is generally the Commissioner of Education, although discrimination claims may be brought under the NJ Law Against Discrimination with the Division of Civil Rights, or through the Courts. The Board's decision not to renew is generally not reviewable as a grievance, unless the Board expressly permitted such grievances through collective bargaining.



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

Before making your choice of attorney, you should give this matter careful thought. The selection of an attorney is an important decision.

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