MTA Division of Legal Services

NONRENEWAL OF NON-PTS TEACHERS

Questions & Answers

What is Professional Teacher Status and who is eligible?

Definition. Professional Teacher Status (PTS) is a designation in Massachusetts law signifying that a school employee has served a certain probationary period and has thereby obtained some measure of job security. Massachusetts General Laws, Chapter 71 § 41 provides PTS teachers with both substantive and procedural protections against dismissal and suspension. Collective bargaining agreements often provide additional protections, including rights in the event of a reduction in force.

Who is eligible for PTS? Teachers, school librarians, school adjustment counselors, school nurses, school social workers and school psychologists are eligible for PTS, including those employed in vocational schools. M.G.L. c. 71 § 41; M.G.L. c. 74 § 22E.

How is PTS acquired?

What is the length of the probationary period? In order to acquire PTS one must serve in a school district for *three previous consecutive school years under an appropriate license.* However, the superintendent, upon the recommendation of the principal, may award such status to any teacher who has served in the principal's school for not less than one year or to a teacher who has obtained PTS in any other public school district in the Commonwealth. While there is no case directly on point, it is unlikely that the superintendent could grant PTS after one year without the recommendation of the principal. In a vocational school, it is the school committee that may grant early PTS. M.G.L. c. 74 § 22E.

How is "school year" defined? Courts have interpreted this requirement to mean three "complete" school years. In one case, *Nester v. School Committee of Fall River,* 318 Mass. 538 (1945), serving 178 days out of a 180-day school year was sufficient to constitute a complete school year. In another, *Fortunato v. King Philip Reg. School Dist.,* 23 Mass. App. Ct. 998 (1980), 160 days of service out of 182 days was not sufficient to constitute a complete school year.

Consistent with *Nester* and *Fortunato,* the Appeals Court held that a teacher's third consecutive year of employment did not count toward tenure because she had taught only 99 out of the 183 days of the school year before beginning a maternity leave. *Matthews v. School Committee of New Bedford,* 22 Mass. App. Ct. 374 (1986). The court left open the question of whether periods of service in different school years could be pieced together to form a composite complete school year. 22 Mass. App. Ct. at 379.

What about sick leave or other paid leaves of absence? Days spent on paid leaves of absence count toward the accumulation of service toward PTS. *Fortunato,* supra. However, it is an open question as to whether days on **unpaid** leave may count toward PTS.

What does "three previous *consecutive* school years" mean? Generally, one must serve three consecutive school years in a district to acquire PTS. However, the Supreme Judicial Court held that a non-PTS teacher who took an unpaid maternity leave in a given school year would not have to start from year one to again accumulate the necessary three **consecutive** school years. *Solomon v. School Committee of Boston,* 395 Mass.12 (1985). The year of unpaid leave does not count as service for PTS unless the teacher serves a sufficient amount of time during that year to constitute a "complete" school year.

Who decides whether a non-PTS teacher will continue in employment?

The principal and the superintendent make all hiring and firing decisions. M.G.L. c. 71 §§ 42 and 59B. The law does not specifically state who decides nonrenewal and MTA has not had a situation in which the superintendent and principal were unable to agree on whether a teacher would continue in employment.

How are non-PTS teachers notified whether their employment will continue?

The June 15 Nonrenewal Notice. Chapter 71 § 41 provides that a teacher shall be notified in writing on or before June 15 whenever such person is not to be employed for the following school year.

What form must the notice take? Under Chapter 71 § 41, a teacher must be given clear **written** notification of non-reemployment from the district official authorized to make that decision. This is not a mere technicality but a mandatory requirement. *Paquette v. City of Fall River,* 278 Mass. 172, 173-174 (1932). Given this strict requirement, the notice of nonrenewal must be clear and unambiguous. A mere reference to nonrenewal buried in the text of an evaluation document drafted by the principal may not constitute notice under the statute.

What happens if notice is not received by June 15?

The law specifically states that "unless such notice is given as herein provided, a teacher without such status shall be deemed to be appointed for the following school year." M.G.L. c. 71 § 41. Therefore, failure to honor the statutory deadline to provide notice of nonrenewal means that the teacher is employed for another year. This is true even if the failure to send the notice was an error and the teacher's continued employment results in the teacher acquiring PTS. See *Bonar v. City of Boston,* 369 Mass. 579 (1976). NOTE: A school district that fails to give notice of nonrenewal by June 15 cannot avoid re-employment by sending the teacher a dismissal notice on June 16. Some intervening misconduct or performance problem must be present.

What are a teacher's procedural rights in connection with nonrenewal?

Other than the notice requirement outlined above, non-PTS teachers are not entitled to any statutory procedures before they are nonrenewed. The procedures afforded to PTS teachers under Chapter 71 § 42 do not apply to the nonrenewal of non-PTS teachers. Therefore, the district is not required to provide a reason for the nonrenewal. *Laurano v. Superintendent of Schools of Saugus,* 459 Mass. 1008 (2011). Some districts have afforded the pre-dismissal procedures that govern termination of a teacher with PTS to teachers being nonrenewed. When that happens, the MTA field representative assigned to the local will meet with local leaders and the teacher to determine the appropriate course of action. If a meeting is scheduled, the teacher facing nonrenewal is represented by the local association and/or the MTA-assigned field representative. The strategy for the meeting will depend on any contractual or statutory claims the teacher may have.

What rights does a non-PTS teacher have if he or she is terminated rather than nonrenewed?

A district may decide to terminate a non-PTS teacher during the school year. Within the first 90 days of employment, non-PTS teachers have no procedural or substantive rights under the statute. However, the district must adhere to the procedures set out in the collective bargaining agreement, including evaluation and notice procedures.

Chapter 71 § 42 provides some procedural rights to non-PTS teachers who have taught for at least 90 calendar days. The superintendent or principal is required to furnish the teacher with prior written notice of intent to dismiss, with an explanation of the grounds for dismissal and documents relating to the grounds for dismissal. Upon request, the teacher must also be given an opportunity within 10 school days to meet with the principal or superintendent to present information pertaining to the decision.

Can a non-PTS teacher effectively challenge nonrenewal?

Violation of contractual procedures. Chapter 71 § 42 states that non-PTS teachers are "employees at will," which has traditionally meant that employment may be terminated by the employer for any reason or for no reason. *Fortune v. National Cash Register Co.,* 373 Mass. 96, 100 (1977). Employers have argued that this at-will language means non-PTS teachers have no right to challenge a nonrenewal decision. This issue was put to rest in *School Committee of Hull v. Hull Teachers Association/MTA/NEA,* 69 Mass. App. Ct. 860 (2007), further app. rev. denied, 450 Mass. 1103-04 (2007). This decision affirmed an arbitration award reinstating a non-PTS teacher for another year of employment based on the finding that the employer failed to follow negotiated evaluation procedures, prejudicing the non-PTS teacher. *Hull* affirmed the union's ability to effectively challenge nonrenewal decisions when negotiated evaluation procedures were not followed.

Other contractual procedures may also be enforceable. For example, where a contract provided that layoff may only occur "when it becomes necessary [for reasons of economy]," one arbitrator determined that a school district had to demonstrate such necessity at arbitration, when nonrenewal was expressly for "economic reasons." *Fall River Educators Association and Fall River School Committee,* Grievance #10-08 (Boulanger, April 19, 2013).

Violation of contractual antidiscrimination provisions. Contractual prohibitions against illegal discrimination in nonrenewal of a non-PTS teacher are enforceable when it comes to sex discrimination. *Blue Hills Regional Dist. Sch. Comm. v. Flight,* 383 Mass. 642 (1981) (Flight). There have been no cases discussing the enforceability of contract provisions prohibiting discrimination based upon union activity. Given a 2010 decision by the Supreme Judicial Court, if an employer were to nonrenew a teacher because of union activity, MTA might advise challenging that decision by filing with the Department of Labor Relations in lieu of a grievance under the contract. See *Department of State Police v. MOSES,* 456 Mass. 450 (2010)(statute giving State Police non-delegable employment authority over civilian employees supersedes clauses in collective bargaining agreement prohibiting discrimination based upon union activity.)

What is the process of determining whether the teacher has acquired PTS?

Since passage of the Education Reform Act of 1993, an arbitration, not the Superior Court, is the proper forum in which to resolve disputes over whether a teacher has professional status under Chapter 71 § 42. *Lyons v. School Committee of Dedham,* 440 Mass. 74 (2003), *Turner v. School Committee of Dedham,* 41 Mass. App. Ct. 354 (1996); cf. *Goncalo v. School Committee of Fall River,* 55 Mass. App. Ct. 7 (2002).

What rights does a teacher have after nonrenewal?

Eligibility for group health insurance during the summer. Teachers and all other public school employees are deemed to be employees during the months of July and August for the purposes of eligibility for health insurance. M.G.L. c. 32B § 2 ("employee"). Teachers who are nonrenewed at the end of a school year are entitled to group health insurance coverage during July and August, and the employer is obligated to pay its share of premium contributions. There is an arbitration decision directly on point that held that summer coverage for group health insurance benefits extends to teachers post-nonrenewal because Chapter 32B § 2 ("employee") "does not condition providing health coverage in July and August upon any requirement that teachers be offered teaching positions for the upcoming school year." Rather, the statute provides that summer health insurance depends upon services rendered by the employee "during the previous school year." *Fall River Educators Association and Fall River School Committee,* Case #11-390-00620-12 (Gary Altman, AAA December 3, 2012), p. 19.

Eligibility for unemployment compensation. Entitlement to unemployment compensation benefits for municipal employees is governed by M.G.L. Chapter 151A. A teacher who is nonrenewed is eligible to collect benefits as soon as the school year is over (i.e., approximately the end of June) unless and until she receives a "reasonable assurance" that she will be reemployed for the upcoming school year or finds other "suitable employment." The fact that a teacher may be receiving paychecks from the district during the summer months does not impact eligibility for unemployment benefits, since the teaching salary is considered to have been fully earned during the school year and "deferred" until the summer. However, as soon as the nonrenewed teacher receives "reasonable assurance" of reemployment in any school system for the next school year or finds other suitable employment, eligibility for unemployment ceases. The Department of Unemployment Assistance (DUA) will seek reimbursement of unemployment benefits paid to a nonrenewed teacher after the date on which the teacher had reasonable assurance of a position.

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