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Dr. Richard S. Vacca, Editor; Senior Fellow, CEPI

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PUBLIC SCHOOL TEACHERS: CONTRACTS, LAW, AND POLICY

Overview

As the new school year moves through its early stages, administrators, classroom teachers, and staff are busy carrying out the responsibilities and tasks agreed to last spring when they signed their employment contract. Whether negotiated individually (in some states, e.g., Virginia, local school boards are not vested by law to collectively bargain with teachers), or collectively (in states, e.g., New York, allowing collective bargaining), the importance of the contract for employment can not be overemphasized. The signed contract serves as (1) the foundation upon which the entire employer/employee relationship rests, and (2) the document that sets out the scope of the job and as a general rule includes, among other things, duration, salary and compensation, and other terms and conditions of employment.

It is a basic tenet of contract law that ignorance of the contents of a contract is not an excuse for a party's failure to carry out the agreement. Ironically, however, employment contracts in public education (including collective bargaining agreements) are not as clearly and specifically drafted as one might think. Thus, confusion often exists regarding contractual obligations and benefits.

Not intended as an extensive treatment of contract law, the purpose of this commentary is to briefly discuss basic principles of contract law as applied to public school system employment. The focus of the research and writing will be on legal and policy issues involving full-time classroom teachers in public school systems.

Principles of Contract Law

Contract: What Is It? The "right to contract" is firmly rooted in constitutional law. However, what is not clear is the meaning of word *contract*. Professor Corbin in his comprehensive treatise offers the following definition: "...a contract is a promise enforceable at law directly or indirectly." He then cautions that "[s]uch a definition as this does not inform us as to what kind of facts will operate to create legal rights and duties..." Corbin (1952) Black's Law Dictionary tells us that a contract is "[a]n agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law..." Garner (1999) The Law Dictionary states that a contract is "an agreement between competent parties, upon legal consideration, to do or to abstain from

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doing some act.” Brann (1997) The operative term used in the latter two definitions is “agreement,” which Knapp defines as “a common understanding as to something which is to be done in the future by one or more of the parties.” Knapp (1976)

As a general rule, “once a contract exists, it is enforceable by either party and it shall not be significantly modified or breached unilaterally by either party.” Vacca and Boshier (2003) Moreover, a contract “is binding on both parties, and either party who fails to meet contractual obligations has breached (broken) the contract.” Fischer, Schimmel, and Kelly (1999)

What Makes a Contract Enforceable? To be enforceable all local school district contracts “must not only conform to the requirements of general contract law, but also must satisfy other statutory and case law requirements.” Alexander and Alexander (2005) In addition, a contract must be agreed to by competent parties to do something lawful, and must have four elements which are: (1) offer, (2) acceptance, (3) consideration [includes each party giving up something of value and receiving some benefit from the promises made], and (4) proper form. Knapp (1976)

Express and Implied Contracts. Because there are *express contracts* (in which the parties are clearly cognizant of the terms) and *implied contracts* (where responsibilities and obligations arise from mutual agreement and promise), 8.C. Michie’s Jurisprudence (1999 Replacement), the intent of the parties often is left to interpretation. In teacher employment contracts, for example, such phrases as “all other assigned duties for which the employee is qualified” often can be found. Vacca and Boshier (2003) Thus, it is not surprising that school system personnel (especially classroom teachers in non-collective bargaining states) are routinely asked and/or assigned to tasks and professional services not specifically enumerated in their contract. As a federal district court recently held, teacher assigned duties during the school term are appropriate “where the contract allows for this.” Harper v City of Jackson Municipal School District (S.D. Miss. 2005) Please note the courts use of the word “allows.”

Contractual Fairness. A general principle of contract law holds that while the individuals who sign a contract agree to comply with their promises (*i.e.*, obligations specified in the contract), all obligations and responsibilities may not be clearly included in written form but are “necessarily implied” in what is written. 8.C Michie’s Jurisprudence (1999 Replacement) This is especially true of assigned duties to teachers related to student clubs, bus duty, and after school athletic events. However, on this point legal experts caution school officials that “[b]oth state and federal constitutions contain protections against the unilateral alteration of contracts by the state to disadvantage individuals in their relationships with government.” Alexander and Alexander (2005)

Must Employment Contracts be in writing? As a general rule, not all contracts must be in written form. Suffice it to say, while a contract is enforceable and binding on the parties whether oral or in written form, those that are written are easier to deal with on a number of levels. However, whether written or oral, one must establish a “reasonably clear interpretation” and seek the “plain meaning” of words and phrases contained in the agreement to establish who is accountable to whom, and when and for what are they accountable. On this latter point, the application of appropriate case law is of critical importance in determining the intent of the agreement.

Some states require written contracts. In Virginia, for example, state law mandates that local public school boards enter written contracts with classroom teachers. Moreover, state law requires that these written contracts (1) must be in a form prescribed by the State Board of Education, and (2) signed by the parties in duplicate. 22.1-302 (A) Code of Virginia (2006) In Maryland the law requires that “All contracts with certificated

employees shall be in writing and on contract forms prescribed by the State Board of Education.” 13A.07.02.01 Maryland School Laws and Regulations Annotated (2004)

Tenure Status, Continuing Contract, and Annual (Term) Contract. Typically the following categories of classroom teacher work in public school systems: (1) *substitute teachers* (hired on a short-term, emergency basis), (2) *annual teachers* (hired on a fixed, year-by-year basis), and (3) where state law provides, *tenure or continuing contract teachers*. The constitutional protections (*i.e.*, the Fourteenth Amendment) and legal rights (federal and state) of employees differ according to their contractual status. Boshier, Kaminski, and Vacca (2004) Even though the employment term of a substitute teacher and an annual contract teacher can be extended and renewed, only a tenured or continuing contract teacher possesses a clear expectation of continued employment in the school system absent cause for termination.

Non-Renewal and Dismissal. While tenure or continuing contract status does not guarantee permanent employment, the courts have clearly held that a teacher who has acquired tenure or continuing contract status possesses both liberty and property interests and is entitled to accompanying procedural due process protections, Board of Regents v Roth (1972) and Perry v Sindermann (1972) Any decision to terminate his/her employment relationship (whether during a contract year or at the end of a contract year) is considered a dismissal. Conversely, only termination of an annual contract teacher during the term of the contract in place at the time is considered a dismissal from employment. In such situations the annual contract teacher also is entitled to basic procedural due process. Carey v Aldine I.S.D., (S.D. Tex. 1998) One must look to appropriate state law for clarification. For example, statutory law in Virginia clearly states: “*Dismissal* means the dismissal of any teacher during the term of such teacher’s contract and the nonrenewal of the contract of a teacher on continuing contract. 22.1-306 Code of Virginia (2005)

Legal and Policy Issues

Teachers make employment contracts with local school boards and not with school superintendents or building principals. As a general rule, state statutes and courts of law grant considerable authority to local school boards to make all personnel decisions necessary for “the best interests of the children.” The traditional rule holds that local school boards operate in good faith, and personnel decisions will stand absent a showing that the board acted arbitrarily, or capriciously, or beyond the scope of its legal authority, or abused its legal authority, or acted in violation of an employee’s constitutional rights. Boshier and Vacca (2003)

Preconditions of Employment Contracts. In recent years, states have enacted statutes requiring pre-employment background checks (*e.g.*, fingerprinting) of all prospective employees, and mandating that the results of these checks must be known by the local school board prior to the awarding of the contract for employment. (See, *e.g.*, 22.1-296.2, Code of Virginia, 2006) So too are some states requiring that all applicants for jobs involving direct contact with students, applicants who either are offered or accept a contract for employment, give written consent for the local school board to obtain personal information in a search of the registry of founded complaints of child abuse or neglect. In Maryland, for example, the law specifies that “The State Board shall adopt regulations that prohibit a county board from knowingly hiring, as a non-certified employee, any individual who has been convicted of a crime involving, among other things, ‘child sexual abuse’ and ‘crimes of violence.’” 6-11 Maryland School Laws and Regulations Annotated (2004)

Falsification of Application. As a general rule, an employee who is enters a contract for employment with a local school board, but either failed to comply with the state law requirements, or had in some way entered false data on the initial employment application, is subject to immediate dismissal from his/her job. In essence, no

matter how long the employee has been on the job, falsification of information on an application for employment will, when discovered, void the contract.

On-The-Job Performance and Employment Contracts. In an era of accountability, as public school systems work to (1) provide a quality education to all students, (2) comply with the requirements of the *IDEA (2004)*, (3) carry out the mandates of the *No Child Left Behind Act (2001)*, and (4) implement statewide student testing programs, it is imperative that students be taught by classroom teachers who are both qualified (licensed) and competent (effective) in the subject(s) for which they are under contract to teach.

Qualifications v Competence. While it is possible to establish a teacher's job qualifications by reviewing transcripts and letters of recommendation, competence in actually carrying out the contract is a more time consuming and complicated process. Classroom observations of performance over time furnish important data. To gather these data, evaluations must be carried out and analyzed by trained evaluators. Another important indicator of teacher competence can be found in results as measured by student academic progress. As states use more technology options to link student achievement on statewide tests to individual school buildings, the productivity profile of individual principals and classroom teachers in those schools will be factored into decisions regarding contract renewal. Vacca and Boshier (2003)

Remediation of Work-Related Deficiencies. The courts have made it clear that unless required by state law it is not necessary to provide remedial help to probationary and/or annual (term) contract teachers. Schofield v Richland County School District (S.C. 1994) In dealing with tenure or continuing contract teachers, however, the following procedural elements should be in place: (1) notice (feedback) of specifically identified deficiencies, and (2) opportunities for remediation of identified deficiencies provided. Roberts v Houston I.S.D. (Tex.App.1990)

Other Causes for Non-Renewal or Dismissal. Not all contract termination decisions are the result of inside the school house behaviors. Teachers can be dismissed from employment for a variety of reasons not directly related to classroom performance. As the United States Supreme Court established more than fifty years ago, "We find no requirement in the federal Constitution that a teacher's classroom conduct be the sole basis for determining his fitness. Fitness for teaching depends on a broad range of factors." Beilan v Board of Education (1952) The key to successfully defending a contract termination is (1) having the necessary documentation (substantive evidence) to make the case, and (2) following a fair process. These elements are critically important in situations where it is necessary to terminate a contract for off-school property, non-classroom related conduct. Some legal experts argue that because the burden of proof likely will shift to school officials, the board's decision must be: (1) linked (nexus established) to contractual responsibilities and expectations, and (2) supported by substantive evidence. Russo (2004) As the Iowa Supreme Court opined in a recent teacher non-classroom related conduct teacher dismissal case, "a preponderance of competent evidence must exist in the record" to support a local school board's decision to terminate the contract. Walthart v Board of Directors (Iowa 2005)

The reader is cautioned that this is an area of potential litigation where employees claim "pretext." For example, this is evident in cases where employees claim that their employer's real (underlying) reason for terminating their contract was in retaliation for an exercise of protected conduct (First Amendment speech), or because of their race, age, disability, or gender. For instructive court decisions on point see, Jackson v Birmingham Board of Education (2005); Cioffi v Averill Park Central School District (2nd Cir. 2006); Ryan v Shawnee Mission U.S.D. (D.Kan. 2006); and Smith v Central Dauphin School District (M.D. Pa. 2006).

Policy Implications

As stated at the outset of this commentary, employment contracts in local school systems can be a source of problems and issues that impact on professional performance and productivity. In my view, legal and policy issues spring less from what is written within the four corners of the formal contract (paper) signed by classroom teachers (or in some states collective bargaining agents) and more from the actual agreement that the written contract memorializes. As pointed out in the above commentary, while teacher contracts seem vulnerable to legal challenges (for example, allegations of unfairness based on a lack of overall specificity and the inclusion of vague language in contract language) that is not the case. However, what follow are some suggestions for consideration by local school officials in a proactive effort to minimize potential contract related issues. It must be made clear in local policy that:

- The Board and its administrative agents and staff intend to do all that is necessary to carry out the spirit of the agreement set out in all employment contracts.
- Employees are expected to review and be cognizant of all aspects of their employment contract.
- The Board expects that all employees will work in good faith to carry out all duties and responsibilities agreed to in the signed contract, including those necessarily implied in the contract.
- Applicable federal and state statutory law and local school system personnel policies in effect at the time the contract is signed are automatically incorporated into and become a part of every employment contract.
- The Board and its administrative agents and staff will work to clarify and interpret the meaning of the written language included in the signed contract.
- All employees will be provided with information (both verbal and written) explaining their legal rights and all contractual duties, responsibilities, expectations, salary and other compensation, and benefits.
- All contract termination decisions will be communicated in a timely manner and in accordance with appropriate procedural safeguards.

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Richard S. Vacca
Senior Fellow CEPI

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