DOCKET NO. 028-R10-03-2015

LEON JAMES	§	BEFORE THE
V.	§	COMMISSIONER OF EDUCATION
DALLAS INDEPENDENT SCHOOL DISTRICT	§	THE STATE OF TEXAS

DECISION OF THE COMMISSIONER

Statement of the Case

Petitioner complains of actions and decisions of Respondent, Dallas Independent School District. Laura Moriaty is the Administrative Law Judge appointed by the Commissioner of Education to preside over this cause. Petitioner is represented by Giana Ortiz, Attorney at Law, Arlington, Texas. Respondent is represented by Kathryn Long, Attorney at Law, Dallas, Texas.

The Administrative Law Judge issued a Proposal for Decision recommending that Petitioner's appeal be denied. Exceptions and replies were timely filed and considered.

The central issue in this case is whether Respondent provided Petitioner with sufficient warning that Petitioner's salary would be reduced. Respondent's written notice provided enough information that Petitioner could have determined the amount his salary could be reduced, and therefore was a sufficiently specific warning.

Findings of Fact

After due consideration of the record and matters officially noticed, it is concluded that the following Findings of Fact are supported by the record:

1. On August 20, 2013, Peggy Sanchez, the Coordinator for Central Staff in Respondent's Human Capital Management Department, sent Petitioner a letter stating, "This letter is to advise you of your assignment as a…Assistant Principal at…Rusk Middle School effective July 31, 2013…Your annual salary will be $73,000.00."

2. On August 23, 2013, Petitioner sent an email to one of Respondent's General Counsel, stating, "My goal is to prevent any unnecessary litigation. Compensation is trying to reduce my salary…I was notified of my new salary of $73,000.00 on August 20 from Peggy Sanchez, which is clearly a violation of the 45 days before instruction rule."

3. On September 5, 2013, Ms. Sanchez sent Petitioner a letter stating, "This letter is to advise you of your assignment as a…Assistant Principal at…Rusk Middle School effective July 31, 2013…Your annual salary for the 2013-2014 school year will be frozen at $79,988.00. Your salary will be reduced for 2014-2015 to be reflective of assignment."

4. In June 2014, Respondent's Board of Trustees adopted its budget and salary schedule for the 2014-2015 school year, and published online a "Salary Handbook" for the 2014-2015 school year. The Salary Handbook included the following chart:

LEVEL	CAMPUS LEADERSHIP ASSISTANT PRINCIPAL LENGTH OF CONTRACT/207 DAYS				
	MIN	2Q	MID	4Q	MAX
ELEMENTARY	$55,200	$59,750	$64,300	$68,900	$73,500
MIDDLE	$59,400	$63,700	$68,000	$72,250	$76,500
HIGH	$67,200	$70,450	$73,700	$76,900	$80,100

5. The 45th day prior to the start of instruction for the 2014-2015 school year was July 11, 2014. After July 11, 2014, Petitioner could no longer unilaterally resign from his contract with Respondent.

6. On September 11, 2014, Ms. Sanchez sent Petitioner a letter stating, "Your 2014-2015 assignment will be Assistant Principal…at Rusk Middle School…effective July 28, 2014…Your 2014-2015 annual salary has been adjusted to $73,000."

Discussion

Petitioner argues that Respondent illegally reduced his salary without prior warning at a time when he could no longer unilaterally resign his contract. Respondent counters that Petitioner received sufficient prior warning a year prior to the actual salary reduction.

Sufficient Warning

The Commissioner has repeatedly held that a school district cannot reduce an educator's salary after the 45th day prior to instruction—when the educator can no longer unilaterally resign—unless the school district has previously warned the educator about the coming salary reduction. *See, e.g., Munoz v. Valley View Indep. Sch. Dist.,* Docket No. 002-R10-09-2013 (Comm'r Educ. 2014); TEX. EDUC. CODE § 21.210. Respondent argues that it gave Petitioner an adequate warning of the coming salary reduction for the 2014-2015 school year on September 5, 2013, when the Coordinator for Central Staff in Respondent's Human Capital Management Department sent Petitioner a letter alerting him, "Your salary will be reduced for 2014-2015 to be reflective of assignment." Under the test the Commissioner articulated in *Brajenovich v. Alief Indep. Sch. Dist.,* Docket No. 021-R10-1106 (Comm'r Educ. 2009), a warning of an impending salary decrease must be both formal and specific to give the educator a meaningful opportunity to decide whether to continue employment with a district. Petitioner does not dispute that Respondent's letter of September 5, 2013 was sufficiently formal—it was in writing and was sent by the human relations office, which is all the *Brajenovich* test requires in terms of formality. *Id.*

Petitioner argues that the warning in Respondent's September 5, 2013 letter was not sufficiently specific under the *Brajenovich* test. Petitioner points out that in *Brajenovich*:

> Respondent warned Petitioner that he faced the possibility of reduced compensation for the coming year at the level of teachers in the same circumstance as he was in. By applying his years of service, stipends, and supplements to the current year's salary schedule, Petitioner could determine how much his salary might be reduced.

Brajenovich, Docket No. 021-R10-1106. Petitioner argues that the September 5, 2013 letter from Respondent did not offer this level of specificity because it neither stated a precise salary number, nor gave Petitioner sufficient information that could allow him to determine a specific salary number by comparing his qualifications and years of experience to a salary matrix.

But the facts in *Brajenovich* belie the breadth of the Commissioner's holding regarding notice specificity. While Mr. Brajenovich himself may have been able to determine his salary precisely, the test the Commissioner set out in *Brajenovich* does not require that a school district give an educator enough information that the educator can determine exactly what the future salary amount will be. The Commissioner held that a notice is sufficiently specific if it "would result in a reasonable teacher knowing the amount the salary ***could be reduced***." *Id.* (emphasis added). The notice does not need to state the salary amount explicitly if the educator can refer to salary schedules published by the school district and determine the amount the salary for the educator's position could be reduced. *Id.* ("The warning Petitioner received put Petitioner in the same position as all the other teachers at the same level on the salary schedule… [From] the current year's salary schedule, Petitioner could determine how much his salary might be reduced."). In subsequent cases, the Commissioner has determined that a notice referring to a salary range is sufficiently specific because it gives a reasonable educator reason to know that the salary could be reduced to the bottom of the salary range. *See, e.g., Abdul-*

Jabbar v. Port Arthur Indep. Sch. Dist., Docket No. 017-R10-12-2014 (Comm'r Educ. 2015) ("the fact that Respondent only gave Petitioner a $21,326 range that his salary could be within does not render the notice too vague to provide Petitioner sufficient notice... Petitioner knew that his salary could be reduced to $53,957, the bottom of the range..."). An educator can decide whether to seek a job elsewhere based on the minimum salary the school district offers for the educator's position.

In this case, Respondent informed Petitioner on September 5, 2013 that his salary for the 2014-2015 school year would be "reflective of assignment." The local record shows that Respondent's Board of Trustees had published a Salary Handbook online that included a salary chart for assistant principals. When Petitioner received Respondent's notice on September 5, 2013, Petitioner should have known by referring to the Salary Handbook that his salary for his assigned position as a middle school assistant principal could be between $59,400 and $76,500. Respondent's letter on September 5, 2013 thus contained enough information that Petitioner should have known that his salary for the 2014-2015 school year could be reduced to $59,400. Respondent actually reduced Petitioner's salary to $73,000, which is the same amount Respondent had previously informed Petitioner it intended to pay him as an Assistant Principal at Rusk Middle School during the 2013-2014 school year. The notice of reduction was sufficiently specific under the *Brajenovich* test, and Respondent therefore acted legally when it reduced Petitioner's salary to $73,000 at a time when he could not unilaterally resign from his contract.

Exceptions

Petitioner filed Exceptions to the Proposal for Decision. Petitioners argue that the Commissioner cannot base his decision on the Salary Handbook, because there is no direct evidence in the local record showing that Respondent's Board of Trustees ever voted to adopt the Salary Handbook. But Petitioner did not object to the Salary Handbook

at the local level, and did not argue before the Board that there was no evidence the Board ever adopted the Salary Handbook—despite the fact that Respondent's attorney stated to the Board, "this Board approved the salary schedule when it approved the budget in June." Hearing Tr. at 18:1-2. Without an objection from Petitioner, it was reasonable for the Board to assume that it had properly adopted the Salary Handbook. No changes were made to this Decision in response to Petitioner's Exceptions to the Proposal for Decision.

Conclusion

Respondent's notice to Petitioner of a salary reduction was sufficiently specific because it provided Petitioner with enough information to allow Petitioner to determine that his salary could have been reduced to $59,400, and to decide from that information whether to look for another job while he could still resign unilaterally.

Conclusions of Law

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact, in my capacity as Commissioner of Education, I make the following Conclusions of Law:

1. The Commissioner of Education has jurisdiction over Petitioner's claims under Texas Education Code section 7.057(a)(2).

2. The warning a school district gives an educator of an impending salary reduction must be sufficiently formal and sufficiently specific to allow the educator a meaningful opportunity to decide whether to continue employment with a district. TEX. EDUC. CODE § 21.210.

3. To be sufficiently formal, a warning must come from a high district source such as the board of trustees, the superintendent, or the office of human resources and be in writing or be delivered at a meeting called for the purpose of informing teachers of a possible reduction in salary.

4. To be sufficiently specific, a warning would result in a teacher knowing the amount his or her salary could be reduced, or would result in a reasonable teacher knowing the amount his or her salary could be reduced.

5. The warning Respondent gave Petitioner was sufficiently specific because it gave Petitioner enough information that he could have determined the amount his salary could be reduced by referring to Respondent's published salary range for all junior high assistant principals.

6. Petitioner's appeal should be DENIED.

ORDER

After due consideration of the record, matters officially noticed, and the foregoing Findings of Fact and Conclusions of Law, in my capacity as the Commissioner of Education, it is hereby

ORDERED that the Petitioner's appeal be, and is hereby, DENIED.

SIGNED AND ISSUED this _____ day of November, 2015.

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MICHAEL WILLIAMS
COMMISSIONER OF EDUCATION

Signed and issued on Oct. 15, 2015 by Michael Williams, Commissioner of Education