



Labor and Employment Law Update

TEL: 661.636.4830
FAX: 661.636.4843
E-mail: sls@kern.org
www.schoolslegalservice.org

August 29, 2013

Court Confirms Personal Service Not Necessarily Required for Notice of Non-Reelection to a Probationary Certificated Employee

Notices of non-reelection to probationary certificated employees must be provided on or before deadlines fixed by statute.¹ While written notice handed to the employee is in practice preferred, in certain circumstances, satisfactory *actual notice* of the non-reelection may be demonstrated rendering personal service unnecessary. Actual notice means that the non-reelection was brought directly to the impacted employee's attention in a timely manner.

Three published appellate court decisions in the last few years have examined specific fact situations involving teachers who claimed they did not get timely notice of non-reelection. All three teachers were in their second consecutive probationary year.

In *Hoschler v. Sacramento City Unified School District*,² the Court of Appeal held that Sacramento Unified's attempt to provide notification of non-reelection to an employee by sending the required notice via certified mail on March 12th was insufficient. In *Hoschler*, the employee did not receive actual notice of the non-reelection until early May—long after the March 15th deadline. The district did not produce a signed return receipt from its certified letter and the parties agreed that Hoschler did not willfully refuse to pick up his mail. The *Hoschler* court found that when a statute requires notice, but does not prescribe a method of that notice, personal service or some other method equivalent to imparting actual notice is required.³

Next, in *Sullivan v. Centinela Valley Union High School District*,⁴ a notice of non-reelection was provided to probationary certificated employee Sullivan on March 16th—one day after the March 15th

¹ Education Code section 44929.21. The deadline for second year certificated employees is March 15. For first year certificated employees, there is no March 15 deadline; June 30 is the *technical* first year deadline. See discussion in *Grimsley v. Bd. of Trustees of Muroc Joint Unified School Dist.* (1987) 189 Cal. App. 3d 1440.

² (2007) 149 Cal.App.4th 258.

³ *Id.* at 269.

⁴ (2011) 194 Cal.App.4th 69.

deadline. Nevertheless, the court found that Sullivan could not assert a failure of timely service because he actively avoided service with knowledge of the planned non-re-election. In any event, Sullivan had actual notice before the March 15 deadline of the decision to non-reelect him. Actual notice of the non-re-election was evidenced by the following: (1) Sullivan and his attorney/friend attended the Board meeting at which the decisions to non-reelect employees were adopted and published by employee numbers; (2) Sullivan was orally told that he would not be rehired prior to the statutory deadline; and (3) Sullivan's wife signed a receipt for the certified letter delivered to his home on March 15th. The *Sullivan* court held that actual notice of the non-re-election was sufficient in these circumstances and personal service was not required. Thus, the non-re-election was valid.

Recently in *Grace v. Beaumont Unified School District*,⁵ the appellate court reviewed whether a notice of non-re-election sent by e-mail prior to March 15 was a legally sufficient notice. Grace was a probationary school nurse. On March 3, 2009, the Beaumont Unified governing board met and determined to lay-off and non-reelect several certificated employees, listed by employee number, in advance of the 2009-2010 school year. Grace was present at the Board meeting and knew one of the employee numbers was hers. Additionally, on March 11, 2009, the Assistant Superintendent for Personnel Services sent Grace an e-mail requesting a meeting with her that day. When Grace responded that she was available and asked about the purpose of the meeting, the Assistant Superintendent responded in an e-mail that the purpose was to provide notice to Grace that the district would not be offering her a contract for the next school year. He also gave Grace the option of not meeting and instead receiving the notice by certified mail. Grace responded with an e-mail requesting the mailed notice. District officials then mailed a certified letter to Grace on the same day, but she did not claim it. The unclaimed letter was subsequently returned to the district.⁶

The court in *Grace* began its analysis with a consideration of Education Code section 44929.21(b). This provision provides that the governing board of a school district must notify a probationary certificated employee on or before March 15 of the employee's second complete consecutive school year of employment of the decision to reelect or not reelect him/her for the next succeeding school year. If the notice is not given in a timely fashion, the employee is deemed reelected for the next school year and must be classified as a permanent employee of the district at the commencement of that year. The court commented that the statute is designed to ensure ample notice of non-re-election to an affected employee, affording him/her the opportunity to find another job and plan for the future. However, the non-re-election statute does not describe a method for giving this requisite notice.

In its analysis, the court in *Grace* also considered the two earlier cases addressing appropriate service of non-re-election notices. When applying the analyses in *Hoschler* and *Sullivan* to the facts at issue in *Grace*, the court held that although Grace had not received a non-re-election notice by personal service, she had sufficient actual notice of the decision to non-reelect her prior to the March 15th deadline. The court recited the fact that Grace was present at the Board meeting at which the decision to non-reelect her was

⁵ (2013) 216 Cal.App.4th 1325.

⁶ *Id.* at 1330-1331.

made and the fact that she waived personal service by requesting the letter be mailed to her home. It appeared to the court that, as in *Sullivan*, Grace was aware the letter was coming and actively failed to claim it before the March 15th deadline. Accordingly, the court found that Grace received adequate notice of the non-reelection and that the non-reelection notice was legally valid.

Grace provides assistance to districts and permits service of non-reelection notices in certain circumstances by means other than personal service, if those means ensure the employee actually receives notice of the non-reelection. Sufficient actual notice includes mailing such a notice by certified mail, if the return receipt shows that the letter was received on or before March 15th. Despite this decision, it remains the advice of Schools Legal Service that timely notice of board action of non-reelection to probationary employees be given by personally serving the written notice and obtaining a signed acknowledgment of receipt by the impacted employee. Again, “timely” notice means on or before March 15th for second year probationary certificated employees.⁷ This deadline is crucial and must be observed.

Should you have any questions or concerns as you prepare to process non-reelections this school year, please feel free to contact our office.

- Melissa H. Brown

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.

⁷ See footnote 1, *supra*, regarding deadlines.