

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

-----: :
WARWICK TEACHERS UNION on behalf of : :
MARY CONWAY, RICHARD DICKSON and : :
MARY PHILLIPS : :
vs. : :
WARWICK SCHOOL COMMITTEE : :
-----: :

DECISION

January 15, 1988

Travel of the Case

At a hearing held before the Warwick School Committee on February 10, 1987 the Warwick Teachers Union argued on behalf of the named petitioners that at the time of hire as teachers they were not properly credited with teaching experience for purposes of placement on the salary scale. The Warwick School Committee issued its decision on June 30, 1987, and on July 23, 1987 the matters were appealed to the Commissioner of Education. The cases of Ms. Conway, Ms. Phillips and Mr. Dickson were consolidated, by agreement, for purposes of hearing and decision at the Commissioner's level. A hearing was held by the Commissioner's designee on September 21, 1987 and post-hearing briefs were submitted by both sides. Jurisdiction to hear the appeal lies under both R.I.G.L. 16-39-1 and 16-39-2.

Issue

Should the terms of the collective bargaining agreement between the Warwick School Committee and the Warwick Teachers Union in effect at the time of hire or the provisions of R.I.G.L. 16-7-29 govern the petitioner's placement on the salary schedule?

Findings of Relevant Facts¹

- Mary Conway was hired as a teacher in the Warwick school system in 1984. She had taught previously in Coventry High School for two years and in the Warwick public schools for two years. When hired in 1984, she was placed on the third step of the salary schedule.
- Richard Dickson was hired as a teacher in the Warwick school system in 1979. He had taught full time previously in the town of Johnston in 1974-75. When hired in 1979 he was placed on step one of the salary scale.
- Mary Phillips was hired as a teacher in the Warwick school system in 1986. She had previous full-time teaching experience in Warwick from 1961-1970 and also taught in the public schools in East Greenwich during 1984-85. When hired in 1986 as a full-time teacher she was placed on step one of the salary schedule.

¹ A threshold issue in this case was the use of Petitioners' Exhibit I (the transcript of the petitioners' hearing before the school committee). The union argued that the transcript was admissible in full and that the facts contained therein must be considered part of the "record" before this hearing officer. The attorney for the school committee took the position that the transcript of the school committee hearing was not proper evidence of the facts contained therein and was not part of the "record" at the Commissioner's level. The latter position is correct, since hearings before the Commissioner under 16-39-1 and 16-39-2 are de novo and the introduction of prior transcripts as full exhibits is generally precluded since the transcripts constitute hearsay. As such, they are admissible only when it is established that facts giving rise to an exception to the hearsay rule exist and would permit introduction of the prior testimony contained in the transcript. See *Slattery v. School Committee*, 116 RI 252, 354 A2d 741 (1976) *Gambardella v. Pawtucket School Committee*, Decision of the Commissioner of Education June 21, 1983.

Thus, the factual findings contained herein are based on those facts stipulated to by the parties, and such additional evidence introduced, excluding the transcript of the hearing before the Warwick School Committee marked as "Petitioners' I".

- During the years 1969-1978 the collective bargaining agreement between the parties contained the following language:

13-4.1 All teachers shall be credited with all previous teaching experience recognized by the Rhode Island State Department of Education. A year's experience shall be based on the teaching of at least ninety (90) school days during any given school year. This provision will include only those teachers hired on or after the effective date of this agreement.

- The above-cited language was contained in Article XII entitled "Salary and Fringe Benefits".
- Beginning with the 1978-1979 contract the language of Section 13-4.1 was changed to read as follows:

13-4.1 A year's experience shall be based on the teaching of at least ninety (90) school days during any given school year. This provision will include only those teachers hired on or after the effective date of this agreement.

- The language contained in the 1978-79 agreement was included in the collective bargaining agreement during each of the years in which the petitioners were hired as full-time teachers in the Warwick school system.
- On September 29, 1986 a final and binding arbitration award construed the language of Section 13-4.1 of the agreement to require teachers hired for permanent teaching assignments in Warwick to receive credit for previous continuous teaching experience in Warwick when placed on the salary scale.²

² The arbitrator accepted the union's interpretation of the contract that prior teaching in the Warwick School system should be credited to newly-hired teachers for placement on the salary scale. It was the position of the school committee that the changes in language resulting from the 1978-79 contract negotiations eliminated the crediting of and previous teaching experience for determining placement on the salary scale. Note that the arbitration award required that the prior experience in Warwick, to be credited under 13-4.1, be "continuous".

Decision

Each of the petitioners has prior public school teaching experience which was not credited for purposes of determining their initial placement on the Warwick salary scale. The relevant contract language (Section 13-4.1) has been interpreted to require the previous experience to be (a) in the Warwick school system (b) continuous³, i.e. teaching for an unbroken chain of years. By reference, then, to the contract language in effect at the time of petitioners' hire as permanent teachers, the contract did not require the crediting of their prior experience as it was not in the Warwick school system, or, as in Ms. Phillips case, was in part outside Warwick (1984-85) and the remainder, although in Warwick, was apparently determined to be non-continuous⁴.

The petitioners base their claim of legal entitlement for credit for their prior public school teaching experience (for purposes of initial placement on the salary scale) on state law. Specifically the petitioners point to the provisions of R.I.G.L. 16-7-29:

16-7-29 Minimum salary schedule established by community. -- Effective with the school year 1960-1961 and in every year thereafter every community shall have established and put into full effect by appropriate action of its school committee a salary schedule recognizing years of service, experience and training...for all certified personnel regularly employed in the public schools...

Both the Commissioner of Education⁵ and the Rhode Island Supreme Court⁶ have

³ See Exhibit 6, arbitration award of Kathrine B. Overton, as clarified by letter of January 8, 1987.

⁴ This hearing officer expresses no opinion on whether Ms. Phillips' experience in Warwick in the 1961-70 period qualifies as "continuous" under the terms of the arbitrator's award; this issue is not raised by this appeal.

⁵ Decision of the Commissioner of Education in the case of Howard Union of Teachers on behalf of Nancy D. Antosh, et al v. State of Rhode Island, June 19, 1981.

⁶ Howard Union of Teachers et al v. State of Rhode Island, 478 A2d 563 (RI 1984)

construed Section 16-7-29 to require a community to recognize prior teaching service in the public schools in cities and towns of this state outside that community as well as in that community in placing a teacher on its salary schedule⁷.

The Warwick School Committee acknowledges the existence of R.I.G.L. 16-7-29 and its recent interpretation by the R.I. Supreme Court in Howard, i.e. the requirement that school committees give credit for all in-state, public school teaching. However, the school committee argues that the facts of the instant case distinguish it from Howard. In Howard the parties had negotiated a collective bargaining agreement but apparently its terms did not address the issue of credit for prior experience. In the case before the Commissioner, the parties have negotiated a contractual term which addresses the subject matter of the statute and specifically provides for credit only for prior continuous teaching experience in the Warwick school system. It is the position of the school committee that the inconsistent contractual provision takes precedence over Section 16-7-29. I respectfully disagree.

One can put forth several arguments as to why a contractual provision of a collective bargaining agreement has precedence over a conflicting provision of state law, but none of them are persuasive. The fundamental reasoning for this is that one must assume that the legislature, in passing statutes for the public good, intends the statute so enacted to be effective until such time as

⁷ In the Howard decision I would note that although the precise issue of within v. outside-the-community teaching was not before the Supreme Court, in that the state did not file a cross-appeal of the Regents' decision, in considering the issue of credit for private school and out-of-state teaching raised by those teachers who petitioned to the Supreme Court, dicta of the Supreme Court is sufficiently broad to interpret its decision as a complete endorsement of the Commissioner's and Regents' rulings in this matter.

the legislature deems it contrary to the public interest, and repeals it. Acceptance of the school committee's argument would permit teacher unions and school committees to agree to a provision which negated a statutory requirement, effectively repealing it as between the parties. It is our decision that a provision of a collective bargaining agreement which is at conflict with a specific provision of the state's education law is invalid⁸.

This ruling was implied by our Supreme Court in 1975 when it considered the argument that another provision of the Warwick contract (the clause which submitted to arbitrators the question of school teacher promotion) was null and void because it conflicted with Section 16-2-18 of the general laws⁹. In ruling that the contractual provision in question did not contravene 16-2-18 since 16-2-18 dealt with the selection, not promotion, of teachers, the court stated at page 353 of the Belanger opinion:

The legislative mandate for good-faith bargaining is broad and unqualified and we will not limit its thrust in the absence of an explicit statutory provision which specifically bars a school committee from making an agreement as to a particular term or condition of employment.

It is our judgement that 16-7-29 is explicit and operates as a bar to a contractual provision providing credit for less-than-all public school teach-

⁸ While there is no Rhode Island case which stands for this specific proposition of law, cases in other jurisdictions uniformly invalidate the collective bargaining provision which is at odds with a particular statutory provision. See West Hartford Education Association v. Dayson DeCourcy, 295 A2d 526, 162 Conn. 566 (Conn. 1972); State v. State Supervising Employees Association, 393 A2d 233, 78 N.J. 54 (N.J. 1978); Leechburg Area School District v. Leechburg Education Association, 355 A2d 608, 24 Pa Cmwlth 256, vacated 380 A2d 1203 (1976), holding that a school district may provide benefits in excess of those provided by statute; Scranton Federation of Teachers Local 1147 AFT v. Scranton School District, 407 A2d 61, 45 Pa Cmwlth 385 (Pa 1979) holding contractual provision authorizing additional pay for rescheduled "snow" days void as in conflict with a contrary provision of state law; Paterson Police PBA Local No. 1 v. City of Paterson, 432 A2d 847, 87 N.J. 78 (N.J. 1981), to cite but a few cases standing for this proposition.

⁹ Belanger v. Matteson, 115 R.I. 332, 346 A2d 124 (1975)

ing in this state in placing teachers on a salary scale.

The school committee in its brief did not really address the issue of the validity of a contractual provision which provides for credit for less experience than that required by state law. The committee relied on other legal theories to advance its claim that the collective bargaining agreement controlled the amount of credit for prior teaching to be accorded teachers for purposes of placement on the salary scale. Our ruling on the invalidity of this clause probably renders unnecessary a discussion of these other theories, but in hope that the parties will be assisted by such discussion we will address these other theories as well.

First, the committee argues that in enacting R.I.G.L. 28-9.3-1 the legislature authorized school committees and teacher unions to negotiate freely and without restriction on terms and conditions of employment, including such subjects as the establishment of a salary scale and placement of teachers on that scale. The enactment of the School Teachers Arbitration Act did not repeal Section 16-7-29, and our state Supreme Court indicated that this statute retains viability notwithstanding the enactment of 28-9.3-1. See Berthiaume v. School Committee of City of Woonsocket, 397 A2d 889 (1979). In fact, in Berthiaume the Court indicated that in reading these two statutes together harmoniously, Section 28-9.3-1 et seq. should be viewed as providing one means whereby the statutorily mandated salary schedule could be established. Our view is that the other requirements of 16-7-29, i.e. the mandate of credit for prior experience as set forth in Howard similarly must coexist with the collective bargaining process. The fact of collective bargaining does not in and of itself, as the school committee would argue, make the provisions of 16-7-29 any less mandatory.

Counsel for the school committee advances the argument that the union has

waived (on behalf of all teachers in the bargaining unit) any benefit accorded by state statute in return for other benefits obtained during the collective bargaining process. Protections afforded to teachers by a state statute enacted for the welfare of the public cannot be waived¹⁰. Our Supreme Court has so held and, in Berthiaume, indicated that Section 16-7-29 was clearly enacted for a public purpose, to "provide a quality education for all Rhode Island youth." In such cases where the beneficiary of the right (the teacher) lacks the capacity to waive the benefit in question by private contract, it seems logical that the collective bargaining agent also lacks such capacity with regard to the agreement entered into on behalf of all the bargaining unit members. Thus the school committee's argument that either the union or the individual teachers have waived or agreed to forego the benefit accorded teachers under Section 16-7-29 is not consistent with the law in Rhode Island.

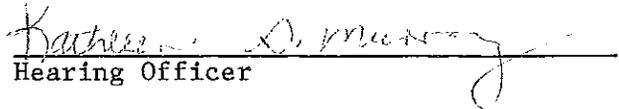
Each of the petitioners delayed varying lengths of time in asserting his/her claim to additional credit/higher placement on the Warwick salary scale. Despite this delay there has been no showing by the school committee that the "passage of time" has worked a prejudicial disadvantage to the school committee. The delay in asserting their rights until after being hired by the school committee does not set forth facts giving rise to a claim of laches but rather waiver. Any attempt to condition the petitioners' employment on a waiver of their statutory rights is void. Even if they had expressly indicated a waiver of their rights at the time they accepted employment, this

¹⁰ This is so whether it be the right to tenure following the third year of employment as a public school teacher (Barber v. Exeter-West Greenwich School Committee, 418 A2d 13 (RI 1980); the right to hearing before the full school board (Davis v. RI Board of Regents, 339 A2d 1247 (RI 1979), or a long-term substitute's right to statutorily-established compensation (Berthiaume v. School Committee of the City of Woonsocket, 397 A2d 889 (RI 889)).

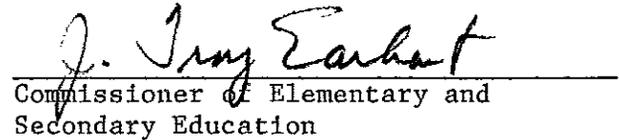
agreement would not be binding. See Barber and Berthiaume, previously cited.

Conclusion

The petitioners appeal is sustained. In accordance with Section 16-7-29 the petitioners are entitled to placement on the salary scale of the Warwick school system in accordance with their prior teaching service in the public schools in Rhode Island. The parties are directed to confer forthwith to determine what sums might be due for wrongful placement in the past.¹¹ If the parties are unable to resolve any back-pay issues, they should so notify the Commissioner within thirty (30) days of this decision.


Hearing Officer

Approved:


Commissioner of Elementary and
Secondary Education

January 15, 1988

¹¹ As Associate Commissioner William P. Robinson indicated in the Howard case, "we seriously question whether back pay should be available to the appellants for the period prior to their commencement of this case." See Footnote 12 of the Decision of the Commissioner, June 19, 1981.