

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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PATRICIA M. HOAG :  
vs. :  
PROVIDENCE SCHOOL :  
BOARD :  
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D E C I S I O N

June 27, 1988

The petitioner is a tenured teacher who contends that under a collective bargaining agreement she has the right to be assigned to a particular teaching position. She argues that the Providence School Department is violating the collective bargaining agreement by refusing her request to be so assigned. She also contends that her Union has violated its duty to provide her with "fair representation" by declining to file a grievance on her behalf.

The petitioning teacher contends that the Commissioner of Education has jurisdiction to decide "unfair representation" cases in which a Union member contends that his or her Union has not provided "fair representation" in the processing of individual grievances. Belanger v. Matteson, 115 R.I. 332 (1975). We are constrained to rule that we lack any such jurisdiction.

In McDonald v. Rhode Island General Council, 506 A.2d 1176 (1986) the Rhode Island Supreme Court stated:

McDonald was a member of Public Service Employees Local Union No. 1033, a union organized to represent employees of the City of Providence pursuant to §28-9.4-1. The Rhode Island Legislature has deemed any municipal labor bargaining unit organized under §28-9.4-1 to be the "sole and exclusive negotiating or bargaining agent for all of the municipal employees in such appropriate bargaining unit. . .". Section 28-9.4-4. Consequently, a public employee is precluded from pursuing a grievance on his own behalf. Any such action must, according to statute, be brought by the appropriate bargaining unit, in this case, local union No. 1033, on behalf of the complaining employee. In essence, the Legislature has taken away the right of individual employees to further their interests individually or to organize into smaller units to deal with their employers. Faced with this situation, we recognized in Belanger v. Matteson, 115 R.I. 332, 338, 346 A.2d 124, 129 (1975), cert. denied, 424 U.S. 968, 96 S.Ct. 1466, 47 L.Ed. 2d 736 (1976).

"a statutory duty on the part of an exclusive bargaining agent to fairly and adequately represent the interests of all of those for whom it negotiates and contracts. . .". See also Steele v. Louisville & Nashville Railroad Co., 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173 (1944). As a result, Rhode Island now recognizes for members of its municipal unions, a tort action against such a union by its members for failure of the union to pursue a grievance claim adequately. (Emphasis added).

We think that the above-quoted language is dispositive of this case.

We think it clear that the Superior Court, and not the Commissioner has jurisdiction over a "a tort action" by a Union member against his or her Union. McDonald, supra. We think that such an action is "equitable" in nature in that it falls within the equity jurisdiction of the Superior Court. (G.L. 8-2-3). We note here that the only fair representation cases which we have been able to find were brought in the Superior Court. McDonald, supra. Belanger, supra.

Our conclusion that the Commissioner lacks jurisdiction in this case is strengthened by language in the McDonald case, supra, which reads as follows:

Justice Stevens stressed that the fair-representation claim could stand independent of the disposition of the employee's claim against his employer. In essence, Justice Stevens recognized that the fair-representation claim stems from the union's tort-like fiduciary duty to its members. As a result, this claim arises from a different theoretical basis from that on which the employee's work-related claim against his employer would be based.

We read the above-quoted language to mean that in Rhode Island an unfair representation suit is grounded in a Union member's alleging that his or her Union has breached its tort-like fiduciary duty to provide fair repre-

sentation. We do not see how breach of a fiduciary duty can be said to arise "under any law relating to schools or education", and it is only cases "arising under any law relating to schools or education" over which the Commissioner has jurisdiction." (G.L.16-39-1) That is to say that simply because the dispute involves a teacher, a teacher Union, and a school committee does not mean that this dispute arises under school law.

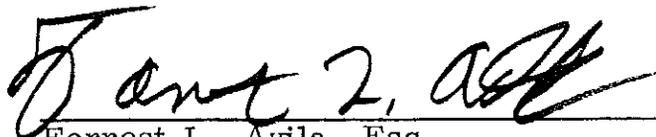
As a supplementary ground for decision we note that we have doubt that we have jurisdiction to decide a matter which arises solely under a collective bargaining contract. Under the common principles of school law a teacher can be assigned to any professional duties which the school committee sees fit to assign him or her. (e.g.) In Re Santee appeal, 397 PA. 601, 156 A.2d 830. It is thus only by virtue of a collective bargaining agreement that teachers have gained the right to have some say about the positions to which they are to be assigned. We think the construction of such contracts must be left to the arbitration process and to the courts. (G.L.28-9-17). We read the Rhode Island case of Bochner v. Providence School Committee, 490 A.2d 37 as stating implicitly that while the Commissioner of Education has jurisdiction to decide statutory claims which involve collective bargaining agreements, the Commissioner does not decide claims which arise solely under a collective bargaining agreement. ("There appears to be no doubt that had the dispute in this case involved simply a question of the terms or conditions of employment, such as workload, hours, or duties, then the arbitration clause should have been invoked." Bochner, supra. (Emphasis added). This appears to be the rule

in New York and New Jersey which have educational appeal systems similar to the Rhode Island system. We ourselves have ruled in the past that we do not have jurisdiction over matters which arise solely under a collective bargaining agreement. Madden vs. Warwick School Committee, Commissioner of Education, April 23, 1984. The Madden decision discussed this issue at some length. We, therefore, incorporate its reasoning by reference and attach a copy of it to this Decision.

It is probably fortunate that the Commissioner's jurisdiction does not extend to hearing cases such as the present one. Our Supreme Court has stated that Rhode Island labor law should be construed in consonance with Federal Labor Law. Belanger, supra. If this is so, then the Rhode Island Labor Board (G.L. 28-7-4) would have concurrent jurisdiction with the Superior Court to hear the petitioner's contention that her Union is in breach of its duty to provide fair representation. It would only serve to cause confusion if the Commissioner were to be added as yet a third forum to hear such disputes. Furthermore, injecting the Commissioner into disputes such as this one would tend to make the Commissioner a "super arbitrator" and thus "would destroy the finality of grievance/arbitration determinations in the public employment sector necessary to effectuate . . . State Policy." Commack U. Free School Dist. v. Ambach, 517 N.E.2d 509 (N.Y. 1987).

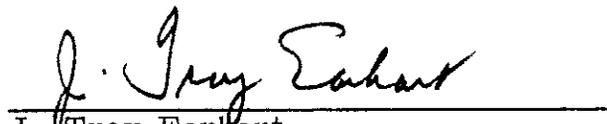
Conclusion

For the reasons set out above, this matter is dismissed for lack of jurisdiction.



Forrest L. Avila, Esq.  
Hearing Officer

Approved:



J. Troy Earhart  
Commissioner of Education

June 27, 1988

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

-----: :  
JOHN R. MADDEN : :  
vs. : :  
WARWICK : :  
SCHOOL COMMITTEE : :  
-----: :

D E C I S I O N

April 23, 1984

## FACTS OF THE CASE

The facts of this case, for present purposes, are well stated in the appellant's letter of appeal:

Mr. John Madden of 5 Linbrook Drive, Warwick, Rhode Island was employed by the Warwick School Department as a custodian and was serving in such a capacity at Tollgate High School until the date of February 22, 1982. On or about that date, Mr. Madden received a notice from Mr. John Venditto, Assistant Superintendent for personnel and employee relation, transferring him from Tollgate High School to Veterans High School as a custodian.

On behalf of Mr. Madden, (a grievance was filed) alleging that said transfer was illegal and contrary to the provisions of the employment contract executed by the Warwick School Committee and the Warwick Independent School Employees Union.

Subsequently, on May 17, 1982, the school committee reviewed and considered the grievance processed on behalf of Mr. Madden and found no violation of the collective bargaining agreement. Consequently, on June 28, 1982, the Executive Board of Warwick Independent School Employees Union considered Mr. Madden's request to continue the grievance to the arbitration procedure.

As a result of the June 28, 1982 meeting, the Executive Board of Warwick Independent School Employees Union decided not to pursue Mr. Madden's grievance to arbitration, citing as reason that the transfer was not arbitrary and/or in violation of the collective bargaining agreement.

The collective bargaining agreement in this case provides that "transfers shall not be executed arbitrarily". (AGREEMENT between the Warwick School Committee and the Warwick Independent School Employees Union, February 1, 1982 to January 31, 1983, p. 6, Article V (C.)). This collective bargaining agreement was entered into under the provisions

of an act entitled "Arbitration of Municipal Employees' (except policeman, fire fighters and certified school teachers) Disputes". (G.L. 28-9.4-1, et seq.) and this agreement is also, by its very terms, subject to a binding arbitration procedure. (Article XVII).

### JURISDICTION

Since we can find nothing in Rhode Island school law which prevents a school district from assigning non-teaching personnel where it pleases it is manifest that any protection Mr. Madden has against "arbitrary transfer" must be found in the collective bargaining agreement, and not under Rhode Island school law.<sup>1</sup> Of course, it is axiomatic that the Commissioner of Education hears only those matters "arising under any law relating to schools or education," (G.L. 16-39-2). In South Orange-Maplewood Ed. v. Board of Ed., ect., 370 A.2d 47, the Appellate Division of the New Jersey Superior Court, in construing a jurisdictional statute substantially identical to the one prevailing in Rhode Island, held that the New Jersey Commissioner of Education had no jurisdiction to decide disputes under a collective bargaining agreement when no construction of school law was at issue. The question was one of whether certain teachers were entitled to sabbatical leaves under a collective bargaining agreement. The Court stated:

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<sup>1</sup> Although we do not decide the issue today, we note that other jurisdictions have held that even a teacher does not have a right under school law to contest a transfer from one building to another. Matthews v. Board of Education, 198 Cal. APP.2d 748, 18 CAL. Rptr. 101 (1962).

N.J.S.A. 18A:6-9 gives the Commissioner jurisdiction over "all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the state board or of the commissioner." Defendant contends that the dispute here involves a number of school laws, including the mandate in the Education Clause of our Constitution (N.J. Const. (1947), Art. VIII, §4, par.1) for a thorough and efficient system of education, the management of local schools by school boards. (N.J.S.A. 18A:10-1), the employment and regulation of employees (N.J.S.A. 18A:11-1), the power to fix and alter their compensation (N.J.S.A. 18A:16-1) and the power to make rules governing terms of employment (N.J.S.A. 18A:27-1 and N.J.S.A. 18A:28-5).

[1] We see the issue differently. N.J.S.A. 34:13A-5.3 authorizes a public employer to enter into a binding agreement with public employees on terms and conditions of employment. Sabbatical leave is clearly a term and condition of employment. It is akin to wage and vacation benefits. The board exercised its authority under the school laws to fix the compensation and other terms of employment through negotiation with employees' representatives. The result was memorialized by the agreement. Now the only remaining dispute concerns the interpretation of that agreement.

[2-4] Many disputes may be resolved by binding arbitration if the agreement so provides, without resort to the Commissioner. N.J.S.A. 34:13A-5.3; Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 311 A.2d (1973). There the court said.

No issues of any substance under the school laws are presented and the expertise of the Commissioner of Education would not significantly further the interpretative process as to the intended meaning of the parties' agreement. We are satisfied that under the circumstances the Association acted within its contractual rights in pursuing the grievances through arbitration without first submitting them to the Commissioner.[at 8, 311 A.2d at 732].

The Commissioner has jurisdiction over certain disputes in the absence of an agreement or if the subject matter is not susceptible to binding agreement because it concerns major education policy or because the issues are controlled by the school laws. Dunellen Bd. of Ed. v. Dunellen Education

Ass'n, 64 N.J. 17, 31, 311 A.2d 737 (1973); Union County Regional High School Bd. of Ed. v. Union Cty. Regional High School Teachers Ass'n, 145 N.J. Super. 435, 368 A.2d 364 (App. Div. 1976). Cf. Red Bank Bd of Ed. v. Warrington, 138 N.J. Super. 564, 571-573, 351 A.2d 778 (App. Div. 1976); but consider the jurisdiction of the New Jersey State Board of Mediation, N.J.S.A. 34:13A-1 et seq., the New Jersey Public Employment Relations Commission (P.E.R.C.), N.J.S.A. 34:13A-3 et seq., and the effects of N.J.S.A. 34:13A-5.3 and N.J.S.A. 34:13A-8.1 as amended by L. 1974, c. 123 §§ 4 and 6. Red Bank Bd. of Ed. v. Warrington, *supra*. We need not decide all the potential conflicts of exclusive, primary and concurrent jurisdiction. See, e.g. Plainfield Bd. of Ed. v. Plainfield Education Ass'n, 144 N.J. Super. 521, 366 A.2d 703 (App. Div. 1976).

[5] We see nothing in the dispute over the meaning of the agreement as it pertains to sabbatical leave which involves an interpretation of any specific statute in Title 18A (Education). Nor can the "school laws" be invoked on the theory that "budgetary constraints" qualify the terms of the agreement.

It seems to us that this case is completely controlled by the collective bargaining agreement, and that no part of this case involves any question of school law. Thus, although the collective bargaining agreement here concerns a school district, no part of the present dispute arises under school law. The Commissioner of Education, therefore, lacks jurisdiction to decide this case. South Orange-Maplewood Ed. v. Board of Ed., et al., supra. Rhode Island law has long recognized that simply because a dispute relates to a school system this, in and of itself, does not mean that the Commissioner of Education automatically has jurisdiction to decide the question presented. In the appeal of John L. James, Tax Collector of School District No. 10, North Providence, 5, R.I. 602, Chief Justice Ames held that the Commissioner of Education did not have jurisdiction to determine whether the tax collector of school district 10 had, in fact,

duly paid to the school district treasurer, and the school district, money which had been collected. The question whether the payment was made was not a question of school law simply because school personnel and school funds were involved. Chief Justice Ames, therefore, held that the Commissioner of Education was correct in dismissing the appeal for lack of jurisdiction. The parties were remitted to their normal remedies at law. Appeal of John L. James, supra.

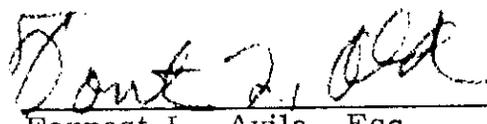
We specifically point out that we do not hold that the Commissioner of Education never has jurisdiction to construe a collective bargaining agreement. When a question of school law also entails the construction of a collective bargaining agreement there can be no doubt that the Commissioner would have jurisdiction to hear the entire matter. For example, the school law of New Jersey granted any teacher "employment credit" for military service "as if he had been employed for the same period of time in some publicly-owned and operated college, school or institution of learning in this or any other state." The court held that the Commissioner of Education had jurisdiction to decide whether a collective bargaining agreement which provided for longevity increases would have to be construed to encompass this legislatively mandated "employment credit". Wall tp. Ed. Assn. v. Bd. of Ed. of tp of Wall, 149 N.J. Super. 126, 373 A.2d 425 (1977). Such a case is to be distinguished from the one before us now which presents no questions involving school law.

<sup>2</sup>cf. School Com. v. Board of Regents for Ed. R.I. , 429 A.2d 1297 (1981). The matter was held to arise under school law since it involved "the selection of teachers" (G.L.16-2-18 and G.L. 16-16-1(2)) along with a question relating to when a per diem substitute, as defined by a collective bargaining agreement, would become a long-term substitute under G.L. 16-16-1(2).

We must, therefore, hold that the Commissioner lacks jurisdiction to decide this matter. We also note that since the appellant has had resort to the grievance procedure contained in the collective bargaining agreement the doctrine of "election of remedies" would seem to bar his appeal here, even if jurisdiction were present. Cranston Teachers Association v. Cranston School Committee, R.I. , 423 A.2d 69. Moreover, if the appellant was not satisfied with the decision of his union not to press his grievance through arbitration he could, perhaps, have considered remedies under the doctrine of "fair representation". Belanger v. Matteson, 115 R.I. 332, 115 A.2d 942, 346 A.2d 124 (1975).

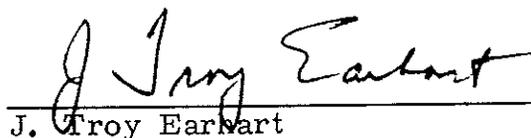
CONCLUSION

The appeal of John R. Madden is denied and dismissed for lack of jurisdiction.



Forrest L. Avila, Esq.  
Hearing Officer

Approved:



J. Troy Earhart  
Commissioner of Education

April 23, 1984