

STATE OF RHODE ISLAND
AND PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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 :
ROBERT L. LAPIERRE :
V. :
CRANSTON SCHOOL COMMITTEE :
 :
----- :

DECISION

August 12, 1988

Travel of the Case

On July 24, 1987 Robert Lapierre appealed to the Commissioner of Education from the decision of the Cranston School Committee to deny his request for reemployment as a mathematics teacher. Mr. Lapierre had asserted a right to reemployment within the Cranston school system upon his retirement from the United States Air Force in September 1986. By resolution of July 20, 1987 the School Committee denied his request.

The issues involved in the appeal were heard on October 13, 1987; October 27, 1987; and December 2, 1987, with the transcript of the final hearing forwarded to this hearing officer on January 5, 1988.

Jurisdiction is alleged to arise under R.I.G.L. 16-39-2.

Issues

Does the Commissioner of Education have jurisdiction to hear the appeal from the School Committee's denial of Robert Lapierre's request for reemployment?

Is the Cranston School Committee required to reinstate Mr. Lapierre, grant him credit for purposes of placement on the salary scale, and otherwise credit him with seniority rights for the twenty-year period he served in the United States Air Force?

Findings of Relevant Facts

The transcript developed at the extensive hearings held in this case contains many facts which were found to be irrelevant to the legal issues raised by Mr. Lapierre's appeal. Substantial effort has been made to focus on the facts which we consider relevant to the issue of whether Mr. Lapierre was improperly denied reemployment, seniority, and tenure rights under R.I.G.L. 30-21-1, 30-21-2 and 16-13-7. The facts in this case are:

- During academic years 1964-66 Robert Lapierre was employed as a mathematics teacher at Cranston High School East.

- On March 2, 1966 he requested an unpaid leave of absence for one year "to fulfill his military obligation" in the United States Air Force.

- On March 21, 1966 the Cranston School Committee granted Mr. Lapierre a military leave of absence for the 1966-67 school year.

- On July 1, 1966 Robert Lapierre voluntarily entered military service.

- Robert Lapierre was on continuous active duty from September 13, 1966 through September 30, 1986, when he was honorably discharged and retired from the Air Force.

- While Mr. Lapierre's initial entry into military service was to "fulfill his military obligation" his status as a regular career officer in the Air Force resulted in a contractual term of service that was indefinite in length¹. However, Mr. Lapierre testified that he could have requested to separate from the Air Force at any time after July 1, 1966, and the Air Force could have granted or denied his request. (Transcript pp. 51-56)

- At no time prior to 1986 did Major Lapierre request permission to separate from the United States Air Force.

- During the period 1966-1980, Mr. Lapierre had several contacts with the principal of Cranston High School East as well as the then-Director of Personnel, Secondo S. Siniscalchi, in which Mr. Lapierre asserted continuing rights to reemployment.

- In February, 1980 Mr. Lapierre was notified that a resolution would be presented to the Cranston School Committee on March 17, 1980 terminating both his military leave and his employment with the Cranston Public Schools.

- The above mentioned resolution was passed on March 17, 1980 and Mr.

¹ We take judicial notice of the fact that Mr. Lapierre's statutory military obligation under the Federal Military Selective Service Act was fulfilled after a four-year term of service.

Lapierre was notified of this action on June 27, 1980. The School Committee cited the expiration of a four-year time period following which "a person serving in the armed forces of the United States waives reemployment rights allowable by law."

- By letter of May 16, 1980 Mr. Lapierre notified the school department of his continued assertion of job protection rights.

- The next communication between the parties was on June 28, 1986 when Mr. Lapierre wrote to the Director of Personnel requesting reemployment as a teacher of mathematics for the 1986-87 school year and detailed the educational credits he achieved while in the Air Force.

- In his response of July 2, 1986 Personnel Director William E. Allen cited the 1980 termination action by the School Committee and concluded "In accordance with the action of the school committee you have no rights to a job with the Cranston Public Schools." (School Committee Exhibit I)

- At this time (July 2, 1986) Mr. Lapierre was invited to fill out an application for a position as a teacher of mathematics or any other area for which he was certified.

- At the time of Mr. Lapierre's request there were no vacancies for mathematics teachers in the Cranston School System, and a vacancy was not created until some time in January, 1987.

- On January 16, 1987 Mr. Lapierre filled out an application with the Cranston School Department. The application noted "before beginning service in this state, it will be necessary to obtain a Rhode Island Teaching Certificate from the Commissioner of Education...It is not necessary to have this certificate prior to returning your application." (School Committee Exhibit J)

- In answer to question Number 10 contained on his application "Do you hold a regular Rhode Island Teaching Certificate?", Mr. Lapierre indicated a

temporary certificate expiring in August 1987 and went on to answer the question, "If not, can you qualify?," in the affirmative.

- On March 6, 1987 Mr. Lapierre received provisional certification in Math, General Sciences and Physics. His previous provisional certification had expired on August 1, 1980. Mr. Lapierre's recertification in these areas on March 6, 1987 was accomplished without any additional education or teaching experience following his request for recertification in June of 1986.

- In March of the 1986-1987 school year, Mr. Lapierre accepted a half-time position and by letter dated March 24, 1987 to the Director of Personnel made a second request for reinstatement to his former position or a position of like seniority, status and pay. Mr. Lapierre indicated in this letter that his acceptance of the half-time position was not a waiver of any rights he is entitled to under state law.

- Following the March 24, 1987 request for reinstatement, Vincent J. Piccirilli, attorney for the School Committee, responded asserting that Mr. Lapierre had been legally terminated in 1980.

- After Attorney Piccirilli's response, Mr. Lapierre's attorney, Michael H. Devlin, formally petitioned the Cranston School Committee for "reinstatement with full tenure and seniority pursuant to various federal and state laws which were in effect at the time of Mr. Lapierre's entry in the armed services."

- The request was denied by the School Committee on July 20, 1987.

Jurisdiction

Counsel for the School Committee has vigorously challenged the propriety of submitting Mr. Lapierre's dispute with the School Committee to the Commissioner of Education. He notes that jurisdiction under 16-39-2 of the General

Laws is limited to situations in which the dispute with the School Committee "arises under any law relating to schools or education." (See R.I.G.L. 16-39-2). Since the primary legal issues in this case involve interpretation and application of two sections of a chapter of the General Laws entitled "Employment of Veterans," he argues that the matter revolves around military affairs and does not arise under a law relating to schools and education. The School Committee's position is that the appeal should be dismissed on this basis.

Given the Rhode Island Supreme Court's elucidation of the characteristics of a dispute properly appealed to the Commissioner under R.I.G.L. 16-39-2,² we share the doubts about the Commissioner's jurisdiction over this appeal. Nonetheless, we decline to dismiss the appeal for jurisdictional reasons in part because the parties have expended considerable time, effort and money in creating an extensive factual record before the Commissioner. In addition, despite the Court's ruling in School Committee v. Board of Regents, supra, we find sufficient ambiguity in R.I.G.L. 16-39-2 such that adjudication of this dispute is not clearly improper.

The subject matter of the dispute involves not just reemployment rights of veterans, but a veteran seeking employment and tenure as a high school teacher. As such, the dispute arises under not just the cited provisions of Title 30 but sections of Title 16 relating to the school committee's statutory

² In School Committee of the City of Providence v. Board of Regents for Education, R.I., 429 A2d 1297 (1981) the Court sets forth three jurisdictional requirements:

- a. the party appealing to the Commissioner must be aggrieved;
- b. the appeal must involve a "decision" or "doing" of a school committee;
- c. the committee's decision must arise under a law relating to schools or education.

authority to hire and dismiss teachers as well. The qualifications and employment rights of teachers in the public schools is a matter of utmost concern to the Commissioner, who through the Department of Elementary and Secondary Education has established specific requirements for teacher qualifications. Secondly, the language of R.I.G.L. 16-39-2 does permit the interpretation that any person aggrieved by any decision of a school committee may appeal to the Commissioner. If the only interpretation of the section were that the dispute must arise under a law relating to schools or education, the language would read: any person aggrieved by any decision or doings of any school committee in any matter arising under any law relating to schools or education may appeal to the Commissioner of Education. Note that in the actual statute the phrase "in any other matter arising under any law relating to schools or education" is preceded by the word "or". In addition, we note that in the statute dealing with the duties of the Commissioner, the language implies broad appellate jurisdiction over decisions of local school committees.³ For the foregoing reasons, we proceed to reach the merits of this case.

Reemployment Rights

Although Mr. Lapierre's claim to reemployment before the Cranston School Committee was apparently based on both federal and state veterans reemployment statutes⁴, in proceeding de novo before the Commissioner, Mr. Lapierre limited

³ Among the Commissioner's duties: R.I.G.L. 16-60-6(9)(h) to interpret school law and (emphasis added) to decide such controversies as may be appealed to him from decisions of local school committees.

⁴ Counsel for Mr. Lapierre petitioned the school committee for his: reinstatement with full tenure and seniority pursuant to various federal and state laws which were in effect at the time he entered the armed forces. (Petitioner's Exhibit 4)

his claim to reemployment as a teacher in the Cranston School System to R.I.G.L. 30-21-1. This statute, enacted in 1943, reads in part as follows:

30-21-2 Reinstatement by previous employer required. -- If any employee enters the land, naval, and air forces of the United States of America, upon his honorable discharge from such service, his former employer, if requested within forty (40) days after such honorable discharge and if the employee is still qualified to perform the duties of such position shall reinstate him to his former employment or to a position of like seniority, status and pay unless such employer's circumstances have so changed as to make it impossible or unreasonable to do so...

The statute does not distinguish between those who volunteer and those who are inducted into the armed forces⁵, nor does it require the veteran's duty to be served during wartime. The employer's obligation to reinstate the former employee is conditioned on (1) honorable discharge, (2) timely request, (3) qualification of the employee to perform the duties of the position.

There is no dispute that on his retirement from military service Mr. Lapierre was honorably discharged.

The argument was made that the June 25, 1986 request for reemployment was not timely because at the time it was made, Mr. Lapierre was not yet discharged from the service⁶. While Mr. Lapierre would urge that the requirements of the statute be construed as permitting a request no later than forty (40) days after discharge, the School Committee and the teacher's union argue that the language means the request must be made after discharge but before the expiration of forty (40) days from the date of discharge. We construe this language to require only that the request to the previous employer be made no later than forty (40) days after discharge, but not necessarily after

⁵ At the hearing, much ado was made of the fact that Mr. Lapierre had voluntarily entered the Air Force. See Tr. p. 47-48.

⁶ This argument was advanced by Attorney Richard Skolnik appearing on behalf of the Cranston Teacher's Alliance.

discharge. This is consistent with the plain and ordinary meaning of the words "if requested within forty (40) days after such honorable discharge." It is also consistent with the notion that statutes preserving employment rights for citizens who serve in the military are to be liberally construed so as to effectively implement their basic purposes. It would also be contrary to the interests of the previous employer (in having ample notice of the employee's intention to return to his position) to require that such request be postponed until after actual discharge⁷. Mr. Lapierre's June 25, 1986 request to the School Committee was, we conclude, timely under 30-21-1.

As to the issue of whether Mr. Lapierre was still qualified to perform the duties of his position, again, it is our conclusion that a liberal construction and application of the statute would allow an employee a reasonable period of time in which to document the fact of his qualification for the position. In this particular case, Mr. Lapierre was qualified to perform the duties of, but lacked the necessary teaching certificate to hold, a full-time mathematics position in the Cranston public schools. Such was his situation until March 6, 1987 at which time he received his provisional certification as a teacher of mathematics, physics, and general science.

Construing this statute so as to allow an employee a reasonable period of time in which to produce the necessary credentials to serve in the position is not unreasonable, given that statutes of this type have been construed not to require immediate reemployment by the employer. A reasonable period of time

⁷ Such was the reasoning behind the holding in Martin v. Roosevelt Hospital, 426 F2d 155 (C.A.N.Y 1970) in which almost identical language in the federal veterans reemployment statute was held to permit a request prior to the employee's discharge from the service.

has been allowed in which the employer can adjust his affairs⁸, or in the case of employment of teachers, wait for a vacancy to be created for a full-time teacher⁹. In addition, the lack of certification did not enter into the Personnel Director's July 2, 1986 denial of Mr. Lapierre's request for re-employment, but rather the fact that he had been terminated by the School Committee on March 17, 1980. In testimony, William E. Allen, Director of Personnel, affirmed that this was the full extent of the factual basis for his July 1986 denial of the request for reemployment. (Tr. p. 71)

Although not advanced by the School Committee as an additional reason for denial of the request, we must assume that Dr. Allen's response was also warranted by the fact that there were no vacancies for mathematics teachers in the Cranston School System until sometime in January of 1987, and shortly thereafter (March 6, 1987) Mr. Lapierre obtained his provisional teaching certificate in mathematics, among other subjects. Thus, both reasonable statutory construction and the facts of this particular case support our conclusion that Mr. Lapierre's failure to hold the necessary teaching certificate at the time of his request does not defeat his claim for reemployment under the statute. He was qualified to perform the duties of the job, and had his credentials in order within a reasonable time after requesting reemployment, the same point at which a position became available within the system.

Having determined that Robert Lapierre met the literal requirements for reemployment under R.I.G.L. 30-21-1, we find that construction of this section to accord a career military officer reemployment rights after some twenty

⁸ Hood v. Lawrence, 138 F Supp. 120 (D.C.N.H. 1955)

⁹ Mowdy v. ADA Board of Education, 440 F Supp. 1184 (D.C. Okla. 1977)

years of service would lead to an irrational result. If a literal construction of a statute would lead to an absurd, unreasonable or unjust result, courts have attempted to ascertain the legislature's intent and effectuate that intent by supplying, modifying or deleting those words necessary to effectuate the intended meaning of the legislature¹⁰. We find it bordering on the absurd, patently unreasonable and manifestly unfair to the veteran's previous employer to place no time limit on the period in which the employee is entitled to job protection rights and the employer is obligated to reemploy the returning veteran. It is generally acknowledged that reemployment provisions such as Section 30-21-1 are intended to protect the former employment of servicemen entering the armed forces on a temporary basis, and are not intended to grant reemployment rights to individuals entering the armed services for career purposes, or those who deliberately elect not to be separated from the service.¹¹ Major Lapierre described himself as a professional soldier in the Air Force, and it is clear that he deferred exercise of his reemployment rights until after enjoying the satisfactions of a full career in military service. We cannot accept that our state legislature intended 30-21-1 to apply to those individuals who voluntarily remain in the military services (or declined to request separation) beyond the period of mandatory service.

In construing §8 of the Selective Training and Service Act of 1940, the predecessor to the present federal veterans reemployment statutes¹² the Court

¹⁰ State v. Gonsalves, 476 A2d 108 (RI 1984)

¹¹ See the general discussion in C.J.S., Armed Services Reemployment Rights §268 et seq.

¹² which explicitly contain a four year (in some cases five-year) time limit on reemployment rights of those enlisting in the armed forces. 38 USC 2024

of Appeals for the Eighth Circuit has considered a reemployment statute bearing striking resemblance to 30-21-1. Like our statute the provision contained no stated upper limit of service time as a condition for enjoying reemployment benefits. In that instance the Court found that by failing to separate himself from the service as soon as he could do so legally and honorably, the plaintiff waived any reemployment rights he may have had under the 1940 Act.¹³ The Court in Smith found that the intent of Congress was to ensure appropriate civilian reemployment protection at the end of a non-career period of service. It is only by attributing this same intent to our state legislature, in enacting similar legislation just three years after this federal statute, that we can effect a result which is rational. We thus find that Mr. Lapierre waived his reemployment rights under 30-21-1 by failing to separate from the Air Force, or even request separation, as soon as he could do so legally and honorably.

Even if the appellant were entitled to reemployment under §30-21-1, we do not agree that he would then be entitled to placement on the salary scale which would reflect credit for his twenty years of military service. R.I.G.L. 30-21-2 guarantees that the veteran reemployed within one year after his honorable discharge will be given "additional seniority rights equal to the time he served in said forces." In interpreting the words "seniority rights" in the federal veterans reemployment statutes, courts have consistently determined that seniority rights are not the equivalent of benefits accruing by virtue of work actually performed or experience obtained. Seniority rights

¹³ Smith v. Missouri Pacific Transportation Company, 313 F2d 676 (1963)

are those which reward longevity.¹⁴ Thus, the benefits earned by a teacher advancing along the step system, which rewards years of experience in public school teaching are not equivalent to "seniority rights" under 30-21-2.

Conclusion

Robert Lapierre waived any rights he had to reemployment within the Cranston School System in failing to request separation from the Air Force in the course of his twenty year period of service. He is therefore not entitled to any "additional seniority rights" pursuant to R.I.G.L. 30-21-2. The issue of whether R.I.G.L. 16-13-7 would entitle Mr. Lapierre to be awarded tenure is not raised by the facts of the case. At the time of the hearing, no evidence was presented that Mr. Lapierre had held three annual teaching contracts, successive or otherwise. Thus, the question of whether his military service impaired the continuity of his teaching in the Cranston School System is not presented, so we need not apply or construe §16-13-7 providing that continuity shall be unimpaired by "absence from teaching because of serving one's country."

For the foregoing reasons, the appeal is denied.

Kathleen S. Murray
Hearing Officer

August 12, 1988

Approved By: J. Irving Earhart
Commissioner of Elementary and
Secondary Education

¹⁴ Poor v. Louisville & N.R. Co., 235 F2d 687 (1956); Alabama Power Co. v. Davis, 97 S.Ct. 2002, 431 U.S. 581, 52 L Ed 595 (1977)