

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

-----	:
JAMES PARENTE	:
vs.	:
SMITHFIELD SCHOOL COMMITTEE	:
-----	:

D E C I S I O N

August 12, 1988

Travel of the Case

On July 27, 1984 James Parente, through his counsel, appealed the decision of the Smithfield School Committee denying his claim for additional compensation for service in the school department in the 1983-84 school year. On August 1, 1984 the parties were notified of an August 29th hearing date by Associate Commissioner William P. Robinson. Apparently, the matter was continued at the request of one or both¹ of the parties and was not re-scheduled until some three and one-half years later when the appellant's counsel notified the Commissioner's office that the dispute remained unresolved.

Upon receipt of the letter of appellant's counsel on February 29, 1988, the matter was scheduled and heard on March 18, 1988. A transcript of the hearing, together with the parties' exhibits, was submitted to this hearing officer on April 7, 1988. Jurisdiction to hear the appeal is premised on R.I.G.L. 16-39-2.

Issues

- Does the provision in the collective bargaining agreement of the parties providing for arbitration of grievances prevent the Commissioner from exercising jurisdiction over Mr. Parente's claim?
- Is the appellant barred from asserting his claim under the doctrine of laches?
- Is James Parente entitled to additional compensation for 62 days of service as a per diem substitute in the 1983-1984 school year?

Findings of Relevant Facts

- o The collective bargaining agreement in effect now and at the time Mr. Parente's claim arose provides for final and binding arbitration of

¹ Counsel for Mr. Parente indicates that the continuance resulted from the agreement of the parties and the reason for the subsequent delay was that they were attempting to settle their dispute. The school committee's counsel denied the fact that the continuance was agreed upon and disputed Mr. Santaniello's statement with regard to ongoing settlement discussions.

grievances;

- o The collective bargaining agreement defines grievance as any claim, complaint or dispute over the interpretation or application of the terms of the agreement;
- o There is no term of the collective bargaining agreement which provides for retroactive pay for substitute teachers who teach in excess of one hundred and thirty-five (135) days in the Smithfield school system; per diem substitutes are specifically excluded from the bargaining unit;
- o During the 1982-1983 school year, James Parente was employed as a regular teacher at the junior high in Smithfield; he was paid on Step 3 of the salary scale;
- o During that school year he received a "layoff letter" which he appealed to the school committee;
- o A hearing was held before the school committee on the issues surrounding Mr. Parente's layoff on September 6, 1983;
- o Testimony was presented by Superintendent John Boyle at the September 6, 1983 hearing regarding the total number of absences filled by substitutes in the areas in which Mr. Parente was certified during the 1982-83 school year. That number was fixed as two hundred and eighty four (284);
- o At the September 6, 1983 hearing before the school committee, the superintendent testified that the school committee had a policy providing that a substitute who works more than 135 days will be compensated retroactively to the beginning of the school year²;
- o The superintendent went on to indicate that he had no objection to the adoption of a resolution by the school committee to give James Parente

² One would assume, and this is implicit in the arguments of the parties, "compensated retroactively" means at the rate provided for in the salary schedule for regular teachers in the school system, which schedule recognized the teacher's years of service, experience and training.

first rights for day-to-day substitute work;

- o The school committee did not adopt such resolution relating to James Parente following the conclusion of the September 6, 1983 meeting, but did instruct Dr. Boyle to call Mr. Parente first for substitute work;
- o Following the hearing, Mr. Parente's nonrenewal was affirmed. This decision was not appealed³;
- o Commencing in the 1983-84 school year Mr. Parente was called first as a per diem substitute to cover those absences for which he was certified;
- o Mr. Parente served a total of sixty-two (62) days up to the date of January 13, 1984;
- o His compensation during this period was at a per diem rate of 35.00/day for the first 46 days and \$50.00 per day for the remaining 16 days;
- o On January 13, 1984 James Parente was recalled as a full-time teacher of mathematics at the junior high school;
- o Notice of his recall was delivered to Mr. Parente in person on January 13, 1984, and his acceptance was given verbally to Dr. Boyle at that time.
- o At the time of his recall, Mr. Parente inquired as to whether or not he would be "better off" continuing as a substitute and Dr. Boyle indicated he could not continue him as a substitute in the classroom in which he was teaching⁴;

³ Mr. Parente specifically testified that his decision not to press his appeal on nonrenewal further was not because of any statements made to him at the September 6, 1983 hearing. See transcript pp. 66-68.

⁴ Mr. Parente was filling-in for a teacher whose death created a vacancy in January 1984. Under the collective bargaining agreement's terms (See Exhibit B and in particular the memorandum of agreement relating to non-renewal and recall) the school committee was obligated to rehire those non-renewed for other than job-related performance "as positions for which they have certification become available."

- o From January 13, 1984 on, Mr. Parente was compensated as a regular full-time teacher at the fourth step of the salary scale pursuant to the collective bargaining agreement then in effect;
- o Thereafter, Mr. Parente asserted a claim for additional compensation for the sixty-two days he served as a per diem substitute; he claims the difference between what he was paid and what he would have been paid at step four of the salary schedule;
- o Mr. Parente's claim was denied by the superintendent and the school committee, resulting in his appeal to the Commissioner.

Decision

Jurisdiction:

The collective bargaining agreement between the school committee and the NEA/Smithfield in effect at the time this dispute arose does commit the parties to resolve disputes arising under the contract through final and binding arbitration. The appellant does not, however, assert a claim which arises out of that contract, nor does this dispute involve the interpretation or application of any provision of the collective bargaining agreement. Mr. Parente's claim is dissociated from the contract and his status as a member of the collective bargaining unit. He asserts rights arising from the statements made to him at a September, 1983 school committee hearing. It is well-established that the Commissioner is without jurisdiction only if the claim arises solely under a collective bargaining agreement. Since Mr. Parente's claim does not arise solely under a collective bargaining agreement⁵ the Commissioner is not without jurisdiction because of the existence of the agreement between the parties providing for binding arbitration of griev-

⁵ If at all, as our review of the contract would indicate.

ances⁶.

Laches:

The school committee argues that Mr. Parente's claim is barred under the doctrine of laches. It is not clear from the record that the delay occurring between the time Mr. Parente appealed to the Commissioner (July 27, 1984) and the date his counsel wrote to the Commissioner requesting re-scheduling of the hearing (February 12, 1988) was entirely due to the fault or neglect of the appellant. His appeal from the school committee's denial of his request was taken in a timely manner. The school committee was put on notice of his intent to pursue his appeal. In addition, no showing has been made that the delay caused any detriment or prejudice to the school committee or impeded the presentation of its case at the hearing. Under these circumstances, the appellant should not be equitably estopped from pressing his appeal even after the substantial delay involved here⁷.

Entitlement to Additional Compensation for the 1983-1984 School Year

It appears that Mr. Parente is relying on two closely-related theories in asserting his entitlement to additional compensation for the sixty-two days he worked as a per diem substitute.

First, he argues that he relied on statements made to him⁸ by the superintendent at the September 6, 1983 school committee meeting. Mr. Parente argues that, taken in context, statements concerning the existence of a school

⁶ See Madden v. Warwick School Committee, Commissioner of Education, April 23, 1984; Hoag v. Providence School Board, Commissioner of Education, June 27, 1988; Note, however, that although the labor contract does not operate as a bar to the Commissioner's jurisdiction, we are not free from all doubt as to whether jurisdiction lies under 16-39-2. The matter does not clearly arise under "any law relating to schools or education". The school committee did not raise this particular challenge to jurisdiction.

⁷ See Footnote 8 of Bailey et al v. Providence School Committee, Commissioner of Education, September 14, 1982.

⁸ Statements characterized by his counsel as "assurances". Tr. p. 6 etc.

committee policy to accord retroactive pay to substitutes employed in excess of one hundred and thirty-five days during the school year amounted to a binding commitment to employ Mr. Parente for a period in excess of one hundred and thirty-five days and pay him retroactively at the rate set forth in the salary schedule for regular teachers. For several reasons, we do not find that a binding commitment to employ in excess of 135 days and pay retroactively was made. At most, we read the transcript of the September 6, 1983 meeting as providing Mr. Parente with an indication that he would have "first call" status for substitute work in the areas of his certification⁹. By the appellant's own testimony, he relied on the information Dr. Boyle had provided about the number of absences in the areas of his certification in the prior school year, together with Dr. Boyle's statement regarding the policy on employment and compensation of substitutes. He then exercised his "best judgement" that he would be employed for more than one hundred and thirty-five days and trigger a right to retroactive compensation as a regular teacher.¹⁰ Per Mr. Parente's own testimony, then, he did not construe the comments made at the September 6, 1983 meeting as a guarantee that he would work 135 days as a substitute and be compensated at the rate of a full-time, regular teacher for those days.

Secondly, the appellant asserts that he was assured retroactive pay for days worked as a per diem substitute if he accumulated 135 days in any capacity during the school year 1983-84. We do not find that the comments made concerning the "policy" of the school committee constituted an assurance that

⁹ Despite Mr. Parente's counsel's urging that the school committee adopt a resolution formalizing his "first call" status, the school committee refrained from doing so. We interpret this as an indication they did not intend a binding commitment in this regard.

¹⁰ See Transcript, p. 67.

if Mr. Parente worked in excess of one hundred and thirty days in any capacity, he would be paid retroactively for those days he substituted. In addition, there is no evidence that Mr. Parente construed the statements made by Dr. Boyle concerning the policy as a statement that retroactive payment would be made even if any portion of the one hundred and thirty-five days was worked as a full-time teacher and not as a per diem substitute. Such construction of Dr. Boyle's remarks, even if Mr. Parente had so testified, would have been unreasonable and illogical. The discussion at the meeting clearly involved compensation of per diem substitutes for work performed in that capacity. Mr. Parente obviously had this understanding when he questioned Dr. Boyle about the possibility of continuing him in substitute status in Mr. Keegan's class rather than appointing him to that position as a full-time teacher. Dr. Boyle explained that the contract required his recall at that point and that Mr. Parente could not continue as a substitute in that class. The appellant accepted his recall, thereby changing his status to that of a regular full-time teacher, whose compensation and benefits were set under the terms of the collective bargaining agreement. The appellant's testimony indicates he was well aware that the effect of his appointment as a full-time teacher was to terminate further accumulation of days worked as a per diem substitute and any entitlement to retroactive pay for those days. Despite this, he chose to accept appointment as a full-time teacher, with all the compensatory and other benefits which flow from that appointment. While Mr. Parente's counsel argues that Dr. Boyle's statement of policy could be construed to provide retroactive pay for substitute work if the teacher served for 135 days in any capacity in the school year, this is not the construction we place on those statements, nor does it appear that even Mr. Parente understood that to be the policy of the Smithfield School Committee.

Since the appellant bases his claim exclusively on statements made

concerning a policy of the Smithfield School Committee, rather than the existence of an actual policy itself, we need not deal extensively with the issue of whether or not there was an actual policy. (Note we have made no factual finding in this regard since it was not relevant to the issues involved here.) The evidence indicated that neither at the time of the 1983 meeting of the school committee nor at the time of the hearing before us did the Smithfield School Committee have any policy¹¹ concerning retroactive pay for substitutes employed in the Smithfield School System. Dr. Boyle testified to the contrary at the September 6, 1983 hearing and his testimony stood uncontradicted by those members of the committee present. We note in passing that this apparent inconsistency may call for the school committee's consideration of the issue. It may be that an update to the committee's policy manual is in order in compliance with R.I.G.L. 16-2-32 requiring that all school committee policies be contained in a policy manual.

For the foregoing reasons, Mr. Parente's appeal is denied.


Hearing Officer

August 12, 1988

Approved by:



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¹¹ Written or de facto