

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

HELEN D'ORDINE :
 : :
 : :
 : :
vs. : :
 : :
 : :
NORTH PROVIDENCE :
SCHOOL COMMITTEE :

D E C I S I O N

November 30, 1988

In the case at hand the record establishes that while the petitioner, who is a certified public school teacher, was ostensibly hired as a "home tutor" she in fact worked in a classroom setting in the public schools of North Providence. She testified that two other teachers who were similarly situated to her filed a grievance and were awarded back-pay as regular schoolteachers. A copy of the Arbitrator's Award was placed into evidence. The Arbitrator's Award does not contain the reasoning by which the Award was reached. The School Committee itself put in no evidence on what the Arbitrator's Award meant. In any event, however, we think that the Award is irrelevant to the present matter since it would not be binding on our construction of the statutory issues presented in this case.

Conclusion of Law

We think that it is clear that the Commissioner of Education does not sit as a "super-arbitrator" empowered to decide every grievance which might arise under a collective bargaining agreement. Hoag vs. Providence School Board, Commissioner of Education, June 27, 1988. The Commissioner does, however, have authority to decide whether a teacher is regularly employed (§16-6-5) and whether he or she has been assigned to the salary schedule mandated by §16-7-29 for certified personnel.

Since the petitioner was regularly employed as a certified public school teacher in the schools of North Providence she should have been compensated on the same salary schedule as other regularly employed teachers.

The petitioner has the right to bring her claim to the Commissioner without going through arbitration since her claim does not relate to contractual matters such as "work load, hours or duties" but rather to whether or not she was working as a certified teacher with the statutory protections which attend such service. Bochner vs. Providence School Comm., 490 A.2d 37 (1985). That is to say her claim is statutory in nature and would have existed whether or not there was a collective bargaining agreement in North Providence.

CONCLUSION

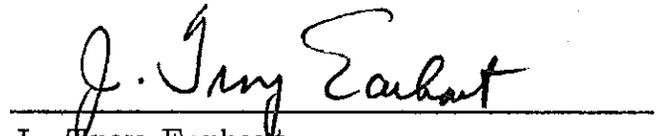
The petitioner is entitled to back-pay for her services calculated on the basis of what a regularly employed teacher, teaching the same hours that the petitioner was teaching, would have received under the salary schedule mandated by G.L. 16-7-29.

If the parties cannot agree on the sum to be awarded, we will hold a further hearing to decide this issue.



Forrest L. Avila, Esq.
Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

November 30, 1988