

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

MICHAEL F. FRANCOIS

vs.

SCITUATE SCHOOL
COMMITTEE

D E C I S I O N

April 27, 1989

Introduction

Mr. Michael F. Francois is a non-tenured teacher. On February 10, 1987 the Scituate School Committee voted not to renew his contract. In September of 1988 a position for which Mr. Francois possessed the requisite certification became available in Scituate. Mr. Francois contends that the Scituate School Committee was and is obligated to offer this position to him. He now claims the position and seeks back pay.

As a non-tenured teacher, Mr. Francois has no statutory recall rights. Moreover, he has no explicit recall rights stemming from any collective bargaining agreement. He argues, however, that (1) the Superintendent of Schools promised him the next available teaching job for which he was qualified, and (2) that the School Committee agreed to grant him recall rights in exchange for his agreement to postpone a hearing on his non-renewal. We will consider each of these arguments separately.

I. Estoppel

We find as a matter of fact that the Superintendent of Schools did expansively promise, perhaps out of an abundance of sympathy for a qualified teacher who had just lost a job, that he would see to it that Mr. Francois would get the next available position. Mr. Francois testified that:

"I brought my layoff notice letter with me to Mr. Manning's office. As I stated, I met him at the top of the stairs. I said, "Mr. Manning, I received this in the mail. . . .What should I do?" He said, "You don't have to ask for a

hearing, and I will tell you the reason why. You're being laid off due to a declining enrollment." He then said to me, "I will probably be superintendent here for another three years. As long as I'm superintendent here, if that position becomes available it will be yours."

We find as a matter of fact that above-quoted conversation did take place. We further find that when a position did open up, the Superintendent recommended another person to the School Committee, rather than Mr. Francois, for the position. The person that Mr. Manning recommended was appointed. The question we must decide is whether an estoppel in this case exists which would have required the appointment of Mr. Francois to the vacant position. We rule that no such estoppel exists.

We are aware of one case involving a leave of absence where the words of a school superintendent and the tacit acquiescence of a school committee potentiated into an estoppel. Schiavulli v. School Committee of North Providence, 114 R.I. 434 (1975). In the present case, however, there is no evidence that the School Committee knew of the promise which had been made or that it gave its assent to any such arrangement. Of much greater significance, however, is that "(i)n determining whether estoppel is an appropriate device to use against the government, we must not only consider the problems encountered by the petitioner, but we must also be mindful of the public interest involved. Lerner v. Gill, 463 A.2d 1352 (R.I. 1983). The public interest would obviously be grievously

disserved if back door "off-the record" promises were ever allowed to determine who is to be appointed a teacher in the public school system of this state. The appointment of public school teachers to the public schools must be a matter of a public record. We, therefore, find that the doctrine of estoppel is not applicable to this case. We also doubt whether there is any "detrimental reliance" present in here to support the petitioner's claim.

Past Practices

The petitioner also contends that the School Committee had developed a practice of granting recall rights to teachers who were to be laid off in exchange for the teachers' postponing requests for hearings on the lay-offs. Since Mr. Francois was a non-tenured teacher the exercise of his statutory right to claim a hearing would probably have availed him little. Still it was a right which he had and agreement to postpone the exercise of this right would probably amount to sufficient "consideration" to support a contractual agreement to grant him recall rights. The problem in this case, in our view, is that the record does not support the existence of any such agreement.

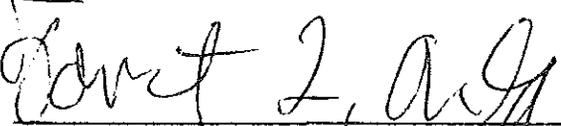
The most we can draw from the facts of this record is that the School Committee and the teachers' union had developed a policy of enlarging the time in which a teacher could request a hearing until such a time as the School Committee knew, in fact, how many positions it would

need to eliminate. A teacher whose position had been eliminated would then have the right to claim a hearing on his or her suspension. In our mind the record does not show the existence of any system where a tenured or non-tenured teacher would give up a right to a hearing in exchange for a right of recall. (Indeed, it is improbable that a bargaining unit made up of mostly tenured teachers would have even thought of bargaining for recall rights which they already possess under the applicable statute (G.L.16-13-6).)

Finally, we should note here that the petitioner in this matter is not now claiming a right to a hearing on his original dismissal. Since he does not possess the rights of a tenured teacher he may feel that he would have little chance of prevailing in such a hearing. In the alternative, he may believe that he cannot show that the School Committee was arbitrary in deciding to dismiss him. We should also note that a claim for a hearing at this date would probably not be timely. Igoe vs. Scituate School Committee, January 2, 1980.

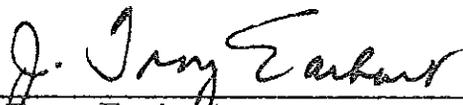
Conclusion

Petitioner's appeal is denied and dismissed.



Forrest L. Avila, Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

April 27, 1989