

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

ROSEMARY HOBSON

vs.

SOUTH KINGSTOWN
SCHOOL COMMITTEE

D E C I S I O N

May 17, 1989

Travel of the Case

On March 7, 1989 Mrs. Rosemary Hobson appealed her April 1, 1987 dismissal from her position as a tenured teacher in the South Kingstown School System. Mrs. Hobson had filed an earlier appeal from her termination which resulted in a remand to the School Committee for clarification and amendment of the original decision. (Rosemary Hobson vs. South Kingstown School Committee, April 4, 1988, Commissioner of Education).

A hearing was convened on April 17, 1989 and the matter was heard by this Hearing Officer on authorization from the Commissioner. Briefs were submitted by the parties, with the record of the hearing being closed on May 1, 1989.

Jurisdiction to hear the appeal lies under R.I.G.L. §§16-39-1, 16-39-2 and 16-13-4.

Issue: Has the failure of the School Committee to take any action with regard to Mrs. Hobson's termination since the April 4, 1988 remand other than to solicit guidance from the Commissioner's office resulted in a denial of her due process rights under state and federal law?¹

¹We do not see the issue properly framed as "did the delay in affording Mrs. Hobson a rehearing following remand by the Commissioner" violate the appellant's due process rights. Implicit in this framing of the issue is the assumption that the Commissioner has ruled in a precedential way that a rehearing was and is required. The Commissioner's February 7, 1989 recognition of "strong support" for Mr. Liguori's position was in response to a request for "guidance," and, as with all requests for advice from the Commissioner, it is informal and non-binding in the event of a subsequent dispute. The fact remains, however, that to date, the School Committee has not brought forth any authority whatsoever to support its position that a rehearing was not required, and on April 10, 1989 it scheduled a rehearing on this matter.

Findings of Relevant Facts

1. On April 1, 1987 Mrs. Rosemary Hobson was dismissed from her position as a tenured teacher by the School Committee.
2. Following post-termination hearings the School Committee affirmed its April 1, 1987 decision to terminate Mrs. Hobson in a written decision dated June 15, 1987.
3. Mrs. Hobson subsequently appealed to the Commissioner of Education and on December 8, 1987 the matter was submitted on briefs to the Commissioner's designee on the preliminary issue of the adequacy of termination procedures utilized by the Committee.
4. On April 4, 1988 the Commissioner issued a decision holding that the June 15, 1987 decision of the School Committee did not comport with requirements of constitutional due process in that it did not clearly state the reasons for the decision and the evidentiary basis relied on.
5. The case was thereupon remanded to the Committee for clarification and amendment of its decision.
6. On June 17, 1988 counsel for the School Committee wrote to the Hearing Officer to request "guidance".
7. In the June 17, 1988 communication counsel described a difference of opinion on whether the School Committee was required to rehear the issue of just cause for Mrs. Hobson's termination in light of the fact that since the date of the Committee's original decision in 1987, the composition of the School Committee had changed.

- 2
8. On June 29, 1988 the Hearing Officer offered her advice on alternative ways to deal with the change in composition of the School Committee, but indicated "If Tom Liguori (counsel for Mrs. Hobson) has any specific case law on point which would require a rehearing of the matter under these circumstances, I would ask him to let me know. Otherwise, I would hope that the directives of the remand could be carried out as described as soon as possible."
 9. On July 12, 1988, the Hearing Officer received the communication solicited from Mr. Liguori, together with case citations on which he relied. Counsel for the Committee was copied in on this communication.
 10. On or about July 12, 1988, the Hearing Officer placed the material provided by Mr. Liguori in a briefcase in an unrelated file where it lay forgotten and undiscovered until January 24, 1989, at which time Mr. Liguori wrote notifying the Hearing Officer that he had in fact responded promptly in July with the case authority requested, had not received a response and went on to note ". . .the School Committee, perhaps awaiting your response, has taken no steps to comply with the directives of the April 4, 1988 decision".
 11. Upon receipt of the January 24 letter, the Hearing Officer reviewed the case authority cited by counsel for Mrs. Hobson and found that "indeed there seems to be strong support for his position that a

²¹By letter dated June 24, 1988.

rehearing is required". A communication to the parties to this effect was made on February 7, 1989.³

12. On March 7, 1989 Mrs. Hobson filed an appeal with the Commissioner requesting nullification of her termination because of the time that had elapsed since her termination and because the School Committee had yet either to comply with the directives of the April 4, 1988 remand, or schedule a rehearing before the current School Committee members.
13. On April 10, 1989 the School Committee sent Mrs. Hobson notice it would conduct a rehearing on May 8 (and if needed May 9 and 11) 1989.
14. One of the present School Committee members is a parent of a child in the South Kingstown School System. Sometime prior to Mrs. Hobson's termination, this person "objected to something to do with Mrs. Hobson". (Tr. p. 26)
15. On rehearing, the School Committee will be considering evidence of Mrs. Hobson's job performance primarily in school years 1985-86 and earlier years, because she taught only 12 or 13 days during the school year in which she was terminated, 1986-87. (Tr. p. 46)
16. One of the issues involved in Mrs. Hobson's termination was and is her medical condition, its impact on her ability to teach, and any requirement that the School Committee make reasonable accommodation for this medical condition or handicap. (Tr. pp. 31-39)

3] The letter of February 7, 1989 also indicated that both the letter of June 24, 1988 and the February 7 letter were in response to the request for guidance and "not intended to circumvent the customary route of Committee action and appeal therefrom when a dispute arises".

Position of the Parties

Counsel for the petitioner argues that the total delay involved in according Mrs. Hobson a fair hearing and legally-sufficient decision from the School Committee is a violation of her constitutional rights to due process and state law requirements as well. The effect of these violations, he argues, is to void her termination and to require Mrs. Hobson to be reinstated with back pay. Additionally, he urges that the totality of circumstances associated with the delay renders it impossible for the School Committee to fairly consider the merits of Mrs. Hobson's case or to comply with the statutory requirement that consideration of her dismissal be heard by the "full" board. He points to the potential bias of one of the members of the present School Committee as an impediment to the full board's future consideration of the issue of whether there is just cause for her termination.

On behalf of the School Committee, Mr. Mills argues that the delay which should be considered is only that lapse of time between the Commissioner's decision remanding the case for further consideration by the Committee (April 4, 1988) and the date upon which it succeeded in obtaining guidance from the Hearing Officer on "how it should proceed". The seven and one-half months delay in taking any action on the matter of Mrs. Hobson's termination was because when it did so, the Committee didn't want to proceed "in a manner which would later be declared invalid". (School Committee Brief at p.13). The School Committee denies any deliberate or purposeful delay, and takes the position that on remand by the Commissioner,

it took steps to ensure that the proceedings before it would fully comply with all procedural requirements.

In its brief, the School Committee notes that upon receipt of advice from the Commissioner that a full rehearing in the matter "was necessary,"⁴ it promptly took steps to schedule such rehearing for the first date upon which all Committee members would be available.

As to the allegation that the School Committee cannot now give adequate consideration to the issues and facts of the case or even comply with any requirement that a "full board" consider Mrs. Hobson's discharge, the School Committee argues that there is no basis in the record to draw such conclusions. It's position is that any rehearing can still accord Mrs. Hobson fair consideration and meet all requirements imposed both by state law and due process requirements.

⁴We feel constrained to point out that what in fact transpired was that the School Committee apparently recognized, as did the letter of guidance of February 7, 1989, that there is indeed strong support for the position that a rehearing is required under state law.

Decision

While it is regrettable that part of the delay in this case is attributable to this Hearing Officer's inadvertent failure to respond promptly to a request for guidance by the School Committee, it simply cannot be recognized as adequate reason for the School Committee's failure to take any steps whatsoever for a one-year period following remand of the case to it by the decision of April 4, 1988. We conclude that, given the totality of circumstances in this case, the delay in taking any action on this matter other than inquiring for guidance on or about June 17, 1988, is unreasonable delay in violation of Mrs. Hobson's right to a hearing and written decision from the School Committee within a reasonable time under the Teachers' Tenure Act. Those factors which go into our finding of unreasonable delay can be summarized as follows:

- The School Committee knew Mrs. Hobson's attorney had supplied this Hearing Officer with case authority for his position, yet it at no time subsequent to July 5, 1988 inquired into why no response to these materials was forthcoming. It was counsel for Mrs. Hobson who, finally, on January 24, 1989 brought to the Hearing Officer's attention the fact that he had submitted the requested support for his position.
- No evidence was submitted that during the period of July 5, 1988 - March 7, 1989 Mrs. Hobson acquiesced

⁵See decisions of the Commissioner in Desrochers vs. Johnston School Committee, January 27, 1976 and Linda Hajjar vs. Westerly School Committee, December 5, 1980.

in the delay, or that the delay resulted from the parties' mutual agreement to use this time to attempt to work out the issue of rehearing, or the merits of the termination itself.

- During this entire period of time (June 17, 1988 to February 7, 1989) the School Committee provided this Hearing Officer with no citational authority in support of its position that no rehearing was required, and her review of the material provided by Mr. Liguori, showed significant, unrebutted support of his position on this issue.
- While the focus of the inquiry on delay is the twelve month period following remand, given that on remand a considerable period of time had already elapsed since the date of Mrs. Hobson's termination (one year) the School Committee should have recognized the time element as an important factor in making its own determination of the steps it would take to ensure subsequent compliance with
6
due process.

^{6]}The hearing officer's preliminary advice, issued on June 29, 1988, noted that absent authority supporting the need to have the School Committee rehear the case, the action suggested should be taken "as soon as possible." This should have conveyed her concern with the lapse of time involved in completing the hearing/decision process at the School Committee's level.

- The School Committee waited two and one-half months before soliciting guidance on the issue, and once it received the guidance, it delayed another two months before taking any action.

Having concluded that the School Committee did not act on the matter of Mrs. Hobson's termination within a reasonable time following remand⁷ as required by the Teachers' Tenure Act, we must consider whether the failure to act "within a reasonable time" violates constitutional due process requirements. Governmental deprivation of a private property interest, such as that which occurs when a tenured teacher is dismissed, is required to be accompanied by an opportunity to be heard "at a meaningful⁸ time and in a meaningful manner". In analysis of whether delay in post-termination proceedings rises to the level of a constitutional violation, courts have looked not just at the length of the delay and the reasons for it, but the effect of the delay on the person's ability to protect his or her property interest as well. As stated by the United States Supreme Court in the recent case of Federal Deposit Insurance Corporation v. James E. Mallen, et al, 108 S.Ct. 1780, 100 L.Ed. 2d. 265 (1988):

For even though there is a point at which an unjustified delay in completing a post-deprivation proceeding would become a constitutional violation. . .the significance of such a delay cannot be evaluated in a vacuum, at 1788.
(Emphasis added.)

7] And in prior Commissioner's decisions elucidating the requirements of this statute

8] Goldberg v. Kelly, 90 S.Ct. 1011, 397 U.S. 254, 25 L.Ed.2nd 287 (1970).

In going on to describe the factors to be considered in addition to the justification (or lack thereof) for the delay, the Court notes that of significance is "the importance of the private interest and the harm to this interest occasioned by delay."⁹

The constitutional analysis, therefore, takes into account factors additional to that of unreasonable delay. In some cases decided prior to the Supreme Court's decision in FDIC v. Mallen, supra, courts had indicated that a showing of "substantial prejudice" occasioned by the delay was a prerequisite to a finding of constitutional violation or the award of relief therefor.¹⁰

We do not accept the principle that a showing of substantial prejudice is a prerequisite to establishment of a due process claim based on delay in providing and completing post-termination procedures. However, in accepting what the Supreme Court in FDIC v. Mallen, supra, has declared an important factor the "harm to the interest occasioned by the delay", and applying it to the facts here, we find an absence of prejudice to the petitioner's protection of her right to continued employment in the South Kingstown School System. Counsel for Mrs. Hobson attempted to establish (1) the present inability of the full School Board to rehear the case, (2) the fact that the evidence of her performance (dating

^{9]}The Court had previously considered, among other issues, the impact of post-termination delay in the 1985 case of Cleveland Board of Education v. Loudermill, 470 U.S. 532, it found that a nine-month post-termination delay was not a per se due process violation, and since the record did not show that the delay was "unreasonably prolonged" it did not support a finding of due process violation based on post-termination procedures.

^{10]}See the Fifth Circuit case of Joseph v. St. Charles Parish School Board 736 F2d. 1036 (1984).

to 1985-86 and before) was stale and (3) the Board could not now consider in an impartial way that aspect of the case which dealt with accommodation of her handicap. We are unable to conclude, on the record as it stands, that the School Committee is unable to give fair consideration of Mrs. Hobson's discharge and the facts related thereto. It may well be that a member of the School Committee is biased and the Committee will have to respond to that, but we cannot make a finding of bias on the record before us.

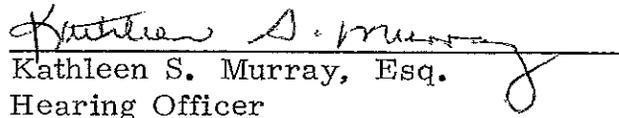
We find that the present record does not support the petitioner's claim of prejudice or harm resulting from the delay. This factor together with all the other circumstances of the entire pre-and post-termination proceedings, cause us to find that her due process rights have not been violated by the post-remand delay.

Conclusion

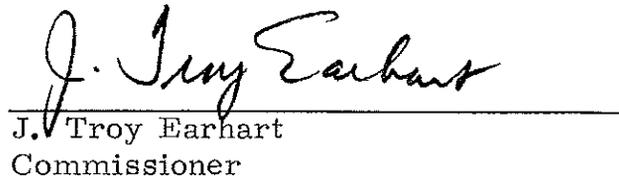
We do not agree that the petitioner's termination in violation of the procedures required by state law entitles her to reinstatement. Absent our ability to determine from the record that the termination was unsupported by the "good and just cause" requirement of R.I.G.L.16-13-3, we feel that the appropriate remedy is to order compliance with the procedures to which the petitioner is entitled together with an opportunity to prove and be compensated for, any actual monetary damages she has suffered as a result of the unreasonable delay, i.e., the period July 5, 1988 to date of rehearing. We might note that in both Corrigan v. Donilon, 639 F.2d 836 (1981) (a decision based in part on a finding of violation of state-

required procedures following termination) and the Commissioner's decision in the case of Hajjar, supra (December 5, 1980) the record established not just the procedural irregularities complained of, but the underlying invalidity of the action of the respective school committees as well. Given this is not the situation before us, and that there are serious allegations of incompetency on which Mrs. Hobson's dismissal is based, we do not believe this is an appropriate case for reinstatement.

Mrs. Hobson, through her counsel, should notify the Commissioner of Education of any need to schedule an additional hearing to give her the opportunity to prove any actual damages she has suffered. In addition, the School Committee is hereby ordered to conclude those post-termination procedures it has indicated it has decided to undertake, i.e., rehearing the matter, within sixty (60) days.


Kathleen S. Murray, Esq.
Hearing Officer

Approved:


J. Troy Earhart
Commissioner

May 17, 1989