

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

-----  
ANNA M. AUTIERI

vs.

WARWICK SCHOOL  
COMMITTEE  
-----

D E C I S I O N

June 28, 1989

### Travel of the Case

The parties did not submit any information on the record regarding the School Committee's consideration of the issues in this case. On January 17, 1989, Mrs. Autieri, through her counsel, filed an appeal from a decision or doing of the Warwick School Committee under RIGL 16-39-2. On February 10, a hearing was convened under authorization from the Commissioner of Education. A stenographic record of the hearing was made, and both sides submitted documentary evidence as well. Opportunity to file written memoranda was requested and given, but the School Committee later opted to rest on the record and arguments made at the time of the hearing. The record of the hearing was closed on March 15, 1989.

### Issues

- (1) Were Anna Autieri's legal rights violated when the School Committee failed to appoint her as a full-time regular teacher of mathematics in January of 1988?
- (2) Did Mrs. Autieri's prior experience in the Warwick School System accord her seniority rights that mandated her selection for one of two regular positions in mathematics (over two persons with no experience in the Warwick School System) in August of 1988?

### Findings of Relevant Facts

- (1) Anna Autieri was employed as a full-time teacher of mathematics in the Warwick School System during the mid-to-late 1970's and in 1980 resigned her position to assume the responsibility of caring for her own young children.

- (2) During school years 1984-85 and 1985-86 she resumed teaching in Warwick as a long-term substitute in mathematics.
- (3) During school years 1986-87 and 1987-88 she was appointed to "one year only" positions in mathematics, substituting for teachers who were on authorized leaves. Her service in 1987-88 was at Aldrich Junior High School.
- (4) During school year 1987-88 and subsequently, Mrs. Autieri had on file in the Warwick School Department an application for full-time, regular employment as a teacher of mathematics and held the appropriate certification for such position.
- (5) In January of 1988, a mathematics teacher at Tollgate High School retired and this position was filled for the remainder of the year by a substitute paid at the rate of Seventy (\$70.00) Dollars per day.
- (6) When the Tollgate teacher described above retired, both Mrs. Autieri and Union president, William Tammelleo, conveyed their position to the Personnel Director and the Superintendent of Schools that (1) the position was a true vacancy that should be filled with a regular teacher and (2) Mrs. Autieri was qualified and available for such appointment.
- (7) Mrs. Autieri was not appointed to the open position and in February of 1988 she was notified that the School Committee had voted to discontinue her employment because her one-year term as a substitute replacement was coming to an end.

- (8) In August of 1988 two new teachers who had no prior experience in the Warwick School System were appointed to two open positions in mathematics. Prior to their appointment, Mr. Tammelleo advocated for Mrs. Autieri's appointment, based on her qualifications and experience within the Warwick School System.
- (9) Mrs. Autieri did not work as a mathematics teacher in Warwick again until February of 1989, when she was offered a position as a long-term substitute at Winman Junior High School.
- (10) In August of 1986, the Warwick Teachers Union and the Warwick School Department entered into an agreement (School Committee Ex. A) whereby a certain procedure was to be followed in filling vacancies in mathematics. This agreement was in force during the school year 1987-88 and during the summer of 1988.

#### Position and Arguments of the Parties

##### Appellant

Counsel for Mrs. Autieri argues that on two occasions in 1988 the School Committee violated her legal rights. First, in January of 1988, when a resignation created a vacancy in mathematics at the High School level and the appellant was not chosen to fill this vacancy and secondly, in August of 1988, when two open mathematics positions were filled by teachers who had less "seniority" than Anna Autieri within the Warwick School System. Attorney Richard A. Skolnik alleges that on both occasions Mrs. Autieri was entitled to appointment as a regular full-time teacher in the Warwick School System.

School Committee

While the School Committee does not deny the excellent credentials and performance record established by Mrs. Autieri during the years she has been teaching mathematics in Warwick, it argues that her status as a substitute teacher has not created continuing status or "seniority rights" which would have compelled her selection for one of the two open positions in mathematics in August of 1988. As to the position which came open in January of 1988, Attorney Robert D. Watt, Jr., denies that the School Committee was obligated to fill the position with a permanent teacher at that time. He presented an agreement between the Union and School Department (S. C. Ex. A) and argues that compliance with its terms prevented the School Committee from filling the position with a teacher other than a substitute for the remainder of the 1987-88 school year. This mathematics position remained unfilled and was placed in the "lottery" in August of 1988, at which time one of the teachers already in the Warwick School System transferred into it. When, after the lottery concluded, two other math positions became vacant, the Committee exercised its statutory prerogative to appoint teachers from the group of candidates available at that time. In conclusion, Mr. Watt argues, the Committee, in exercising this prerogative was not bound by principles of seniority.

1] While the School Committee's arguments on the precise effect of this Agreement (i. e. whether it required (a) that the position be left vacant until the end of the school year, (b) that the position be offered to all four of the teachers affected by the agreement, or (c) that the position be offered to the two of the four not already placed in math positions) are not amplified in the record, we take it that the School Committee's position is that at the very least the Agreement precluded the filling of this vacancy in January by the appointment of anyone, including Mrs. Autieri as a regular teacher employed under an "annual" contract under §16-13-2 of the General Laws.

DECISION

Of the two issues raised by the appellant, the one that is immediately and decisively resolved by application of prior decisional law to the facts here is the issue of whether Mrs. Autieri had seniority which entitled her selection for the mathematics vacancies in August of 1988. As detailed in our findings of fact, Mrs. Autieri resigned from her full-time regular teaching position in Warwick in 1980. The parties agree that this resignation constitutes a break in service such that any contractual seniority which she may have enjoyed at that time was lost. From 1984 onward she served as a long-term substitute, with teaching service during 1986-87 and 1987-88 based on letters of appointment which clearly set forth the nature of her appointment as that of a substitute for the limited period of one school year on each occasion. Such limited-period appointments to fill vacancies created by the regular teacher's leave of absence create no right to continued employment beyond the limited period for which the long-term substitute is engaged. This is true even if the period of appointment is for a period of one full school year.

While Mrs. Autieri does not question the validity of her appointment or the consequences of her status in the one-year only position in 1987-88 in terms of her termination at the end of the school year, she argues that she had "recall" rights based on the seniority she has established in

---

2] Carbone v. Exeter-West Greenwich, March 9, 1979, Commissioner of Education, aff'd by Board of Regents, October 25, 1979. At both levels it was emphasized that such full-school year contracts were permitted if not used to circumvent the Teachers Tenure Act and that the limited-period appointee was replacing an absent teacher. There is no dispute that this was the situation with Mrs. Autieri's appointment in both school years in which she was a "one-year only".

the system by her entire period of employment as a substitute from 1984 through 1988. Her seniority, she argues, required her appointment to one of the two math positions which became vacant at the end of the summer after the "job fair". This is simply not the case. As a non-tenured teacher and a substitute, the appellant had no statutory recall rights following the termination of her limited appointment in June of 1988. She also enjoyed no contractual recall rights by virtue of the collective bargaining agreement in effect between the Teachers Union and the School Committee.

Her counsel's reliance on our decision in Chadwick, et al. vs. Pawtucket School Committee, Commissioner of Education, July 13, 1987, as authority for the proposition that Mrs. Autieri, as a long-term substitute had recall rights is misplaced. In Chadwick, the Commissioner ruled that certain teachers employed in one-year only position in Pawtucket in 1985-86 should have been rehired in 1986-87 because they had more "seniority" than other teachers who were rehired for the 1986-87 school year. Implicit in the Commissioner's ruling in that case is his finding that an established practice existed in Pawtucket in which the School Committee did make appointments which recognized seniority established by teaching service even in temporary or substitute positions within the school system. In affirming the decision on this point this underlying finding of fact was noted by the Board of Regents:

Although the associate commissioner does not make explicit findings regarding the basis for the use of seniority in recalls, the record contains support for his tacit acceptance of the existence of such a recall system in Pawtucket. Board of Regents decision, December 10, 1987, Chadwick, et al vs. Pawtucket School Committee.

The record before us contains no such evidence of a practice or policy at work in the Warwick School System, nor has counsel for Mrs. Autieri argued that such a recall system was utilized by the Committee in filling vacancies. There is no evidence that the School Committee made any express commitment to Mrs. Autieri when it appointed her as a "one-year only" or when it approved her termination on February 25, 1988, (Appellant's Ex. 3) that she would be eligible for recall on the basis of seniority.<sup>3</sup>

Without a practice or policy within the Warwick School System recognizing seniority of long-term substitutes and recalling such teachers to fill vacancies on the basis of such seniority, or an express commitment to Mrs. Autieri in this regard, her claim to one of the two math vacancies which became available in August of 1988, was no more than wishful thinking. The Committee was free to exercise its statutory right to select teachers in a reasonable and non-arbitrary fashion. There is no claim here that the selection of two candidates who had no prior experience with the Warwick School System was per se arbitrary and capricious, nor is there any claim that the Committee's decision was arbitrary on any other basis. For these reasons, we find no violation of school law when the Committee failed to select the appellant for a permanent math position in August of 1988.

---

3] Unlike the situation in Richards v. Newport School Committee, Commissioner of Education, May 31, 1979, where the school committee did make a binding commitment to do so when it adopted the superintendent's statement that "as openings occur teachers will be recommended to be called back according to seniority".

The question of Anna Autieri's entitlement to appointment to the full-time math vacancy at Tollgate High School in January of 1988 (the "Kuebel" vacancy) involves consideration of several legal issues. Among them are her standing to raise the issue, existence of a "true vacancy" and the School Committee's obligation to fill such vacancies under RIGL 16-13-2, and the question of appropriate remedy.

There is no need to cite authority for the long-established rule that RIGL 16-13-2 requires the various school districts to fill teaching vacancies with regular teachers employed on the basis of an annual contract. The strong policy in favor of continuing teaching service and avoidance of the creation of a "class of temporary teachers"<sup>4</sup> has led to decisions imposing the requirement that even if a vacancy arises after the beginning of the school year, it must be filled by a regular teacher and not a substitute.<sup>5</sup> There does not seem to be a dispute between the parties as to the existence of a true vacancy by the retirement of Heinz Kuebel in January of the school year. The Committee, however, has argued that because of the agreement in effect with the Union (S.C.Ex. A) it was relieved of its statutory obligation to fill the Kuebel vacancy.

4] See the Board of Regents discussion in Freeman v. School Committee of the City of Pawtucket, December 11, 1980.

5]Note, however, that the Commissioner has indicated that if the vacancy occurs "a few days or a few weeks before the end of the school year, the appointment of a teacher as a day-to-day substitute would be proper. . ." footnote 4, pg. 3 of the Commissioner's decision in Daley vs. North Providence School Committee, May 25, 1977.

Before addressing the question of whether the existence of this Agreement has the effect argued by the School Committee, we must note that to our knowledge, this is the first time a teacher has raised the issue of non-compliance with §16-13-2 and not actually been the teacher whose employment was alleged to have been in violation of the statute, i. e. a per-diem substitute performing the duties of a regular teacher in the vacant position. This fact raises the issue of Mrs. Autieri's standing as a person aggrieved by the Committee's decision to fill the Kuebel vacancy with a substitute for the remainder of the school year.<sup>6</sup> We are satisfied that where, as here, the teacher asserting the violation is admitted by the School Committee to be well qualified for the position in question, and she asserts her availability and qualifications for the appointment in a timely fashion, and the teacher at the time held a limited-term appointment in the same school system, she has sufficient interest to pursue an appeal in this matter.<sup>7</sup> In so ruling, we find that she has a legally-protectible and tangible interest at stake, under these circumstances.

The Committee has directed our attention to Exhibit A, entitled "Agreement", dated August 28, 1986, a document signed by Mr. Tammelleo of the Union and Mr. Venditto of the Warwick School Department. We presume that the Committee's argument is that this document was (1) legally

---

6] In her letter of appeal to the Commissioner, she appeals from a "decision and doing" of the Warwick School Committee. In proceeding under R.I.G.L. §16-39-2, her status as a "person aggrieved" by the action of the School Committee is necessary. We would note, however, that the Committee has not raised the issue of whether Mrs. Autieri is a "person aggrieved" under §16-39-2.

7] The record does not indicate why the teacher appointed as a substitute to fill the Kuebel vacancy has taken no action, or none was taken on her behalf. It seems to us to be illogical to say that if that substitute (whose temporary employment was of even shorter duration than the appellant's, and who appar-

binding on the Committee as a limitation on its prerogative to select and appoint teachers to fill vacant positions in the Warwick School System and (2) should be construed to have required the Committee to maintain<sup>8</sup> vacancies in math positions until the end of the school year in 1988.

As we have noted above, R.I.G.L. §16-13-2, requires the appointment of a regular teacher except when a relatively small part of the school year remains to be completed. The only other exception to this statutory obligation occurs when "unusual circumstances" justify a reasonable delay in making the appointment. We find that the existence of the Agreement proffered by the Committee does not constitute "unusual circumstances" for maintaining the Kuebel vacancy for the entire second semester of the school year. First, there is nothing on the record which indicates this Agreement was a valid addendum to the collective bargaining agreement between the parties or adopted or approved by the Committee. There is nothing to sustain a finding that this document was legally binding on the Committee as a restriction on its ability to fill vacancies as they arose (and when the statute required them to be filled).

---

(footnote 7 continued)

ently was not an applicant for the Kuebel vacancy) had appealed, she would have standing while Mrs. Autieri would not.

8] The Agreement was to facilitate the placement of four teachers who had been displaced from mathematics positions. The Agreement provides that permanent math positions that are available to one of the four teachers will be filled (at an end of the year drawing) on a temporary basis by one of the four until there are four positions to offer and a final drawing is made among the four.

The Agreement concludes with the statement "nothing contained herein will negatively affect the rights of other teachers".

Secondly, even if it were binding on the School Committee, we do not construe the Agreement as requiring vacancies in mathematics to be maintained for a full semester, or even longer, just so that permanent math positions could be made "available" at a year-end lottery for the teachers mentioned in the Agreement. This is not the construction placed on the document by Mr. Tammelleo, who signed it on behalf of the Union. According to his testimony, he considered the Kuebel vacancy a true vacancy which should have been filled by a regular teacher in January of 1988. Even if we accept the Committee's arguments as to the interpretation to be given the Agreement, we find that the resulting situation is not the type of unusual circumstances justifying maintenance of this vacancy because the process for filling the vacancy under the terms of this Agreement would be unreasonably long. The Board of Regents in its decision in Torrealday vs. Providence School Committee, January 24, 1980, affirmed the Commissioner's finding that unusual circumstances existed and noted:

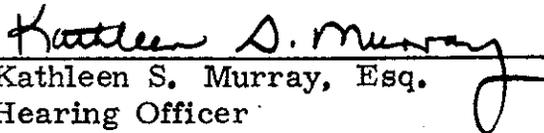
In our view, where a process is in place for filling vacancies on a permanent basis, a reasonable time may be allowed for the use of a substitute teacher in a vacancy.

The "reasonable time" called for by the Regents in the Torrealday case, supra, (in an analysis which differed from the Commissioner's decision) was to permit the process of recall to result in the selection of a permanent teacher. The Warwick School Committee's process for filling permanent math vacancies in 1987-88, if we accept its interpretation of the Agreement, would require an unreasonably long delay in contravention of the

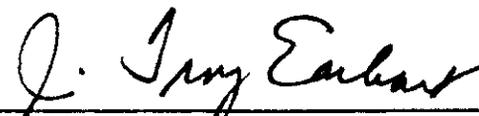
strong policy requiring that teaching service be on the basis of an annual contract and that substitutes be employed only to replace absent teachers. In addition, it would result in other certified teachers' rights being negatively affected. Such an Agreement must fail as it is an arrangement which conflicts with §16-13-2's requirements.

Conclusion/Remedy

Based on the record before us, Mrs. Autieri has established her standing to assert the violation of §16-13-2 which we find occurred when the School Committee failed to fill the Kuebel vacancy in January of 1988. Since the statute does not set forth a specific remedy for its violation, we direct the parties to confer to attempt to agree on an appropriate remedy for Mrs. Autieri. If unable to reach such agreement, they should notify the Commissioner of Education of the need to schedule an additional hearing on the issue of remedy within sixty (60) days of this decision.

  
Kathleen S. Murray, Esq.  
Hearing Officer

Approved:

  
J. Troy Earhart  
Commissioner of Education