

Travel of the Case

This matter was appealed to Commissioner J. Troy Earhart on April 4, 1989. Hearings were held on May 18 and June 19, 1989 by the undersigned Hearing Officer, under authorization from the Commissioner. The record was thereafter left open for the parties to submit additional material until August 15, 1989 at which time the record was closed.

Jurisdiction to hear this appeal lies under R.I.G.L. §16-39-1 and §16-39-2.

Issues

- I. Was Ms. D'Ambra a "regularly-employed" teacher in the North Providence School System during the period 1979-1983?
- II. Was Ms. D'Ambra entitled to credit, for purposes of placement on the salary scale, for her service during those same years?
- III. Is Ms. D'Ambra barred under the doctrine of election of remedies from presenting these claims to the Commissioner since she has also filed a grievance relating to this matter?

Findings of Relevant Facts

- After several years of employment as a per-diem substitute in the North Providence schools, Ms. D'Ambra was hired for school year 1979-80 as a part-time ESL tutor.
- During school years 1979-80 through 1982-83, Ms. D'Ambra provided in-school tutoring in the English language and life skills for students deemed in need of such tutoring by the Special Education Department.

- At the beginning of each school year Ms. D'Ambra received a list of those ESL students she was assigned and the schools they attended.
- During this time, 1979-1983, the total number of hours worked by Ms. D'Ambra was determined by the number of students assigned to her for ESL tutoring. The ESL program was operated on a "pullout" basis, so that the exact schedule of the tutoring at the various schools was determined by the children's schedules.
- Initially the tutoring provided by Ms. D'Ambra was on a one-to-one basis, but in the later years of her involvement with the ESL program, some grouping of students occurred.
- During school years 1979-1983 the number of students instructed by Ms. D'Ambra increased every year.
- Ms. D'Ambra developed her own curriculum and teaching materials for these students during these years.
- During 1979-1983 Ms. D'Ambra was paid at the hourly rates and¹ for the total numbers of hours indicated on Joint Exhibit I.
- Neither the appellant nor any of the other ESL tutors were paid pursuant to the contract in effect at the time with the teachers' union, but these other teachers have either received stipulated arbitration awards providing for payment pursuant to the contract or (in the D'Ordine case) have appealed to the Commissioner and received a deci-

1] Although Joint Ex. I indicates the full-days equivalent worked by the appellant, neither that document, nor any other part of the record details the precise number of days worked by Ms. D'Ambra during any given school year during 1979-1983. She did not work every day of the school year. (Tr.p.62-63).

sion entitling them to contractual compensation.

- In 1983 the appellant accepted a full-time one-year appointment at the Birchwood School. She was paid at the first step of the salary scale.
- In 1984 Ms. D'Ambra obtained appointment as a full-time permanent teacher at the Centredale School at which time she was placed on the second step of the contractual salary scale. She has advanced one step each year since that time, and is still employed as an elementary school teacher at the Centredale School.

Decision

Ms. D'Ambra asserts before us that her compensation at the rate of Nine (\$9.00) Dollars per hour in school years 1979-80 and 1980-81, and at Ten (\$10.00) Dollars per hour in 1981-82, and 1982-83 violated the statutory requirements of R.I.G.L. §16-7-29. We agree because we conclude that considering all of the circumstances surrounding her employment during those years, she was part of the group of "certified personnel regularly employed in the public schools" of the North Providence public system.² Ms. D'Ambra testified that she took the coursework to obtain the necessary ESL certification, as soon as she "was informed that it was needed". (Tr. p. 55). Throughout the years in question she taught for the entire length of the school year, albeit on a part-time basis, tutoring children in school, during regular school hours. Her work schedule was the result of the number of

2] This conclusion is drawn independently of any conclusions/agreements in this regard contained in the stipulated arbitration awards relating to similarly-situated personnel in the North Providence School System evidence of which is contained in the record before us.

children assigned to her for such tutoring and structured to accommodate the need to pull these children out from their classrooms at such times as would cause the least amount of interference with their other coursework. While the record does not reflect that the appellant provided such services on a daily basis, the instruction was pursuant to a schedule which, once developed at the beginning of each semester, was strictly adhered to. It established the appellant as a regular, part-time instructor³ in the North Providence School System, and entitles her to compensation under the salary schedule in effect for such teachers during those years.

In finding that the appellant served as a regularly-employed teacher, we would note that neither §16-7-29 nor §16-16-1 defines what "regularly employed"⁴ means. Therefore, in construing "regularly employed" as it appears in R.I.G.L. §16-7-29 and in applying it to the facts of this case, we have relied on the ordinary and everyday meaning of such words, together with the construction placed on this language in our decisions in Morris vs. School Committee of the Town of Hopkinton, November 4, 1975 and most recently in D'Ordine vs. North Providence School Committee, November 30, 1988. We might note that Helen D'Ordine served in the same capacity in the North Providence School System as the appellant and

³]In addition, it appears, although we make no finding in this regard, that Ms. D'Ambra was employed on the basis of an unwritten annual contract.

⁴] R.I.G.L. §16-7-16 refers us to §16-16 for such definition. Section 16-16-1 "Definitions" defines "Teacher" as a person ". . . who is engaged in teaching as his or her principal occupation and is regularly employed as a teacher in the public schools of any city or town in the state. . . ." Thus, while we know that to be a teacher a person must be regularly employed we gain no insight into what criteria confer such status, except that this section goes on to state by inference that a substitute teacher is regularly employed when he/she serves at least three quarters (3/4) of the number of days that public schools are required to be in session.

during the same time period. Our finding that Ms. D'Ordine was regularly employed is consistent with our conclusion as to Ms. D'Ambra, although we do note that the record in D'Ordine, supra, indicated that during all of the years in question except one, Ms. D'Ordine worked on an almost daily, part-time basis. While Ms. D'Ambra's total number of hours and days worked may have been less than that of Ms. D'Ordine, her employment was no less regular in character.

The appellant's second claim is that since her appointment as a full-time teacher in 1983, her placement on the salary schedule has been inappropriate in that she was not given credit for her service during the years 1979-⁵ 1983. Reference again must be made to §16-7-29 of the General Laws and its language requiring school committees to compensate regularly-employed certified personnel according to a salary schedule "recognizing years of service, experience, and training". The Rhode Island Supreme Court has determined that creditable service includes only teaching experience and training in public schools within this state. Howard Union of Teachers v. State, 478 A.2d 563 (R.I. 1984). Clearly the appellant's employment during the 1979-1983 period was "service" as that term has been construed by the Court in the Howard case. Ms. D'Ambra was regularly employed for the entire length of the school years in question. Again, giving the phrase "years of service" its ordinary and everyday meaning we construe it to mean service "for the period of a (school) year". The statute does not limit creditable periods

5] Perhaps not wanting to assume our decision that the appellant was also a regular teacher during 1979-1983 and, therefore, entitled to pro-rated compensation per the contractual salary schedule during those years, Ms. D'Ambra's representative confined the claim for appropriate credit to the period 1983 onward, at which time there is no dispute that she became regularly employed.

of service to years of full-time employment, nor can we find any statutory basis to impose a requirement that for a year of service to be creditable, a regular employee must work full-time.⁶ Thus it is our conclusion that Ms. D'Ambra is entitled to credit, for purposes of placement on the salary schedule, for a year of service for each year from the 1979 school year forward. Of course, once her placement on the salary schedule is correctly determined, her compensation should be pro-rated according to the number of hours she worked during these years.

A final issue before us is whether the appellant is barred from obtaining relief before the Commissioner because she has filed a grievance under the Collective Bargaining Agreement governing the wages, hours and working conditions of North Providence teachers. Counsel for the School Committee argues that the claims presented are identical, and that under the doctrine of "election of remedies" she should be precluded from presenting her claim and obtaining relief in this forum. Edward A. Casey, Jr. on the appellant's behalf, argues the necessity of pursuing her claims before both the Commissioner of Education and an Arbitrator in order to re-

6] We would note that §16-7-16(h) directs us to Chapter 16 for the meaning and definition of "service" as used in Chapter 7; A general discussion of creditable service appears in §16-16-5, however, we find no specific discussion in that section of how to calculate or credit part-time service of a regularly employed teacher. Even if there were, we believe such methods of calculating service would be for retirement purposes, not for purposes of determining credit for salary schedule purposes. Additionally, the Rhode Island Supreme Court in Howard Union of Teachers, 478 A.2d 563 (R.I. 1984) supra, determined that the directive to refer to §16-16 for definitions meant one did not refer to "the more particularized provisions of Chapter 16", but only the definition section, i. e.; §16-16-1. Thus, we conclude "years" in the phrase "years of service" as it appears in §16-7-29 has no statutory definition.

medy statutory as well as contractual violations.

Having carefully examined the merits of the case presented before us, as well as the grievance filed by Ms. D'Ambra on December 14, 1987, related documents, and the Union contract, we are convinced that this is not a situation in which election of remedies should act as a bar to our adjudication of the statutory issues of whether Ms. D'Ambra was regularly employed under §16-7-29, and her entitlement to credit for years of service under that same provision of school law. We see these issues as separate and distinct from any violation of the contractual provisions cited in the December 14, 1987 grievance. While in years past the parameters of the Commissioner's statutory jurisdiction over contractual matters were unclear, it is now "axiomatic" that the Commissioner hears only those matters "arising under any law relating to schools or education". (See John R. Madden vs. Warwick School Committee, April 23, 1984, Commissioner of Education - pg.2).⁸ The possibility of over-lapping jurisdiction is greatly reduced as matters that arise solely under a collective bargaining agreement are within the purview of the grievance/arbitration process, while those arising under school law are within the province of the Commissioner under R.I.G.L. §16-39-1 and §16-39-2. Under this scenario,

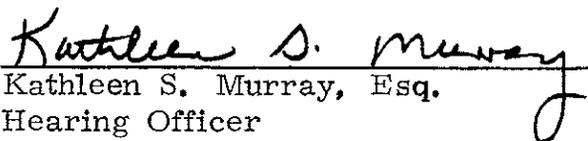
7]"We just want her claim to be fully adjudicated to the extent that it exists and not to have it adjudicated twice and come up with contrary rulings; that's not the intention here at all". (Tr.p.20)

8] In recent years both the Rhode Island Supreme Court (in City of Providence v. Board of Regents for Education, 429 A.2d 1297 (1981) and the Commissioner through decisions (Madden, supra, and Hoag v. Providence School Board, June 27, 1988, have clarified the jurisdictional limits of Title 16 hearings.

it may many times be the case that, as in the instant matter, questions of school law exist separate and apart from alleged violations of a collective bargaining agreement and require recourse to two tribunals for complete redress. We see the remedies obtainable in arbitration as consistent and additional, not negating or conflicting with the relief accorded before us. Thus, we find the doctrine of election of remedies inapplicable in this case under the guidelines set forth in Silva v. Silva, 404 A.2d 829 (R.I. 1979) and Corderre v. Zoning Board of Review of City of Pawtucket, 251 A.2d 397, 105 R.I. 266 (1969).

Conclusion

The parties should confer and consistent with our decision in this case, make the appropriate salary and step adjustments for Ms. D'Ambra. If they are unable to agree, they should notify the Commissioner's office and an additional hearing on the issue of remedy will be scheduled.


Kathleen S. Murray, Esq.
Hearing Officer

Approved:


J. Troy Earhart
Commissioner of Education

January 3, 1990