

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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HELEN D'ORDINE

vs.

NORTH PROVIDENCE  
SCHOOL COMMITTEE  
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D E C I S I O N

February 26, 1990

This hearing was convened December 4, 1989 at the request of the plaintiff, Helen D'Ordine.

The Commissioner's decision of November 30, 1988 found 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. . . .(He) does. . .have authority to decide whether a teacher is regularly employed . . . . and whether he or she has been assigned to the salary schedule mandated by §16-7-29 for certified personnel. . . . 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 §16-7-29.

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

The parties agreed to a back payment based upon the salary schedule for the four (4) school years 1979-1983 (Joint #1). The plaintiff, however, sought additional monies based upon six (6) items: preparation time, sick leave, medical coverage, travel pay, contribution toward retirement and interest on the award.

Because the parties were not able to reach agreement a hearing was held on December 4, 1989. Witnesses were sworn and testimony taken by the undersigned Hearing Officer for the Commissioner of Education. Submissions were received on December 13, 1989 and the case closed on December 20, 1989.

Mrs. D'Ordine argues her case on the premise that if she is to receive a sum based upon the difference between her actual dollars received and a calculation of hours actually worked multiplied by the hourly rate paid to teachers on the appropriate step of the salary scale, she is, in addition, entitled to proportional payment for five (5) items listed above since they are covered in the collective bargaining agreement between the North Providence Federation of Teachers, Local 920, American Federation of Teachers, AFL-CIO and the School Committee of the Town of North Providence, and also interest on such monies denied her in the process.

Mrs. D'Ordine argues that she was a regularly employed part-time teacher and that others who were similarly employed were awarded these benefits when such were pursued through arbitration. She maintains that since she left the system at the end of the 1982-83 school year she was not included in the arbitration filed in 1983-84 and that she should be accorded treatment similar to those persons in like circumstances.

The School Committee argues that they will pay all the benefits paid any part-time employee, but that the part-time personnel did not receive benefits at the time in contention.

### Opinion

An Arbitrator's Award, dated December 30, 1985 was submitted as evidence in the hearing of September 17, 1987. This Award granted several persons doing similar work to Mrs. D'Ordine adjustments in

pay and several benefits; i. e.; prorated sick leave, payment for medical coverage and travel pay. A submission by the plaintiff, not impeached by the defendant, shows that during the years in question teachers employed similarly to Mrs. D'Ordine were granted reimbursement for costs of medical coverage as a result of an agreement between the Union and the School Committee made in the summer of 1983.

Although the decision of November 30, 1988 does not specifically address the issue of the interpretation of the Commissioner beyond statutory responsibility, we find that to stop and thereby treat persons with a lack of equity and fairness would be a dereliction of responsibility.

Since the issue is to be of equity of treatment, we look to the collective bargaining agreement for guidance. It is in that document which one finds the specifics of the implementation of the law; i. e.; §16-7-29. It is further logical that if others employed in like manner to accomplish the same tasks have been granted retroactive consideration in certain areas then that same treatment should be accorded to Mrs. D'Ordine. The only difference between the persons being that Mrs. D'Ordine was no longer employed by the North Providence School Committee when the settlements or awards were made to others; i. e.; she left in June of 1983. All of the above impels us to afford her equal treatment. Therefore, we find as follows:

The salary differential as agreed to by the parties [Joint #1] is to be awarded [Net: \$13,233.12] and, since Mrs. D'Ordine was a part-time, regularly employed teacher in North Providence and since others, similarly

situated, have been provided with certain benefits, those referenced benefits are awarded as follows:

1. Travel Pay

The reference to travel pay is found in Article V; Salaries; Section 11. Since Mrs. D'Ordine traveled to various schools during the school day, she is entitled to payment under this item, since others in like classification have been accorded this benefit. [Arbitration 12/30/85].

Four years at \$50.00 each - Net: \$200.00

2. Medical Benefits

The reference to medical benefits is found in Article VI, Section 2. Mrs. D'Ordine received no medical benefits during this period, but provided for her own medical needs. Since both the [Arbitration of 12/30/85] and Agreement of August 1983 made awards to others in like classification, she, therefore, is awarded "Payment in lieu of Blue Cross and/or Delta Dental" and is awarded the same per each contract year as follows:

|         | <u>Medical Coverage</u> | <u>Delta-Dental Coverage</u> |
|---------|-------------------------|------------------------------|
| 1979-80 | \$500.00                | -not covered                 |
| 1980-81 | \$500.00                | -not covered                 |
| 1981-82 | \$500.00                | -not covered                 |
| 1982-83 | \$500.00                | \$150.00                     |

Net: \$2150.00

3. Sick Leave

The reference to sick leave benefits is found in Article VI Section 1 - Fringe Benefits. There is no monetary award

attached hereto. Although this benefit was awarded to similarly situated teachers, this is a cumulative benefit if not utilized yearly. Mrs. D'Ordine left the system and thereby she forfeited the possibility of award. There is no payment for unused sick leave upon leaving the system short of retirement.

The other items requested by Mrs. D'Ordine and referenced in the contract, i. e.; preparation time and the \$900.00 contribution by the Town to the retirement plan are found as follows:

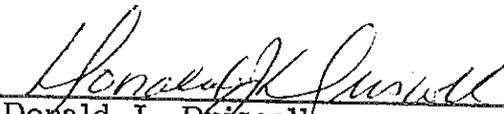
The request on preparation time is denied for two reasons, i. e.; first, no other person similarly situated has been awarded this benefit, and, second, Mrs. D'Ordine did not work a full day and as a regularly employed part-time teacher has been compensated for hours specifically worked on various days of varying lengths wherein she was free to arrive at her own scheduled time and leave when she was finished. Preparation time is a benefit given to persons teaching a full teaching day.

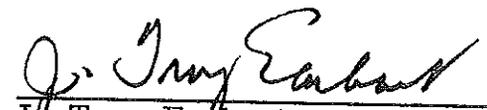
The \$900.00 contribution to the teacher retirement plan is denied. The item appears only in the contract covering the last year of Mrs. D'Ordine's employment - - 1982-83. It is limited to persons making payment into the retirement system at the time. Mrs. D'Ordine was not a member of the retirement system and made no contribution to the same during that year.

In the matter of interest we hereby make an award of statutory interest. In summary, the Commissioner finds that Mrs. D'Ordine is entitled to the fol-

lowing, in addition to the stipulated salary adjustment:

|                      |                      |
|----------------------|----------------------|
| For Travel           | - \$ 200.00          |
| For Medical Benefits | - \$2150.00          |
| For Interest         | - Statutory Interest |

  
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Donald J. Driscoll  
Hearing Officer

Approved:   
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J. Troy Earhart  
Commissioner of Education

February 26, 1990