

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

TIMOTHY M. CENTORE :
 :
 :
vs. :
 :
 :
JOHNSTON SCHOOL :
COMMITTEE :

D E C I S I O N

March 13, 1990

This matter was heard September 25, 1989 upon appeal to the Commissioner of Education by Timothy M. Centore from a decision of the Johnston School Committee to suspend him as a teacher effective with the close of the 1988-89 school year.

The Commissioner has jurisdiction to hear the appeal by virtue of the provisions of Section 16-39-2 of the General Laws of Rhode Island. The matter was heard by Donald J. Driscoll, Hearing Officer, under authorization from the Commissioner.

Due notice was given to the interested parties of the time and place of the hearing. Both parties were represented by counsel. The hearing was conducted de novo, witnesses were sworn, testimony was taken, a transcript of which was made and evidence was submitted.

Facts of the Case

1. The appellant was employed as a science teacher by the Johnston School Committee beginning in September 1988. His status was as a non-tenured teacher.
2. The School Committee employed Mr. Centore as a science teacher at Johnston High School to replace a teacher on leave.
3. On or about October of 1988 a science vacancy occurred at the Ferri Middle School, the vacancy was posted by the School Committee, Mr. Centore applied and was appointed to that position by the School Committee.
4. The parties agreed that, for purposes of educational continuity, Mr. Centore would remain at the High School teaching science

instead of transferring to the Ferri Middle School position.

5. On January 24, 1989 the Superintendent of Schools recommended to the School Committee that the position of science at the Ferri Middle School be eliminated for the 1989-90 school year.
6. Subsequently, Mr. Centore was notified of his suspension from the position of science teacher as a result of a substantial decrease in enrollment at the Ferri Middle School, grades 7 and 8.
7. There is no challenge in this hearing as to improper notification, failure to hear, etc. Both sides agreed all procedures have been addressed properly.

The Issue

Did the Johnston School Committee act according to law when it suspended Timothy Centore from the position of science teacher at the Ferri Middle School effective at the close of the 1988-89 school year?

Stipulation of the parties is (Tr. 3) ". . . this matter has been treated as a suspension or layoff under §16-13-6" (Suspension because of decrease in school population - Seniority - Reinstatement).

Argument

The School Committee alleges that, in its review of enrollment projections and upon recommendation of the Superintendent, it determined to reduce staff. The Committee argues that, over a period of time, enrollment at the Ferri Middle School, grades 7 and 8, had decreased significantly. As a result, the Superintendent determined the least senior

1] It is assumed that Mr. Centore continued to the end of the school year at the High School and that a substitute was engaged to teach at the Ferri Middle School science program.

non-tenured teacher (Tr.19) to be Mr. Centore and that by eliminating the science position there would be no adverse impact on the teaching assignments per the contract between the parties. (Tr.22)

The School Committee further argues that it is well established that the Committee has no burden of proof when noticing non-tenured teachers of non-renewal.

Mr. Centore argues that his appointment to the Ferri Middle School position and his, the administration's and Union's agreement, that he remain teaching at the High School for the balance of the school year, implied a commitment for the 1989-90 school year. He argues that in November of 1988 when the posting took place and prior to that time the School Committee was well aware of the decline in enrollment which had taken place and the Committee made no move to reduce staff.

The plaintiff further argues that under §16-13-6 of the General Laws the School Committee may suspend teachers only when the numbers in the enrollment decline are ". . .substantial. . ." and the suspensions are ". . .necessitated by the decrease. . .".

Mr. Centore further argues that the provisions of the contract between the parties in Johnston provide for "equitable schedules for teachers. . ." etc. and that his suspension causes an inequitable situation among and between teacher scheduling at the Ferri Middle School.

Opinion

Having considered the evidence and the testimony, it is our opinion that the School Committee's suspension of Timothy Centore was improper.

The parties agreed that this was a suspension of a teacher under R.I.G.L. §16-13-6, which reads as follows:

16-13-6. Suspension because of decrease in school population - Seniority - Reinstatement. - A school board may, by reason of a substantial decrease of pupil population within its school system, suspend teachers in such numbers as are necessitated by the decrease in pupil population; provided, however, that suspension of teachers shall be in the inverse order of their employment unless it is necessary to retain certain teachers of technical subjects whose places cannot be filled by teachers of earlier appointment; and, provided, further, that such teachers as are suspended shall be reinstated in the inverse order of their suspension. No new appointments shall be made while there are available teachers so suspended.

The decision rests upon the language of this section of the law. The School Committee's argument that in the case of a non-tenured teacher's dismissal or suspension, there is no burden of proof other than a showing that the school committee acted reasonably fails in this case. The failure in the instant case is posited in the shifting, by stipulation of both parties, of this particular non-renewal from other sections of §16-13, specifically Sections 2, 3 and 4 to §16-13-6 specifically.

This office has found and the Rhode Island Supreme Court has also concluded that non-tenured teachers when dismissed must be given a statement of reasons but that there is no burden to show "just cause" required of the school committee. Those findings by the Commissioner are: Latham vs. North Kingstown School Committee, November 17, 1980, (pg. 6 & ft. 11) and Karagozian vs. North Providence School Committee, May 17, 1979, (pg. 7 & ft. 14). We hasten to note, however, that these cases rested in §16-13-2, 3 and 4.

Having considered the argument of both parties, we find that the utilization of §16-13-6 as the section under which the action against Mr. Centore is taken, places on the School Committee a heavy burden of proof consistent with the language of §16-13-6. Whether the person is tenured or non-tenured is of no import under §16-13-6. The phrases employed by the statute as a standard are:

" . . .by reason of a substantial decrease of pupil population. . .suspend teachers in such numbers as are necessitated by the decrease. . ." (Emphasis added).

The Commissioner has consistently found in many cases that a school committee can suspend under §16-13-6, but in each and every case the school committee had to demonstrate a reduction in pupils of considerable proportion, supported by an addressing of the issue of the number of suspensions supported by the changes in sections or classes, and/or ratios of pupils to teachers. Hodgdon vs. Cranston School Committee, (June 25, 1981) Decision to Remand: " . . .but some sound rationale for the number of suspensions "necessitated" must be found if the requirements of §16-13-6 are to be met". (p.2.)

On September 9, 1982 the Commissioner found on Remand, Hodgdon vs. Cranston School Committee, supra, (p.3):

The word "necessitated" in the first sentence of the statute is critical. We understand that word, when read in light of the entirety of Section 16-13-6, to denote a requirement that suspensions under said statute be roughly proportion-

ate to the extent of the "substantial decrease in pupil population" (which is the problem addressed by the General Assembly in enactment Section 16-13-6).

The School Committee presented enrollment figures used for its decision making for Grades 7 and 8 at the Ferri Middle School from school years 1985-85 through 1988-89 with a projection for 1989-90.² Those figures show a decline from 530 to 375 over that period of time. The large declines took place in two separate periods, i.e.; between 1984-85 (530) and 1985-86 (446) and between 1987-88 (459) and 1988-89 (380). The decline predicted between 1988-89 (380) and 1989-90 (375) was one of five pupils.

The School Committee offered no supporting evidence of a rationale for "necessity". The action of January 1989 to reduce the staff by one (1) member, therefore, fails the test of "necessity" established in the law.

The School Committee was aware of its enrollment condition on a continued and annual basis. The behavior of the Committee in keeping its staff model constant, indeed reaffirming that pattern again in November 1988, over the period of time encompassed by the enrollment figures, calls into question the Committee's use of §16-13-6 and the standards which it encompasses.

As to the Union's argument that the suspension causes an inequitable schedule among teachers at the Ferri Middle School, we do not decide since that is a matter for the collective bargaining agreement between the parties and not properly before the Commissioner of Education.

2] The projection figure was confirmed by October 1989 enrollment of 373.

Since the Committee failed to exercise its right to reduce staff in years when enrollment declined 15.8% between 1984-85 and 17.2% between 1987-88, and we have no evidence of the precise impact of the additional 5 pupil reduction between 1988-89 and 1989-90, we do not find that the Committee has established the necessity of a reduction for an additional 1.35% decline in pupil population between 1988-89 and 1989-90. Lacking sufficient information to meet its burden of proof, the School Committee's action is deemed to be improper.

The Johnston School Committee is ordered to reinstate Timothy Centore immediately. Mr. Centore is awarded pay and benefits retro-³active to the first day of school, 1989-90 school year; such payment to be reduced by payment and benefits received by Mr. Centore for employment from the first day of the 1989-90 school year and unemployment received as a result of this lay-off if such should be the case.

If Mr. Centore should decline immediate (within two (2) weeks of receipt of this award) employment with the Johnston School Department, the issue of the suspension is moot but the issue of compensation differential must be met if existant. If the parties cannot agree on the issue of dollars, the Commissioner will reopen and rule on the issue.

3] We would emphasize the narrow scope of this decision. It applies the law as we understand it to the facts presented by this record, and we would caution against an overly broad reading of this ruling. As always when statutory mechanisms appear to collide with a school committee's judgment as to what would be in the system's best interest a difficult question is presented. While we are never eager to fault a school committee's judgment as to how its resources should be allocated (bearing in mind that meaningful education, not job

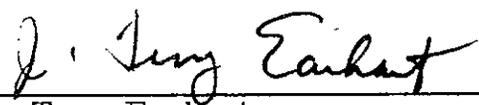
Footnote 3 continued

security, is or should be the primary goal of all involved in the process of education - - although we also recognize that a degree of job security contributes to the health of the entire endeavor), we must in this instance defer to the implicit command of the statute which the School Committee chose to invoke.



Donald J. Driscoll
Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

March 13, 1990