

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

DR. MADELEINE O. ROBINSON :
 :
 :
vs. :
 :
 :
PROVIDENCE SCHOOL BOARD :
 -and- :
PROVIDENCE TEACHERS :
UNION :

D E C I S I O N

June 5, 1990

Travel of the Case

On November 9, 1989, the Commissioner of Education received a letter of appeal filed on behalf of Dr. Madeleine O. Robinson, a teacher at Central High School in Providence. The letter noted violations of the collective bargaining agreement in place between the Providence School Board and the Providence Teachers Union, and alleged a failure on the part of the Union to process Dr. Robinson's grievance by obtaining information on the grievance and scheduling a hearing in a timely manner.

Both the School Board and Teachers Union were notified of the appeal to Commissioner Earhart, and the parties appeared before the Commissioner's designee on December 15, 1989. Transcript of the hearing was received, and the record closed on January 19, 1990.

The focus of the hearing convened was to determine if the Commissioner had jurisdiction over the matter under R.I.G.L. §16-39-1 or §16-39-2.

Issue

Does Dr. Robinson's appeal to the Commissioner present a dispute over which the Commissioner of Education has jurisdiction under R.I.G.L. §16-39-1 and §16-39-2?

Findings of Relevant Facts

The parties agreed that a preliminary determination of the jurisdictional issue would be beneficial to all concerned, and for this reason the evidence submitted on the underlying facts was minimal and confined

to the jurisdictional issue.

- Dr. Robinson is a teacher in the English department at Central High School. She holds lifetime certification in English and a professional certificate in Art. She also holds a doctorate in English. (Tr.p.7)
- As far back as 1979, Dr. Robinson requested that her name be placed on the transfer list for a transfer to Classical High School.
- Despite seniority in the Providence School System and the fact that she holds a doctorate in English, Dr. Robinson has not made sufficient progress on the transfer list to be transferred to Classical.
- Dr. Robinson attributes her lack of success in effecting a transfer on the failure of the School System to give proper credit for her seniority and advanced degrees, as well as on certain practices being followed in making teaching assignments at Classical which practices result in improper utilization of (or avoidance of) the transfer list. (Tr.pp.22-24) (Union Ex. B).
- On December 24, 1988 Dr. Robinson filed a grievance with the Providence Teachers Union, AFT Local 958, AFL-CIO, in which she set forth facts she alleged support violations of various provisions of the collective bargaining agreement. (Union Ex.B).
- To date, no hearing has been held on Dr. Robinson's grievance, nor has the Union made a decision on whether or not it will advance her claims as a grievance under the contract's grievance process. (Union Ex.B, letter of November 7, 1989 from Dr.

Robinson's attorney to Commissioner Earhart.)

Decision

Despite counsel's attempts to distinguish this matter, the appeal presented both in writing¹ and in hearing before us is indistinguishable from that presented by the petitioner in Hoag v. Providence School Board.² Consistent with Hoag we find that the appeal of Dr. Robinson presents a dispute over which the Commissioner has no jurisdiction under R.I. G.L. §16-39-1 or §16-39-2.

As in Hoag the claim focuses on allegations of contractual violations (Articles XIV, XV, and XVII of the agreement) together with allegations that the Union has breached its duty of fair representation, in failing to process the grievance in an effective and timely manner. In appearing before us, counsel for Dr. Robinson expanded upon the teaching assignment/³transfer list element of the claim in an attempt to establish its extra-contractual origin.

Our review of all of the citations offered by the petitioner in support⁴ of her position that her claim arises under school law does not convince us that such is the case. It appears to us that, apart from

1] Letter of appeal to the Commissioner dated November 7, 1989 from Dr. Robinson's attorney.

2] Decision of the Commissioner dated June 27, 1988.

3] We might observe here that since hearings before the Commissioner are not regulated or bound by formal rules of pleading, expansion of a claim or grounds for an appeal at time of hearing is perfectly proper.

4] As we have stated, it is axiomatic that appeals under §16-39-1 and 2 must arise under a law relating to schools or education. Madden v. Warwick School Committee, April 23, 1984.

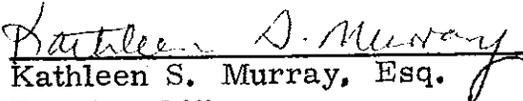
her "breach of duty of fair representation" claim, her complaints regarding insufficient recognition of her seniority and degree status and her failure to effect a voluntary transfer to Classical High School arise solely under the provisions of the collective bargaining agreement. The contract in place between the parties covers the subjects of salary increment for advanced degrees⁶ and transfer policies and procedures.⁷ The clause covering "transfer policy", Article XIV, also covers the subject of assignments to a particular grade or subject (14-5). Thus, even the petitioner's claim that she is not teaching appropriate(advanced) courses at Central is a matter encompassed by the provisions of the contract. The Legislature has determined that such matters are properly the subject of negotiation by and between the school districts and the bargaining agent for the teachers. (See: R.I.G.L. §28-9.3-1 et seq.) The statutes cited by the petitioner did not lead us to any provision of school law dealing with her claims or which accord her more(or less) in the way of substantive or procedural rights, beyond what the parties have negotiated. We conclude, therefore, that her claims as to transfer, class assignment and recognition of advanced degree status arise solely under the collective bargaining agreement.

5] Which is in the nature of a tort over which the Superior Court exercises jurisdiction.

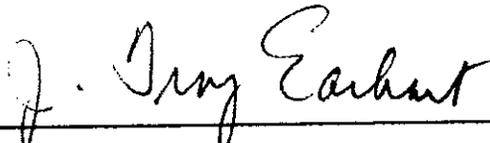
6] Appendix A, Professional Advancement schedule September 1, 1989 - August 31, 1990 . . . Doctorate \$2857.00.

7] Article XIV "Transfer Policy".

For these reasons, her appeal is denied and dismissed.


Kathleen S. Murray, Esq.
Hearing Officer

Approved:


J. Troy Earhart
Commissioner of Education

June 5, 1990