

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

----- :
PETER J. O'CONNELL :
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 :
vs. :
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NEWPORT :
SCHOOL COMMITTEE :
 :
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D E C I S I O N

June 13, 1990

Travel of the Case

On March 21, 1989, an appeal was filed by the NEARI on behalf of Peter J. O'Connell. A March 14, 1989 decision of the Newport School Committee had affirmed the Committee's prior decision consenting to the appointment of a person other than Mr. O'Connell to the position of assistant girls basketball coach at Rogers High School.

The matter was heard by the undersigned Hearing Officer designated by the Commissioner of Education on May 4, 1989. Briefs were submitted by the parties, a process completed on October 5, 1989.

Issue

Did the Newport School Committee act within its legal authority when it appointed a candidate other than the appellant to the position of assistant girls basketball coach at Rogers High School?

Findings of Relevant Facts

- Peter J. O'Connell has been an English teacher at Rogers High School for seventeen (17) years.
- In response to an internal posting, he applied for the position of assistant girls basketball coach for the 1988-89 season.
- After submitting his application and participating in the interview process, Mr. O'Connell was successful in being recommended for the position by the Principal of Rogers High School, and was appointed by Superintendent of Schools, Donald J. Beaudette.
- A non-teacher, Colleen M. Murphy, who at the time held the

position of coach of the freshman girls team at Rogers, was recommended for the position by the Athletic Director of the High School, Henry R. Hole. Mr. Hole's brother, John Hole, head coach of the girls basketball team, also supported Ms. Murphy's candidacy for the appointment.

- At the School Committee meeting of December 13, 1988, Superintendent Beaudette "recommended" the appointment of Peter J. O'Connell to the position.
- The Superintendent's basis for proposing Mr. O'Connell's appointment was that he was the best qualified candidate, and choosing a teacher for the position (over a non-teacher) would be consistent with the posting for the position and School Committee policy of encouraging teachers to seek out coaching positions.
- When the motion to "appoint" Mr. O'Connell pursuant to the Superintendent's recommendation, was made at the December 13, 1988 School Committee meeting, the motion was not seconded.
- Thereupon, Dr. Beaudette made a second "recommendation" for Colleen Murphy.
- Dr. Beaudette's prior written recommendation to the School Committee had indicated that if the Committee preferred Ms. Murphy over the appellant for the position he had "no problem" recommending her as his second choice.

1]See Appellant's Ex. 6 incorporated in the Superintendent's written recommendation to the School Committee dated December 9, 1988 -School Committee's Ex. 2.

- Dr. Beaudette had previously indicated to the School Committee that Ms. Murphy was less qualified than Mr. O'Connell, but that she would be an acceptable choice as well.

(School Committee's Ex. 2).
- Upon receiving the Superintendent's second recommendation, the Committee voted unanimously to appoint Colleen Murphy as Assistant Girls Basketball Coach.
- The reasons for the Committee's rejection of Mr. O'Connell's appointment and acceptance of Ms. Murphy's appointment were (1) she had the recommendation of the Athletic Director and Head Basketball Coach (Tr. p. 31), (2) in the past the School Committee has, when possible, moved a freshman coach up to a position of assistant varsity coach (Tr. p. 32), and (3) since Ms. Murphy was coach of freshman girls team in 1987-88, she would be familiar with individual players (Tr. p. 32).
- Both Mr. O'Connell and Ms. Murphy hold the coaching certificate required by the Department of Education, which indicates completion of a Red Cross first aid course.

2] School Committee Ex. 2.

3] As established by J. Clement Cicilline, Chairman of the Newport School Committee.

4] In his brief, counsel for the School Committee argues that an additional reason for Ms. Murphy's appointment was her "seniority" as a coach within the Newport School System. Although Mr. O'Connell had coached the freshman girls basketball team during 1983-1986, counsel argues that upon his resignation in 1986 his service was interrupted. Therefore, Ms. Murphy's service as coach during 1987-88, he argues, accorded her greater "seniority". We do not include this reason in our findings of fact because no evidence from the School Committee establishes that any "seniority" system was a part of the Committee's rationale.

Decision

This case does not appear to present the situation where a superintendent and members of a school committee have a difference of opinion as to who is the better qualified candidate for a position, taking into account the written qualifications expressed in the School Committee's posting for the job. We have ruled that where two candidates are both qualified for a position, and such a difference of opinion exists, the prerogative of judgment as to who is the better-qualified candidate is that of the School Committee. While previously the School Committees exercised this prerogative of judgment by virtue of the power to appoint school department employees, the current language of the relevant statutes, R.I.G.L. 16-2-9, §16-2-11, and §16-2-18, accords school committees this power through their ability to grant or withhold consent to the superintendent's appointments.

In this case, the record indicates that the reasoning for the School Committee's withholding of consent to the appellant's appointment, and its giving consent to the appointment of the second candidate appointed by Superintendent Beaudette rested on its consideration of factors not tied to the qualifications listed in the October 14, 1988 job posting. The appellant, we find, met all of the qualifications listed in the job posting (Appellant's Ex.3) while the successful candidate did not. We would note that the basis

5] DeGuilio v. West Warwick School Committee, decision of the Commissioner dated August 21, 1981.

6] The record before us indicates Ms. Murphy had one year's prior coaching experience, as freshman coach at Rogers High School, together with some prior unspecified volunteer coaching. (Appellant's Ex.6).

for disagreement here was whether factors apart from qualification warranted Ms. Murphy's appointment. Evidently, Dr. Beaudette felt that they did not while members of the School Committee felt they did.

In spite of the disparity in qualifications of the two candidates, and the fact that the successful, lesser qualified candidate was the second choice of the Superintendent, we are not prepared to second guess a school committee's reliance on additional factors relating to a job candidate's background, if such "other factors" would furnish a reasonable non-arbitrary rationale for the School Committee's choice. We see the Commissioner's role, on appeal, as according deference to the judgment of the School Committee in matters of this type, absent proof that the judgment was arbitrary or capricious.

The reasons attested to by Mr. Cicilline included the fact that Ms. Murphy, as the prior year's freshman coach would have familiarity with individual players. It is true that she would be familiar with those freshmen continuing to the varsity team, but not new players or others who were already beyond their freshman year during the 1987-88 season. Also, it is more likely that the appellant, an English teacher at Rogers High School and former freshman girls basketball coach (1983-1986) would have greater familiarity with individual students than Ms. Murphy, a non-teacher and coach for only one year. As to having the written recommendation of the Athletic Director, (the second reason cited by the Chairman of the School Committee) we were not provided with any information that this recommendation was entitled to greater weight than that of the

Superintendent and the Principal of the High School, both of whom filed written recommendations in support of the appellant. ⁷ The third basis for the School Committee's decision was that a "promotion" of a coach from freshman to assistant varsity or from assistant varsity to head coach would be effected by Ms. Murphy's appointment. Mr. Cicilline testified that moving a coach up in this fashion was something he thought had been done in the past. (Tr.p.32). Detracting from the force of this rationale is the fact that Ms. Murphy had been a coach in the system for only one season. In addition, the Chairman acknowledged in his testimony that the Newport School Committee generally adheres to a policy that "all things being equal," the preference is to appoint a teacher as coach. (Tr.pp.64-65). In fact this "policy" was clearly expressed as the fifth qualification listed in the position posting. (Ex.3). There was no convincing reason offered for not following this expressed policy of giving preference to teachers in this situation. Certainly one wonders why this written preference and policy would give way to accomplishing the promotion of a coach who had been involved in the school athletic program for only one year.

Conclusion

The factors advanced by the School Committee to support its action in denying the appellant this coaching position do not rest on the areas of qualification indicated by the School Committee in its job posting.

7] The letter of the Athletic Director noted in Ms. Murphy's favor that she was "worthy" of appointment and had been "loyal and dedicated" to the girls program at Rogers High School. It is the superintendent who appoints personnel in a school system and, therefore, it is his recommendation that has greater weight. Recommendations by others are recommendations to the superintendent for his use in formulating his appointment decision.

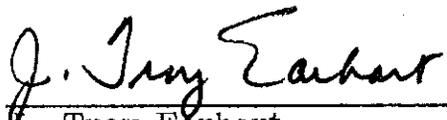
These other factors do not lend sufficient support to the basis for the decision to protect it from a finding of arbitrariness and capriciousness.

We, therefore, find the decision to appoint someone other than the appellant as beyond the limits of discretion exercisable by the Newport School Committee. The appellant should be compensated for any loss of compensation that resulted.



Kathleen S. Murray, Esq.
Hearing Officer

Approved:
June 13, 1990



J. Troy Earhart
Commissioner of Education