

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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GERALD MORISSEAU

vs.

CUMBERLAND  
SCHOOL COMMITTEE  
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D E C I S I O N

July 16, 1990

### Travel of the Case

On June 7, 1988 an appeal was filed with the Office of the Commissioner on behalf of sixteen (16) teachers "laid off" in the Cumberland School System. On request of the parties, the matter was held in abeyance until March 15, 1989, at which time a hearing was held by this Hearing Officer under authorization of the Commissioner. At the time of the hearing, the number of appellants had been reduced to two teachers; by the time briefs were submitted, only one teacher, Gerald Morisseau, remained in lay-off status. The record of the case closed on October 24, 1989.

Jurisdiction to hear the appeal lies under R.I.G.L. §16-39-2 and probably §16-13-4 as well.<sup>1</sup>

### Issue

Was the appellant's non-renewal/suspension as an untenured teacher of secondary-level mathematics at Cumberland High School justified?

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1] We note that in its 1986 decision in Ciccione v. Cranston School Committee the Rhode Island Supreme Court confined the hearing and appeal procedure set forth in §16-13-4 to teachers facing permanent dismissal, not suspension. This situation was altered by enactment of Ch. 357 Section 1 of the Public Laws of 1988 which amended R.I.G.L. §16-13-5 to give suspended teachers, upon request, right to hearing and appeal procedures set forth in §16-13-4. In our case, appellant Morisseau's lay-off, as will later be discussed, retained the essential elements of a non-renewal under §16-13-2, and thus he probably retains rights to the hearing and appeal procedure set forth in §16-13-4 because of this section's explicit incorporation into §16-13-2.

Findings of Relevant Facts

- Gerald Morisseau was employed as an untenured mathematics teacher at Cumberland High School during the 1987-88 school year.
- On February 17, 1988 the Superintendent of Schools notified the appellant of the prospect of his non-renewal for the following school year, citing as the basis a need to reduce staff because of six (6) reasons stated in the letter. (Joint Ex.C).
- The letter of February 17 noted that the statutory provisions relevant to the notice were General Laws of Rhode Island, Sections §16-13-2, §16-13-4 and §16-13-6.
- On February 26, the Superintendent notified the appellant in writing that the School Committee had voted not to renew him as a teacher for the 1988-89 school year. (Joint Ex.D).
- The reasons for the School Committee's action were given as follows:
  1. Anticipated continuing substantial decrease of pupil population including 1987-88 school year.
  2. Maximum efficient use of certified staff consistent with student enrollments.
  3. Anticipated insufficiency, loss and/or reduction of federal, state and/or local funding and/or appropriations.
  4. Maximum efficient use of certified staff consistent with fiscal constraints.
  5. Over-staffing requiring reduction of staff based

upon efficiency of present class sizes, of present class schedules, and/or of present utilization of available classes consistent with staff certifications.

6. Professional staffing needs of the Cumberland School System.

- In February of 1988, Superintendent of Schools, Dr. Rodney H. McFarlin, reviewed data which indicated a projected decline in the number of secondary students (grades 7-12) of 115 students, calculating decline from the actual October 1987 enrollment to projected October 1988 enrollment. (Tr. pp. 27-28).
- The actual decline in students at the secondary level, grades 7-12, measured from October 1987 to October 1988 was 71 students. (Tr. p. 67)
- In school year 1987-88 there were 21 mathematics teachers in grades 7-12. (Tr. p. 75).
- In school year 1988-89 there were 18 mathematics teachers (Tr. p. 76). Two secondary mathematics teachers transferred to elementary school math positions (Tr. p. 134) and the appellant as the least senior math teacher was laid off, hence the reduction in staffing from 21 to 18.
- All students at the High School level are not required to take mathematics. (Tr. p. 92). Two credits of math are required. (Tr. p. 92).
- No enrollment figures for numbers of students taking math at the secondary level were submitted (Tr. p. 86); former Principal Richard B. Lynch testified that at the High School level, it is difficult to assess the impact of a projected decline in overall enrollment on

staffing needs in the math department because these needs are determined in part by what courses the students select. (Tr. p. 102).

- o At Cumberland High School, the average daily load for math teachers in both 1987 and 1988 was approximately one hundred (100) students per teacher according to the principal's best recollection. (Tr. pp. 110-111).
- o The contractual limit on average daily student load for teachers at the secondary level is one hundred and twenty-five (125) students. Class size is limited by contract to twenty-eight (28) students.
- o Maintenance of approximately the same average daily class load at the High School level in both years was accomplished in spite of reassignment and adjustment of teacher schedules to increase the number of class periods actually taught. (Tr. pp. 116, 122) and increasing numbers of students in some classes. These adjustments did not increase significantly either class size or average daily student load nor increase student load or class size beyond the levels permitted by the contract.
- o The actual decline in overall student enrollment at the High School grades 9-12, was nineteen (19) students.

#### Decision

Mr. Morisseau, as an untenured teacher in the Cumberland School System during 1987-88, taught under the terms of an annual contract. This contract was subject to non-renewal, upon proper and timely notification by the School Committee under §16-13-2. The appellant was furnished with a statement of cause for the non-renewal of his contract, which statement of cause detailed six (6) reasons on which the School Committee relied in deciding not to renew Mr. Morisseau's contract. Other than reason

number three,<sup>2</sup> as to which no evidence was submitted by either party, the record before us contains evidence supporting the validity of the other reasons given to the appellant in the February 26, 1988 statement of cause. In conducting a de novo review of the decision to non-renew the appellant, under the guidelines set forth in Jacob v. Board of Regents, 117 R.I. 164 (1976) and Wujcik vs. School Committee of the Town of Warren, 388 A.2d 17 (1978) we find that both substantively and procedurally the appellant has received all he is entitled to.

While the precise extent of decline in enrollment in math at the High School level has not been established, we do not have proof that there was no impact on the level of enrollment in math classes at the secondary level resulting from an overall decline of seventy-one (71) students.<sup>3</sup> Even if the inference that overall decline resulted in some decline in enrollment in secondary math classes in Cumberland were rebutted, and it was not, there is ample evidence on the record before us of the validity of all of the other reasons cited by the School Committee, with the exception of funding cutbacks. According to the testimony of the former Principal of the High School, slight increases in class size, reassignment of teachers previously covering study halls, increasing the number of actual class periods assigned to teachers who were previously teaching fewer than five (5) class periods,<sup>4</sup> were all steps taken to achieve a more efficient use of staff and

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2] "Anticipated insufficiency, loss and/or reduction of federal, state and/or local funding and/or appropriations."

3] We are convinced that the untenured teacher had the burden of proof to establish the lack of or insufficiency of the relevant pupil population decrease.

4] Without violation of the Cumberland Teachers' Association contract, we would assume. We do not rule on this point because it is a matter not within our jurisdiction.

and to reduce staff not apparently needed to accommodate the numbers of students enrolled in secondary math courses in the 1988-89 school year. Thus, while it is not conclusively established in the record that declining enrollment in math did occur from October 1987 to October 1988 other legitimate factors lend additional support to the School Committee's decision under §16-13-2.

These findings are made despite the fact that the emphasis throughout the hearing before us by counsel for the School Committee was on the "essential" factor of substantial declining enrollments as justification for this teacher's lay-off. As our findings of fact indicate, a projected overall decline of 115 students or an actual decline of 71 students (19 at the High School) does not necessarily establish a decline in the number of students taking secondary math, especially at the High School level where it is not a required course for all four years. Of course, it would be possible to infer decline based on the fact that with a reduction of three teachers at the secondary level, the average daily load per teacher remained approximately the same, but for the fact that Mr. Lynch testified that teacher reassignment and slight increases in class size in some classes at the High School also took place. These other factors may very well have affected the maintenance of average daily load of approximately one hundred (100) students, rather than this figure being consistent due only to decline in the number of students selecting math courses at the High School.

We have analyzed and upheld the propriety of Mr. Morisseau's lay-off under §16-13-2 since we are of the opinion that what the School Committee did was to non-renew his annual contract under this section of our

laws. In fact, the communication from Superintendent McFarlin to the appellant on February 26, 1988 indicated that the vote of the Committee was "not to renew" (emphasis added) the appellant's employment as a teacher. Counsel for the appellant has argued that since counsel for the School Committee described the action taken by the Committee as a "suspension because of declining enrollment" then went on to say:

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"We have a §16-13-6 suspension -- we have two

§16-13-6 suspensions as far as I'm concerned". (Tr.p.16)

that this section of the law is controlling. (See Appellant's Brief at p.2). We agree that if Mr. Morisseau's lay-off were governed by the provisions of §16-13-6, the standards for determining the legality of the action would be much different. Proof that such suspension was necessitated by the decrease in pupil population would be required. See: Hodgdon vs. Cranston School Committee, decision of the Board of Regents, June 25, 1981; Angell vs. Cumberland School Committee, decision of the Commissioner, October 18, 1982; Del Sesto and Hines vs. Smithfield School Committee, decision on remand to the Commissioner, March 18, 1986. Furthermore, as we have indicated, proof of declining enrollment necessitating the appellant's non-renewal is not adequately established in this record. However, despite the School Committee attorney's statement characterizing the

5] Mr. Morisseau's case was initially consolidated with that of a tenured teacher who was suspended due to declining enrollment. This tenured teacher's lay-off was made moot by her subsequent recall.

6] We note here the issue of whether this is a burden of proof borne by the School Committee or teacher was addressed by us very recently. In the case of an untenured teacher who was stipulated to be suspended due to declining enrollment under §16-13-6, we ruled that this heavy burden of proof is on the School Committee to establish decline necessitating such suspension. See: Centore vs. Johnston School Committee, decision of the Commissioner, March 13, 1990. We would note, however, that in Rotella vs. Providence School

appellant's non-renewal as a suspension under §16-13-6, the formulation of the issue contained in his Brief (p.8) and reliance on declining enrollment as the essential factor for this lay-off, we do not interpret this as intent on the part on the part of the School Committee to bind itself to the stringent standards of a §16-13-6 suspension. Unlike the recent case of Centore, supra, counsel did not stipulate that §16-13-6 was controlling. In addition, in explaining use of the word suspension to describe the action taken by the School Committee, its counsel clarified that suspension was appropriate terminology to apply in the appellant's case because he acquired recall rights under Article 27 of the contract and not under the statute (Tr. pp. 4-6). If it were conceded that Mr. Morisseau acquired statutory recall rights, i.e. under §16-13-6 we would be persuaded by the argument that this School Committee had "suspended" the appellant pursuant to this law, and visited upon itself the application of any resulting legal standards for determining the legality of its action thereunder. We think it would be manifestly unfair, given the entire record of this case to ignore reasons giving a legally supportable basis for this lay-off under §16-13-2 and confine our analysis to §16-13-6 on the basis of an unfortunate choice of terminology. We, therefore, reject the analysis of this action as a

footnote 6 continued

Committee, decision of the Commissioner, July 11, 1984 in footnote 4 there is a discussion indicating the burden of proof would rest with the untenured teacher. Since we do not feel that this is a case of suspension under §16-13-6, we are not constrained to address this issue.

7] Also, we might note that the counsel for the School Committee, while focusing on declining enrollment also noted that the other factors listed in the February 26, 1988 letter lent further support to the School Committee's action (see School Committee Brief at p.20, Transcript p.153).

§16-13-6 suspension.

For the foregoing reasons, the appeal is denied.

8] We might note here our own reservations on whether §16-13-6 is applicable to untenured teachers apart from occasions when the parties stipulate that it controls.

Kathleen S. Murray  
Kathleen S. Murray, Esq.  
Hearing Officer

Approved: July 16, 1990

K. Troy Earhart

J. Troy Earhart  
Commissioner of Education