

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

----- :
AFONSO N. BORGES :

vs. :

CENTRAL FALLS :
SCHOOL COMMITTEE :
----- :

D E C I S I O N

July 31, 1990

This matter was heard on the appeal to the Commissioner of Education of Afonso N. Borges from a decision of the Central Falls School Committee not to renew his contract for the 1989-90 school year.

The Commissioner has jurisdiction to hear the appeal by virtue of the provisions of §16-39-2 of the General Laws of Rhode Island, as Amended. The matter was heard by the undersigned Hearing Officer under authorization from the Commissioner.

Due notice was given to the interested parties of the date, time and place of the hearing. The appellant was represented by the Executive Secretary of the Rhode Island Federation of Teachers, Local 1567, AFT, AFL-CIO. The School Committee was also represented by counsel. Testimony was taken, a transcript of which was made and evidence was presented. In addition to oral argument, the parties submitted written briefs in support of their respective positions. Upon the testimony taken and the evidence presented, we find the following:

1. Afonso N. Borges was initially employed by the Central Falls School Department on September 19, 1987 to teach two classes of ESL (English as a Second Language) and three classes of Portuguese although he was not officially appointed by the School Committee until January 14, 1988 on a one-year only basis.
2. Mr. Borges was granted an emergency certificate in the area of ESL by the Rhode Island Department of Education.
3. During the summer of 1988, the Central Falls School Department again advertised for a teacher certified in Secondary ESL and Portuguese, and, once again received no applications.

4. Mr. Borges was granted an emergency certificate in Secondary ESL by RIDE expiring on August 31, 1989, and, as a result he was hired by the School Committee for the 1988-89 school year.
5. During the 1988-89 school year, Mr. Borges taught three classes of ESL and two classes of Portuguese.
6. The School Committee, at its meeting of February 17, 1989, voted by resolution recommended by the Superintendent of Schools not to renew Mr. Borges's contract for the 1989-90 school year.
7. The Committee notified the appellant by letter dated February 28, 1989 stating that the reason for nonrenewal of the appellant's contract was a "substantial pupil population decline in Portuguese classes at the Junior/Senior High School".
8. The appellant requested a hearing and was granted a hearing by the School Committee on December 11, 1989 at which time the Committee reaffirmed its decision of February 17, 1989.
9. Mr. Borges appealed the decision of the School Committee resulting from the December 11, 1989 hearing to the Commissioner of Education on January 29, 1990.
10. The parties mutually agreed to the date of March 14, 1990 for the hearing before the Commissioner and further agreed to submit written¹ briefs by no later than May 22, 1990.

According to the written brief filed by the appellant, the only issue to be determined with regard to the appellant's schedule is the 2/5 time

1] Originally the parties agreed to submit written briefs within ten (10) days of the receipt of the transcript.

which was comprised of two classes of Portuguese which the appellant alleges were improperly abolished by the School Committee. The 3/5 portion of the schedule which was comprised of three ESL classes is not in question. (Appellant's brief - pp.12-13).

Appellant argues that the School Committee erred when it eliminated Portuguese from the course offerings at Central Falls Jr./Sr. High School for the 1989-90 school year. In support of its position, appellant cites §16-22-8 of the General Laws of Rhode Island, as Amended, which reads as follows:

§16-22-8. Foreign language courses.- Whenever there shall be twenty (20) students who apply for a course in Italian, Portuguese or Spanish language in any high school of the state, the school committee of the specific town shall arrange a course in Italian, Portuguese or Spanish to be conducted by a competent teacher.

Appellant argues that the twenty (20) students referred to in this section means a total of 20 students in one or more sections, not necessarily 20 or more students in a level. (Emphasis added). Louis Del Papa, a staff person from the Rhode Island Department of Education whose responsibility is the Basic Education Plan (BEP), testified that the interpretation of §16-22-8 fostered by the appellant is in his opinion the correct interpretation.

Appellant further argues that Standard F. of Section 10 of the BEP which was approved by the Board of Regents states, "The District shall guaranteed three years of instruction in at least two foreign languages". Therefore, according to the appellant, the School Committee violated that regulation of the Board of Regents when it did not offer Portuguese II and

III during the 1989-90 school year, thus depriving those students who had completed Portuguese I and II during the 1987-88 school year of the opportunity to take Portuguese II and III, respectively. Mr. Del Papa testified that he concurs with that interpretation. (Tr. pp. 21-25).

And, finally, appellant argues that the School Committee did not give him an "objectively truthful reason" for his nonrenewal and, therefore, his termination was not for cause. Appellant states that he should have been offered at least two classes (sections) of Portuguese for the 1989-90 school year. In support of that position he cites Rosemarie Alvarnaz vs. Warren School Committee, November 9, 1982, the Board of Regents remand to the Commissioner on appeal, and the Commissioner's Decision on remand dated May 18, 1982. When the Commissioner's Decision on Remand was returned to the Board of Regents, it reviewed the case on a more narrow issue of "was this nontenured teacher given an objectively truthful reason for her termination?" The Board ruled that "the termination of the appellant's services was improper". (Regents Decision 11/9/82).

Respondent argues that a nontenured teacher has no standing to claim benefits of a regulatory or statutory violation intended to benefit students. In support of that position, respondent cites Alvarnaz vs. Warren School Committee, May 18, 1982.

Respondent also argues that the appellant, as a nontenured teacher, was hired for one-year only and could not have any legal expectation for employment beyond one year. In support of that position, respondent cites Schwartz vs. Woonsocket, Decision of Commissioner, February 1978; Mycroft vs. Cumberland, Decision of Commissioner, 1979 and Hennessey vs.

East Providence, Decision of Commissioner, October 1980.

The Superintendent of Schools, Roland E. Deneault, testified that nine (9) students signed up for Portuguese I, six (6) for Portuguese II, four (4) for Portuguese III and one (1) for Portuguese IV. On the basis of those figures, since level I had fewer than twenty (20) students express an interest, he recommended to the School Committee and the Committee voted to eliminate all Portuguese course offerings for the 1989-90 school year. Respondent argues that it was well within its statutory rights under §16-22-8 when it eliminated Portuguese as a foreign language course offering for the 1989-90 school year because at least twenty (20) students did not express an interest in any level of the course. The Superintendent testified that the appellant was teaching two sections of Portuguese at the time of his "termination" which represented 2/5ths of his class load. One of the two sections was Portuguese I and the other was a class which contained a combination of Portuguese II, III and IV.

Finally, respondent argues that the Committee gave a statement of cause that clearly meets all the standards articulated by the Commissioner in Brennan vs. Exeter-West Greenwich, November 1981; Schreitmuller vs. Smithfield, November 1983, and that a nontenured teacher may not benefit from even a mistake of a school committee in order to obtain greater job security and there is no retroactive enhancement of rights. (See: Bochner vs. Providence, Decision of Board of Regents, March 1987.)

The official position of the Commissioner of Education with regard to §16-22-8 is that a level I course offering must be implemented in Italian, Portuguese or Spanish whenever twenty (20) students make application

for such a course, and, in accordance with the BEP, Section 10, Standard F, and Indicator, page 70, once a school system has implemented said course offering, the foreign language course must be offered for a minimum of three (3) years in order to give the students who have completed level I the opportunity to complete levels II and III. Therefore, the Committee did have every right to eliminate Portuguese I for the 1989-90 school since less than twenty (20) students had expressed an interest. However, it should have continued to offer Portuguese II and III in order to afford the opportunity for the six (6) students who signed up for Portuguese II and the four (4) students who signed up for Portuguese III to complete these requirements in accordance with the BEP, Section 10, Standard F, which is a regulation of the Board of Regents which has the effect of law.

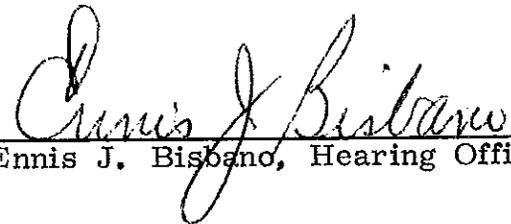
When dealing with nontenured teachers, school committees have a tendency to use the terms "non-renewal" as stated in §16-13-2 and "suspension" as stated in §16-13-6 interchangeably. By so doing, they often give to nontenured teachers either willingly or unwillingly a right which they do not have under law. Such is the case in point. The School Committee at its meeting of February 17, 1989 adopted a resolution that the appellants' contract be "suspended" at the end of the 1988-89 school year due to declining enrollment" in the Portuguese classes. (See Superintendent's letter of February 16, 1989 which is part of Joint Ex.2). In his letter of February 28, 1989 to the appellant the Superintendent states "As soon as datum is available concerning the 1989/90 staffing needs, you will be permitted to exercise your seniority rights and will be offered positions as they become

available within your areas of certification". (Joint Ex.2). The action of the School Committee on February 17, 1989 as confirmed by the Superintendent's letter of February 28, 1989, clearly indicates that the appellant was not terminated in accordance with §16-13-2 but was suspended for declining enrollment as authorized by §16-13-6 with full recall rights. (Emphasis ours). Therefore, the question to be addressed by this Hearing Officer is the very narrow question which the Board of Regents raised in its decision of September 28, 1982 regarding Alvarnaz, supra, that is, "Was this non-tenured teacher given an objectively truthful reason for he termination?". The Regents ruled in that case that she was told that the system did not require a teacher with her certification when in fact it did. They stated that her termination was improper, reversed the Commissioner's decision of January 29, 1980 and remanded the case to the Commissioner for determination of a proper remedy.

We find that in the instant case the appellant was given less than an objectively truthful reason for his termination by the School Committee. Since regulations of the Board of Regents require that three (3) years of Portuguese be offered to students, the School Committee erred when it eliminated the course offerings in Portuguese II and III for the 1989-90 school year and that they should have combined the two levels into one (1) class (section) as they had done in the preceding school year.

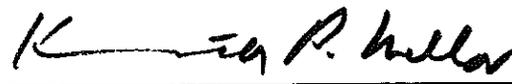
Accordingly, since the appellant was suspended with full recall rights, he should have been offered the opportunity to teach one class (section), combined Portuguese II and III, for the 1989-90 school year.

The parties are directed to meet in an attempt to mutually agree on a monetary settlement. The amount could be de minimus since the appellant has worked as a substitute teacher and has also collected unemployment benefits. Should the parties be unable to resolve the monetary adjustment, this Hearing Officer retains jurisdiction for the limited issue only.



Ennis J. Bisbano, Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

July 31, 1990