

Travel of the Case

The South Kingstown School Committee's April 1, 1987 decision to terminate Rosemary Hobson as a tenured teacher in its system has been followed by a succession of appeals to this office. The Commissioner's last decision in this matter (May 17, 1989) was followed by a rehearing¹ and reconsideration of Ms. Hobson's termination by the School Committee. Her termination was affirmed by written decision of the School Committee on June 13, 1989. This decision was appealed to the Commissioner on June 19, 1989 on the basis that "just cause" for termination is lacking. Subsequently, another appeal was filed on the basis of the School Committee's refusal to pay Ms. Hobson damages in the form of compensation for the period July 5, 1988 to June 13, 1989, a period which had been found to constitute unreasonable delay in affording this teacher post-termination² procedures required under the Teachers' Tenure Act. This second appeal, filed on July 13, 1989 has been consolidated with the appeal challenging the validity of Ms. Hobson's termination.

The matter was referred to the undersigned Hearing Officer for hearing and decision under authorization of the Commissioner. The parties agreed to submit evidence in the form of the complete record considered by the School Committee at its May 1989 rehearing of the matter, the written arguments of counsel made to the School Committee at that time, and its June 13, 1989 decision.

1] On the original record created in May and June of 1987.

2] See our conclusions as to the School Committee's failure to comply with the requirement that a tenured teacher be granted a hearing on her/his dismissal and written decision within a reasonable time at page 7 of the Commissioner's May 17, 1989 decision.

After review of this voluminous documentary evidence, the Hearing Officer convened the hearing pursuant to the parties' request to supplement this record with legal argument. The parties appeared on February 28, 1990 for this purpose. A post-hearing brief was submitted by the School Committee and the record of the case closed on April 12, 1990.

Issues

- I. Is the School Committee's termination of Rosemary Hobson supported by "good and just cause"?
- II. Is Ms. Hobson entitled to damages in an amount equivalent to the salary she would have earned during the period of delay in affording her required post-termination procedures?

Findings of Relevant Facts

- Rosemary Hobson was a tenured teacher in the South Kingstown School System until she was terminated, effective April 1, 1987. (Attachment 14 of Joint Ex.I).
- The recommendation of Superintendent of Schools, Arthur B. Campbell, to dismiss Ms. Hobson was made on February 18, 1987 and was based on fourteen (14) reasons identified in a memorandum to the School Committee. (Joint Ex.I, Attachment I).
- Evaluations of Ms. Hobson's performance as a kindergarten teacher at the West Kingston Elementary School during school years 1983-84 and 1984-85 were made by Principal Richard A. Corcoran. These evaluations indicated Ms. Hobson had organizational difficulties and identified "a need for her to closely examine the organizational strategies (sic) she uses for delivery of instruction". (Joint Ex.I, Attachments 2 and 3).

- These evaluations also noted negative parental perceptions and complaints regarding her performance.
- In April of 1985, Ms. Hobson suffered a subarachnoid hemorrhage, and was absent for the remainder of the school year.
- She returned to her teaching position in September of 1985.
- Beginning in September the newly-appointed Principal Richard J. Hines conducted some early informal observations of teachers and reviewed prior evaluations so that he could develop teacher objectives for school year 1985-86. (Ex. I, Tr. 5-28-87, p.4).
- At the beginning of the year he noted the appellant had "organizational difficulties" (Ex. I, Tr. 5-28-87, p.4) and saw a definite need for her to "try to use a systematic approach" to the learning of the kindergarten students. (Tr. 5-28-87, p.7).
- As a result of his observations, Principal Hines met with Ms. Hobson on a weekly basis, conducted numerous informal observations and four (4) formal observations of her class during that school year.
- On September 18, 1985 Mr. Hines sent the appellant a memorandum indicating her need to draw up an "accountability checklist" (skills to be taught the class), formal lesson plans, and a need to shorten the organized play time for the children. (Tr. 5-28-87, pp.7-8).
- Ms. Hobson did not draw up the "accountability checklist" and did not submit the required lesson plans until being asked to do so on two additional occasions in September and after being cited for insubordination for not complying with these requests in an October 3, 1985 memorandum from Mr. Hines to Superintendent Campbell. (Tr. 5-28-87, p.9, p. 50).

- Even after Ms. Hobson drew up lesson plans, Mr. Hines found them to be incomplete, and so poor that a substitute teacher was unable to follow them. (Tr. 5-28-87, p. 50, 59-60).
- During a formal observation on November 12, 1985, Principal Hines observed that the lesson plans were not being followed. (Tr. 5-28-87, p. 10). This same observation was made during the formal observation he conducted on January 28, 1986. (Tr. 5-28-87, p. 11). At the end of the school year, Mr. Hines felt that the appellant's lesson plans were still incomplete and unsatisfactory. (Tr. 5-28-87, p. 52).
- Lack of adequate organization of curriculum and deficiencies in instructional skills were noted throughout the school year in the course of Mr. Hines formal and informal observations. (Ex. 10; Tr. 5-28-87, pp. 4, 19, 24, 27, 33-34, 38-39, 41, 43, 68 and 69).
- On many occasions throughout the year, Mr. Hines observed failure on the part of the appellant to take appropriate corrective action regarding her pupils behavior in the classroom. (Ex. 10; Tr. 5-28-87, pp. 83, 88).
- To respond to a situation of negative parental perceptions of Ms. Hobson's performance and specifically to counteract parent concerns expressed to him following an October 2, 1985 Open House, (Tr. 5-28-87, p. 79), Mr. Hines requested that Ms. Hobson develop a short weekly newsletter to inform parents of the activities that week and activities coming up. Ms. Hobson refused his request, and instead sent home a commercially prepared newsletter. (Ex. 41 A-C, 43, Tr. 5-28-87, pp. 54, 109-110, 117).

- On at least two occasions during the 1985-86 school year, Mr. Hines requested that Ms. Hobson submit to him copies of all ditto materials used in her classroom. She supplied him with the requested materials on only two occasions. (Tr. 5-28-87, pp.50, 110).
- During the course of the school year, Mr. Hines observed drastic mood changes and temper flares by Ms. Hobson. (Tr. 5-28-87, pp.80-82, Ex.10). He also observed her lack of productive interaction with other members of the school staff (Tr.5-28-87, p.81, Ex.10) and during May and June of 1986 Ms. Hobson maintained a log book on the activities of other staff members. (Tr.5-28-87, p.80).
- On two occasions in September of 1985, and once in January of 1986, Ms. Hobson left members of the class unsupervised - once in the classroom, once in the cafeteria, and one time in the outside playground. (Tr.5-28-87, pp.84, 102).
- Principal Hines noted on November 12, 1985 during a formal observation that there was a need for organization of materials and the classroom in general. (Tr.5-28-87, p.10). This same observation was made during the January 15, 1986 formal observation. Mr. Hines noted at that time that the bulletin boards were "less than inspiring". (Tr.5-28-87, p.10). In another written evaluation, Mr. Hines noted "the overall appearance of the room is neater, however very cold. During the year there were few bright, cheery bulletin boards". (Ex.10).
- At the conclusion of the 1985-86 school year, Ms. Hobson received a written evaluation which noted many of the performance problems described above, as well as the areas of improvement and progress achieved. (Ex. 10).

- On July 28, 1986, Principal Hines had to send a written memorandum to Ms. Hobson asking her to submit end-of-the-year reports on her students. (Tr. 5-28-87, p. 13). He had sent a prior memo on June 30, 1986 informing Ms. Hobson that she had left her classroom in an unacceptable condition; i. e. classroom materials had been left all over and kits of materials were incomplete. (Tr. 5-28-87, p. 12).
- In his end-of-the-year evaluation, Mr. Hines recommended Ms. Hobson be placed in a higher grade. (Ex. 10). Superintendent Campbell concurred in this recommendation (Tr. 5-4-87, p. 53) and in the fall semester Ms. Hobson was assigned to teach the sixth grade. (Tr. 5-4-87, p. 54).
- The appellant continued to experience performance problems in this assignment, however, the Administration acknowledged "in retrospect, that Mrs. Hobson's assignment to the sixth grade for the fall of 1986 was inappropriate to her capabilities" (Ex. 46; April 6, 1988 settlement agreement of grievance relating to 1986-87 class assignment.)
- In the fall of 1986, Ms. Hobson for the first time attributed her performance problems to disabilities resulting from the brain hemorrhage she had in April of 1985. (Tr. 5-4-87, p. 55). In her prior discussions on the subject of her health and ability to work with Superintendent Campbell (in October of 1985) she had made no claim that she had any disability. (Tr. 5-4-87, p. 47).
- On October 9, 1986, the appellant and the School Committee entered into an agreement under the terms of which Ms. Hobson would be placed on sick leave. She was to provide all medical records relating to her April

1985 brain hemorrhage, and submit to a medical examination by a physician chosen by the School Committee. (Ex.5).

- Pursuant to this agreement the School Committee agreed to "investigate" Ms. Hobson's claims of continuing disability to enable it to determine:

what if any existing handicapping condition Mrs. Hobson now has and what accommodation can be reasonably made for this condition . . .

and to determine:

What Mrs. Hobson's condition was in the 1985-86 school year and to reexamine her performance evaluation, complaints, etc. in light of that condition to determine if any negative performance was related to the residual effects of the hemorrhage. (Ex5).

- Ms. Hobson underwent the evaluations as agreed, and the resulting information was submitted to Superintendent Campbell. (Tr.5-4-87, pp.58-59).
- The tests and evaluations performed on Ms. Hobson during January and February of 1987, and resulting reports indicate she suffered from residual deficits in brain function as a result of the subarachnoid hemorrhage. The deficits were of such severity that they could impair her capacity for returning to her employment as a teacher. (Ex.7,8,13).
- The impairments suffered by Ms. Hobson were concentrated in the areas of new memory, attention and concentration on tasks that required analysis of visual information and a motoric response. (Ex.8, Tr.5-8-87, p.152).

- The neurologist to whom Ms. Hobson was referred, Dr. Susan Soloway Spencer, rendered an opinion on January 30, 1987 indicating that the appellant's ability to teach at a new grade level was "unlikely", and her ability to continue to teach kindergarten was uncertain. Her report indicates:

It would be reasonable to review her performance in the year following her hemorrhage when she did teach kindergarten. It was at this time that one could have made a reasonable assessment of her ability to continue teaching that grade which she had taught for nearly a decade prior to the event in question. (Ex. 7).

- Upon his receipt and review of the medical documentation from Dr. Spencer, and additional reports and evaluations conducted by Dr. Kimberlee John Sass, a clinical neuropsychologist, (Ex. 8), Superintendent Campbell recommended that Ms. Hobson be dismissed. (Ex. I).
- Notice of the Superintendent's recommendation, the supporting reasons and opportunity for hearing before the School Committee were forwarded Ms. Hobson on February 24, 1987. (Ex. I).
- After a pre-termination hearing held on March 31, 1987, the School Committee voted to terminate Rosemary Hobson, effective April 1, 1987 and so notified Ms. Hobson. (Ex. 14).
- It was not until June 13, 1989 that the post-termination hearing procedures required by constitutional Due Process and the Rhode Island Teachers' Tenure Act were completed by the School Committee.

- The June 13, 1989 decision of the School Committee found that eleven (11) of the fourteen (14) reasons for discharge had been substantiated, and, in addition, that because of the residual deficits resulting from her brain hemorrhage, Ms. Hobson was medically unable to perform her teaching duties.

Decision

The record on appeal before the Commissioner of Education demonstrates by a preponderance of the evidence³ that good and just cause supported Rosemary Hobson's termination as a tenured teacher. Numerous professional inadequacies, particularly in the areas of classroom management and curriculum organization were documented by the School Committee. While some of the evidence presented in support of the reasons for discharge was over-lapping and two of the initial fourteen (14) charges were not substantiated,⁴ the remainder of the allegations contained in Mr. Campbell's February 1987 recommendation for termination (Ex.I) were clearly proven. Taken individually, some of the proven charges are sufficiently serious that they would probably establish good and just cause for termination in and of themselves. Weighed together, the supporting reasons go far beyond meeting the necessary burden of proof which must be met by a school committee defending its termination of a tenured teacher.

In reviewing the evidence de novo we are constrained to note our finding of additional "good and just cause" which goes beyond the general

3] as well as by a "clear and convincing" standard of proof

4] We find, as did the School Committee, that charges 9 and 11 were not supported by the evidence; however, we find that charge No.13 was substantiated, whereas the School Committee apparently did not so find. (See page 16 of the June 13, 1989 decision).

categories of inefficiency and incompetency encompassed by the initial charges compiled by Superintendent Campbell. It is evident that during the 1985-86 school year there was a persistent pattern of non-cooperation by Ms. Hobson. While she did, on isolated occasions, comply with the requests of Principal Hines, generally there is a consistent pattern of her failure to follow his directives and suggestions. Some of the Principal's requests were aimed at assisting Ms. Hobson in improving her instructional techniques, and classroom organization. Yet, other than identifying a professional "difference of opinion" on the issue of content of parent newsletters and bulletin boards, Ms. Hobson gives no adequate explanation for her long delays in cooperating with Mr. Hines and, on some occasions, her total non-compliance with his reasonable requests. Had Ms. Hobson fully cooperated with her Principal's extraordinary attempts to assist her in improving her teaching performance, we can only speculate that her performance record for the 1985-86 school year would have been much improved. But the professional inadequacies are coupled with the absence of her full cooperation in remediating these problems. We perceive this non-cooperation to be additional good and just cause for termination.

Unlike the School Committee, we do not find as an additional basis for termination that Ms. Hobson is medically unable to perform her teaching duties. The evidence was uncontradicted that the appellant has residual deficits in brain function as a result of a subarachnoid brain hemorrhage she suffered in April of 1985. However, in order to find that these residual deficits precluded her from functioning as a kindergarten teacher, the evidence must establish a nexus between these deficits in brain function and the per-

formance deficiencies she exhibited in the period following her recovery.
5
No such evidence is contained in this record. The medical experts who
evaluated Ms. Hobson uniformly agreed that there were residual effects from
the brain hemorrhage and that these deficits could possibly prevent her from
functioning adequately as a kindergarten teacher. All of the medical experts
opined that the test of her capacity to continue as a teacher was her perfor-
mance on the job. None of the medical experts reviewed her performance
record for the 1985-86 school year to determine which, if any, professional
inadequacies were attributable to the residual deficits in brain function
6
from which she suffered. Without such review it would be erroneous to con-
clude that the appellant's negative performance in 1985-86 was related to the
residual effects of the brain hemorrhage. On the same basis, no competent
evidence exists that she is medically incapable of performing her teaching
duties. For this reason, we reject medical incapacity as an additional
basis for discharge.

Counsel for Ms. Hobson has argued that her termination must be over-
turned because it is not supported by "good and just cause" and that she be
reinstated to her position with accommodations appropriate to her disability-
(ies). As to the first issue we have considered it and upheld her term-
ination, based on the record considered de novo. This result makes

5] Counsel for the School Committee acknowledges this in his brief of April
12, 1990 at page 4, footnote 3. Curiously though, the School Committee's de-
cision of June 13, 1989 assumes that such a nexus is established and it finds
that the brain hemorrhage rendered Ms. Hobson medically incapable of per-
forming her teaching duties satisfactorily. (See in particular page 17 of its
decision and the discussion at pages 11-15 regarding "Ms. Hobson's Medical
Condition".)

6] Even though this was one of the purposes for the medical evaluations, ac-
cording to the agreement between Ms. Hobson and the School Committee.
(See Ex. 5).

moot the requested determination of what accommodations would be legally required if Ms. Hobson were reinstated. While we note that generally the question of what accommodations would be required of the employer of a disabled but qualified employee is a matter not arising under education law and beyond the Commissioner's jurisdiction, this case presents an interesting and difficult twist on this issue. Ms. Hobson's counsel argues additionally that her entire performance in school year 1985-86 should be disregarded as a basis for "just cause" in that Ms. Hobson was suffering from a handicap during that period and if the assessment of her performance were conducted, with appropriate accommodation to her disability in place, she would have performed satisfactorily. This argument intertwines questions of employment and education law and resolution of the just cause issue necessitates consideration of the "accommodation" issue.

The finding that just cause exists implicitly overrules the appellant's arguments in this regard. We find there was no duty on the part of the School Committee to refrain from acting on the appellant's negative performance during the 1985-86 school year. The setting in which she was evaluated was supportive in that Principal Hines offered her assistance at every point. At no time during that school year was a request for a specific accommodation to any disability under which Ms. Hobson labored requested or refused. In fact, early on in the school year, the appellant assured both the Principal and Superintendent that she was medically capable of returning to work. In the hundreds of pages of medical testimony and documentation there is no causal connection established between the specific deficiencies

cited during 1985-86 and the residual deficits in brain function found
7
to exist. Under these circumstances the evaluations and documented
deficiencies are not invalidated by the alleged failure to put in place
accommodations appropriate to the appellant's disability(ies).

The final issue raised by Ms. Hobson's appeal is her entitlement to
compensation in the form of lost earnings for the period July 5, 1988 to
8
June 13, 1989. This period was found to constitute unreasonable delay
in affording Ms. Hobson the procedures to which she was entitled under the
Teachers' Tenure Act. The Commissioner's prior decision indicated that
the appropriate remedy was compliance with the required procedures "to-
gether with an opportunity to prove and be compensated for any actual
monetary damages" suffered as a result of the unreasonable delay. In its
consideration of the matter on appeal, the Board of Regents stated:

We will assume that the Hearing Officer
will adhere to precedent set in previous
Commissioner's decisions which considered
lost earnings as an element of damages,
unless she articulates a rationale for de-
parture from such precedents or distinguishes
them from this case.

We can distinguish this case from the case of Linda Hajjar vs. Westerly
School Committee (December 5, 1980) in that in Hajjar, the invalidity

7] Some of the same deficiencies were cited in a performance evaluation the
year prior to Ms. Hobson's brain hemorrhage.
8] by decision of the Commissioner dated May 17, 1989.

of the teacher's non-renewal for the school year 1978-79 was clear on the record. This fact, coupled with the procedural violations, prompted the Commissioner to order payment of back pay for the one-year layoff. In ⁹Hulecki the issue was the appropriate remedy for a violation of constitutional due process, not the Teachers' Tenure Act, and the Commissioner found that potential employer bias of one of the three members of the School Committee impermissibly tainted its subsequent decision. Thus, Hulecki is distinguishable in that the award of lost wages was premised on a constitutional claim.

The prior precedent of a back pay award for procedural violation of the Teachers' Tenure Act, unaccompanied by a finding of substantive invalidity of the action taken, consists of the Commissioner's decision in Paul J. Desrochers vs. Johnston School Committee, January 27, 1976. The rationale for departure from this single case is that its application would result in a windfall to a teacher whose discharge has been upheld. The better rule, as established in recent cases where employee dismissal is not accompanied by proper procedures is to order that the procedures be furnished without further delay. ¹⁰ In the constitutional due process setting, appropriate relief has been held to include a) furnishing of the required procedures, b) nominal damages, c) opportunity to prove damages resulting from the delay itself. Lost wages, absent a finding that

9] Edward J. Hulecki vs. Gloucester School Committee, February 17, 1976.
10] See deKoevend v. Bd. of Educ. of West End School District RE-2, 688 P.2d 219 (Colo.1984); Ferrario v. Board of Educ. of Escanaba, 395 N.W2d (Mich.1986).

the termination was invalid, have generally not been an element of damages for procedural violations and we thus decline to make such an award here. Standing alone to the contrary is the reinstatement and back wages ordered in Desrochers, supra.

For the foregoing reasons, both appeals of Rosemary Hobson are denied.


Kathleen S. Murray, Esq.
Hearing Officer

Approved: October 2, 1990


J. Troy Earhart
Commissioner of Education