



The parties in this case are the West Warwick School Committee, the West Warwick Teachers' Alliance, and a former school administrator who has returned to the classroom. The parties request that we make a ruling determining the seniority rights of the former administrator. We feel, however, that we should decline to rule in this case because until a decision has been made to dismiss or suspend a teacher any issue of seniority is moot and no real dispute exists. (§16-39-1). We are reluctant to rule in a controversy which is only hypothetical at this time. We will, however, address the issues raised by the parties under our authority to issue opinions on school law questions. (§16-60-6(h)). This will have the effect of giving the parties some guidance without establishing binding precedent in any actual contested case. Jennings v. Exeter-West Greenwich Regional School District Committee, 352 A.2d 634, 116 R.I. 90. This approach will also facilitate review of this ruling in the event that a higher tribunal decides that a decision on the merits is in order. In Re: Michael C., 487 A.2d 495, 498 (1985).

The petitioner in this case, Paul A. Faella, is a former administrator who has exercised his right to return to the classroom. The relevant law (G.L.16-13-3(b)) provides as follows:

Any teacher appointed to a position of principal, assistant principal, or vice principal within the school system in which the teacher has attained tenure shall, upon termination or resignation of the administrative position, be allowed to return to his or her former status as a tenured teacher within the system.

The parties in this action agree that in the event of teacher suspensions due to decline in enrollment the petitioner would be entitled to the protection of §16-13-6 which reads as follows:

§16-13-6. Suspension because of decrease in school population-Seniority-Reinstatement. -  
A school board may, by reason of a substantial decrease of pupil population within its school system, suspend teachers in such numbers as are necessitated by the decrease in pupil population; provided, however, that suspension of teachers shall be in the inverse order of their employment unless it is necessary to retain certain teachers of technical subjects whose places cannot be filled by teachers of earlier appointment; and, provided, further, that such teachers as are suspended shall be reinstated in the inverse order of their suspension. No new appointments shall be made while there are available teachers so suspended. (Emphasis added).

The petitioner contends that in the event of suspensions due to decline in enrollment his service as an administrator should be added to his prior and current service as a teacher in any computation of seniority for purposes of teacher suspension due to decline in enrollment.

We agree with the petitioner that his service as an administrator must be added to the seniority as a teacher in any computation of seniority for purposes of teacher suspensions due to decline in enrollment. As was stated in an opinion letter of the Department of Education on August 16, 1984:

We believe that under Rhode Island law there are two different types of seniority -- statutory and contractual. Statutory seniority stems from G.L.16-13-6 which basically requires that teachers be suspended and re-hired in accordance with their seniority. That is to say G.L.16-13-6 focuses on job security. It is our opinion that an administrator who has served as a teacher within a given school system does not lose statutory seniority when he or she becomes an administrator (§16-13-3). We further note that such an administrator continues to accrue statutory seniority while serving as an administrator. Although not an issue here we should point out that it is very doubtful that statutory seniority could be changed through a collective bargaining agreement, Berthiaume v. School Committee of Woonsocket, \_\_\_ R.I. \_\_\_, 397 A.2d 889.

Contractual seniority is another matter. Such seniority exists only by virtue of a collective bargaining agreement. Such seniority is thus to be determined only in accordance with the collective bargaining agreement, since, absent such an agreement, it would not exist at all.

Mr. Faella also contends that his service as an administrator should count in any computation of seniority for purposes of dismissals or suspensions due to financial exigency or reorganization.

In essence we have to decide whether, in cases of dismissal or suspensions due to reorganization or fiscal exigency, Mr. Faella's seniority rights are statutorily based or whether he must be remitted to whatever rights he may have under the applicable collective bargaining agreement. The collective bargaining agreement does not appear to allow Mr. Faella to add his service as an administrator to his service as a teacher in computing his seniority for purposes of suspension or dismissal due to fiscal exigency or reorganization.

We basically agree with Mr. Faella that his seniority, including seniority accrued as an administrator, should count in any computation of seniority for purposes of dismissals or suspensions due to financial exigency or reorganization. We recognize that consideration of seniority in dismissals or suspensions based on financial exigency or reorganization is not explicitly mandated by the Rhode Island Teacher Tenure Law (G. L. §16-39-1, et seq.) but we think that the Tenure Law implicitly mandates a consideration of seniority in such circumstances . . ." unless it is necessary to retain certain teachers of technical subjects whose places cannot be filled by teachers of earlier appointment."

In the Rhode Island case which first recognized financial exigency as good grounds for suspension the Hearing Officer, Commissioner William P. Robinson, relied on Krotkoff v. Goucher College, 585 F.2d 675 (1978). (See: Barry and Healey vs. Warren School Committee, Commissioner of Education, January 26, 1981.) The Court in Krotkoff stated:

As we mentioned in Part II, the 1940 Statement on Academic Freedom and Tenure sanctions termination of faculty appointments because of financial exigency. But it also stipulates: "Termination of a continuous appointment because of financial exigency should be demonstrably bona fide." The evidence discloses that the academic community commonly understands that inherent in the concept of a "demonstrably bona fide" termination is the requirement that the college use fair and reasonable standards to determine which tenured faculty members will not be reappointed. The college's obligation to deal fairly with its faculty when selecting those whose appointments will be terminated is an attribute of tenure. Consequently, it is an implicit element of the contract of appointment.

The authorities we have consulted, and the cases collected in those authorities, indicate to us that "fair and reasonable standards" in deciding which statutorily tenured teachers are to be suspended or dismissed due to reorganization or fiscal exigency include consideration of seniority and consideration of the needs of the school to retain teachers for specialized subjects. (See: W. Valente, Education Law, Sec. 15.3 and 15.25 (1990 Deskbook Encyclopedia of American School Law))

We, therefore, conclude that a former administrator's seniority rights for purposes of suspensions or dismissals based on fiscal exigency or reorganization are grounded on the Rhode Island Teacher Tenure statute and that these rights, therefore, must prevail against any collective bargaining agreement which attempts to limit them. It is axiomatic that collective bargaining agreements cannot abridge statutory rights. Berthiaume v. School Committee, 121 R.I. 243, 397 A.2d 889 (1979). In the case at hand this would mean that Mr. Faella, in the event of suspensions or dismissals based upon fiscal exigency or reorganization, would be entitled to count his seniority accrued as an administrator even though the collective bargaining contract which deals with the subject makes no provision for counting such seniority. (See: Champion v. Kenowa Hills Public Schools, 402 N.W.2d 62 (Mich.App.1986). Such seniority is a statutory incident of tenure and is not grounded in the collective bargaining agreement. That is to say that such seniority would exist even in the absence of the collective bargaining agreement.

It should be noted that this decision only deals with Mr. Faella's

seniority for purposes of suspension or dismissal. We believe that seniority for almost all other purposes is to be determined by reference to the collective bargaining agreement. LaFlamme vs. Pawtucket School Committee, Commissioner of Education, January 16, 1990.

Conclusion

This matter is dismissed as moot and this decision shall stand only as an interpretation of school law.



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Forrest L. Avila  
Hearing Officer

Approved:

January 3, 1991



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J. Troy Earhart  
Commissioner of Education