

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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ANGELA RUGGERIO

vs.

BRISTOL  
SCHOOL COMMITTEE  
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D E C I S I O N

March 4, 1991

This matter was heard on May 31, June 21 and 22, August 17 and September 25, 1990. The hearing was held upon appeal of Mrs. Angela Ruggerio from an action of the Bristol School Committee to the Commissioner of Education.

The Commissioner has jurisdiction to hear the appeal under the provisions of the Rhode Island General Laws, 1956, as Amended, §16-39-2 and §16-13-4. The matter was heard by the undersigned Hearing Officer upon appointment by the Commissioner.

Due notice was given to the parties of the time and place of the hearing. Both parties were represented by counsel, witnesses were sworn, testimony taken and evidence presented. The hearing was conducted de novo and parties stipulated to the following:

1. All procedures were followed in relationship to notice and hearing at the School Committee level.
2. Angela Ruggerio was not in her "tenure" year. She was in effect terminated at the end of her second full year<sup>1</sup> of probationary teaching.

#### Facts in this Case

Upon testimony and examination, we find the following:

- (1) The termination/non-renewal of Angela Ruggerio was not related to her achieving permanent status as a "tenured" teacher. The action took place in her second year of probationary status.
- (2) Mrs. Ruggerio was certified by the State of Rhode Island Department of Education as an Art Teacher, grades K-12 and as an Elementary Grades Teacher.

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1] This was in addition to occasional day-to-day substitution in 1986-87 and 110 days as a long-term substitute in 1986-87.

- (3) Mrs. Ruggerio was employed by the School Committee as follows:
  - School year 1986-87 day-to-day substitute, elementary grades.
  - School year 1987-88 long-term substitute (110 days), art teacher.
  - School year 1988-89 Elementary teacher - Grade 2.
  - School year 1989-90 Elementary teacher - Grade 2.
- (4) Mrs. Ruggerio was "recalled" to an elementary position in August of 1988 as an elementary teacher.
- (5) Mrs. Ruggerio was paid at the maximum rate of pay because of her previous teaching experience.
- (6) The School Committee has an evaluation policy/plan which sets forth the philosophy and procedures for evaluation. The process is referenced in the contract between the Bristol School Committee and the Bristol Education Association dated September 1, 1989 through August 31, 1992.
- (7) The Staff Evaluation Manual was promulgated in January of 1975 and revised in August of 1981.
- (8) The Manual describes improvement as the purpose of the policy/plan but implies a retention use.
- (9) Mrs. Ruggerio was notified of termination prior to March 1, 1990 by letter and was afforded a pre-termination hearing. The reason given for non-renewal, effective at the end of the 1989-90 school year, was "unsatisfactory teacher performance."
- (10) The pre-termination hearing per agreement of the parties was held on March 19, 1990.

- (11) The Bristol School Committee voted to terminate Angela Ruggerio on March 19, 1990 by a 4-3 vote.
- (12) Mrs. Ruggerio requested and was granted a hearing under §16-13-4. The hearing was held on May 7, 1990 and the School Committee, at the close of that hearing, voted to sustain the termination by a 4-3-vote.

### Decision

Under Rhode Island law a non-tenured teacher, upon receiving notice of non-renewal, can be terminated without a finding of good and just cause. Jacob v. Board of Regents, 117 R.I. 164, at 166. In Jacob supra at 170, the Court stated, however, that non-tenured teachers were entitled to a statement of the reason for their non-renewal:

The Legislature, in affording non-tenured teachers an opportunity to learn the reasons why the committee did not rehire them, did by legislative fiat what has been done by judicial fiat, most notably in Drown v. Portsmouth School Dist., 435 F.2d 1182 (1st Cir.1970), and Donaldson v. Board of Educ., 65 N.J.236, 320 A.2d. 857 (1974). Both courts, in ruling that a non-tenured teacher was entitled to know why he or she was not reengaged, observed that a statement of deficiencies can enable the teacher to embark on a program of self-improvement, correct any false information or rumors, explain away incorrect impressions, and possibly uncover any constitutionally impermissible reasons for non-retention. We would also add that the statement or reasons and hearing provisions promulgated by our Legislature can act as a brake on any committee's desire to indulge in an arbitrary abuse of the exercise of its discretionary power. It should be emphasized that the Section 16-13-2 hearing sought by the teacher casts no burden of proof on the committee. The burden of persuasion remains on the teacher to convince the committee that it was mistaken when the committee reached the conclusion that it did.

While the hearing contemplated by Section 16-13-2 is not quasi-judicial in nature, the committee does have a duty to listen to a dissatisfied teacher in an objective manner and fairly consider its original decision. The fact that the General Assembly has mandated a hearing before the full committee carries with it the implicit reasonable hope that those who are heard might be heeded. Golden Gate Corp. v. Town of Narragansett, 116 R.I. 552, 359 A.2d. 321 (1976).

We hear this case independently, on a de novo basis as defined in §16-13-4 and Pawtucket School Committee v. Board of Regents, R.I. 513 A.2d 13 (1986).

Since the non-renewal of a non-tenured teacher's contract need not be accompanied by a showing of "good and just cause", we must determine if a valid reason for non-renewal exists. We are constrained to examine whether the reason for this dismissal can be supported as valid by evidence.

This case is a most serious matter since it not only means that a person has lost employment but, it also has an onerous impact created by the reason given -- "unsatisfactory teacher performance." The language of Jacob v. Board of Regents, supra, at 170 is important, however, in that it not only places on the teacher the burden of persuasion but requires the Committee to listen objectively and to consider fairly, its decision.

There is no property right to continued employment within the three year period of non-tenured teacher status as described in §16-13-2 and 3, as amended. There is, however, the opportunity for the teacher to cast sufficient doubt on the validity of the reason given so that the Committee will be persuaded to reverse its action.

Since there was no burden of proof on the School Committee in this case, both the pre-termination hearing and the post-termination hearing were essentially presentations by Angela Ruggerio to the Committee in an attempt to persuade the Committee to reverse its decision. Both transcripts of the hearings before the School Committee became exhibits and part of the record before the Commissioner.

We are essentially examining two questions which interact with each other.

1. Did Angela Ruggerio establish sufficient doubt or reason for the Commissioner to reverse the decision of the School Committee not to renew her contract for the 1990-91 school year?
2. Did the School Committee listen objectively and fairly consider its decision in the non-renewal of Angela Ruggerio's contract for the 1990-91 school year?

On the first question we are troubled by inconsistencies and deficiencies in School Department practice and testimony outlined in I, II, III, and IV as follows.

I. EVALUATIONS OF TEACHING PERSONNEL

The Bristol School Committee has a teacher evaluation policy. The system is organized around the principles of analysis and improvement, but may be used implicitly for retention decisions. The evaluation policy is tied in its use to the Contract which exists between the School Committee and the Bristol Education Association.

We note the following inconsistencies in the evaluation:

- (A) The use of evaluations by teacher/supervisors which ostensibly were arranged for teacher analysis and improvement but which were ultimately used for retention purposes in that they clearly provided base-line and cumulative data for a dismissal recommendation. Although the final evaluations were made by principals, certified to evaluate teachers, the principals were not, in the final analysis, the evaluators alone, since they utilized non-certified evaluations for base-line and cumulative data and concurred with the findings in building the final evaluation.
- (B) Evaluations are required by contract to be reasonably spaced. The evaluations of December 1989 to February 1990 indicate a concentration of activity which compressed and limited time for effective improvement. While earlier (September-November) evaluations had been spaced, over a period of time, the final report was compressed.
- (C) A most favorable evaluation, by a professional certified to evaluate, was not included in the cumulative final evaluation. Although included in the total packet presented to the Superintendent, the evaluation was not made part of the Principals' final evaluation of February 1, 1990.
- (D) The evaluations of December 1989 and January 1990 of Mrs. Joyce M. Kinsella and Mrs. Naomi Carpenter are at odds in some findings. Further, testimony of Mrs. Kinsella was not at a confidence level to this Hearing Officer, sufficient for us to conclude she supported

the non-renewal of Mrs. Ruggiero. The credibility of other evaluators was equally lacking in conviction in terms of support for the charge of "unsatisfactory teacher performance." Further, a report by Mrs. Kinsella of a discussion held with Mrs. Ruggiero outside of school was ordered reduced to writing and placed in the personnel file without Mrs. Ruggiero's knowledge and then used as part of the negative evaluation by the Superintendent of Schools. This action is explicitly forbidden by policy (School Committee Policy p.3.)

## II. CLASS COMPOSITION

Angela Ruggiero presented evidence to the Committee and before this Hearing Officer that the academic and socio/cultural factors of the children in her class may have made it difficult to achieve administrator's expectations in terms of teaching skills of an academic nature. Of the class members (25), a significant number were handicapped or were eligible for Chapter I services. While we hold reasonable expectations for those children to achieve, numbers of special needs children in a class may be a factor to be considered in judging professional performance. Further, Mrs. Ruggiero argued a somewhat different point of view from Mrs. Carpenter's vis-a-vis what the pupils in her class needed, i.e., emphasis on the relative merits of some mechanics of teaching versus emphasis on personal growth in self worth and value. Neither argument or educational point of view is wrong on its face--they are different and not mutually exclusive. They are both valid.

### III. STUDENT GROWTH

There is ample evidence, no matter what measures were used, of student growth academically of a positive nature. Further, according to testimony of parents, there is evidence of better student behavior, a more positive attitude toward school and a better feeling about themselves. One must conclude that Mrs. Ruggerio, while maybe not totally responsible, shares in those achievements since she was a dominant variable in the lives of these children.

### IV. MATERIALS

The facts are undisputed that materials were not made available to Mrs. Ruggerio in a timely manner so that she could prepare before school started in September of 1988. Some of the student reading materials were not delivered until November.

Now we come to the second question.

The hearing before us was conducted over five (5) days with eighteen (18) hours of testimony and 634 pages of transcript. The record is more extensive than the hearing before the School Committee. In order to establish a complete record for the Commissioner of Education the School Committee offered voluntarily to go forth first and establish or present evidence which formed the basis of the Superintendent's recommendation and the School Committee's action. (TR.I-p.3). By its nature, then, this hearing before the Commissioner greatly expanded the evidentiary base in that Angela Ruggerio was able, as she had not previously before the School Committee, to cross-examine on the evidence presented

on which the School Committee originally made its decision. This raises a serious doubt in our mind that the Committee had the opportunity to fairly consider its original decision and then make that decision based on valid reasons.

We noted in the first question that Angela Ruggerio did raise certain inconsistencies and deficiencies regarding the evaluation of her performance. It follows that if those inconsistencies and deficiencies in the evaluation process are sufficient to refute the charge then no "valid reason" exists. To be valid a reason must be defined, in the first instance as "having legal force: properly executed and binding under the law" and secondly, as "sound: well grounded on principles of evidence, able to withstand criticism or objection, as an argument" (Websters, New Universal Unabridged Dictionary, Dorset & Barber 1983.)

We do not find by this action that a school committee has a burden of proof in the termination of a non-tenured teacher. We believe, however, given the reason for the termination, the long-term negative impact which it will have on the individual, and that this was not her tenure year, that every opportunity be extended to comply with the non-renewal requirements cited earlier.

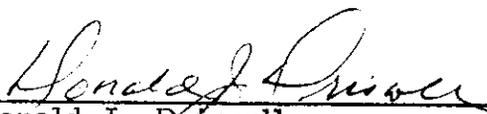
Given the extensive nature of the record before us and not before the School Committee, and given the issues raised in terms of reason and validity, we are reluctant to rule on this matter until the School Committee reviews the same evidence as we possess.

The system may be at fault and, as a result, the Commissioner

hesitates to sit as a super-school committee when the basis for making his decision may rest on different information or information presented much differently, from the case's original presentation.

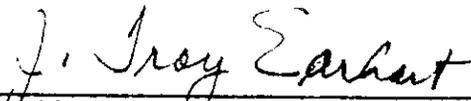
We are prepared to render a de novo decision, but wish the Bristol School Committee to be sure of its decision prior to that.

We, therefore, remand this matter to the School Committee for consideration of the evidence before the Commissioner and a determination of whether that evidence, without using information provided in non-certified evaluations, is sufficient to confirm the non-renewal of Angela Ruggerio.

  
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Donald J. Driscoll  
Hearing Officer

Approved:

March 4, 1991

  
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J. Troy Earhart  
Commissioner of Education