

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

IVY KOLB and
MARY ANN McCOMISKEY
-and-
LINCOLN TEACHERS'
ASSOCIATION

vs.

LINCOLN SCHOOL
COMMITTEE

D E C I S I O N

August 15, 1991

This matter was heard on August 8, September 12 and November 9, 1990 upon the appeal to the Commissioner of Education by the Lincoln Teachers' Association on behalf of Ivy Kolb and Mary Ann McComiskey from a decision of the Lincoln School Committee concerning placement on the salary schedule.

The Commissioner scheduled this appeal by virtue of the provisions of §16-39-1 and §16-39-2 of the General Laws of Rhode Island, as Amended.¹ The matter was heard by the undersigned Hearing Officer under appointment by the Commissioner.

Due notice was given to the interested parties of the time and place of the hearing. Both parties were represented, witnesses sworn, testimony taken, a transcript of which was made, and evidence presented.

Jurisdiction

The first issue before us is the issue of jurisdiction, i.e., is the appellant(s) barred from obtaining relief before the Commissioner because a grievance has been processed through the School Committee and a request for arbitration has been filed under the Collective Bargaining Agreement governing the wages, hours and working conditions of Lincoln teachers.

Facts in the Case - Jurisdiction

The appellant(s) requested arbitration on April 4, 1990 and the appeal to the Commissioner was filed May 30, 1990.

Decision - Jurisdiction

The Commissioner has found repeatedly that he lacks jurisdiction when the appellant(s) seeks redress under the grievance procedure

1] A "jurisdictional" argument was advanced by the defendants in this case. The Hearing Officer reserved judgment and heard the case on the merits pending the jurisdictional ruling which is addressed herein.

of the Collective Bargaining Agreement.

He did, however, in D'Ambra vs. North Providence School Committee, January 3, 1990 find an exception. In that case he found for jurisdiction.

. . .it may many times be the case that . . . questions of school law exist separate and apart from alleged violations of a collective bargaining agreement and require two tribunals for complete redress. We see the remedies obtainable in arbitration as consistent and additional, not negating or conflicting with the relief accorded before us.

The appellant(s) argue that the placement on the salary scale is derived from §16-7-29, as Amended:

Every community shall establish and put into full effect, by appropriate action of its school committee, a salary schedule recognizing years of service, experience and training, beginning at a minimum of . . .and rising to a maximum of

For us to find that a dual track of relief exists, we would have to find that the School Committee failed to establish by its action a salary scale which has a minimum and maximum. By the adoption of a Collective Bargaining Agreement with a 10-step salary scale, the School Committee has fulfilled its obligation under §16-7-29, as Amended.

The appellant(s) could have elected to have this case adjudicated before the Commissioner or under the provision of the Collective Bargaining Agreement. They filed both. Since we find that the issue is identical and the remedy sought is identical in both routes, we then find

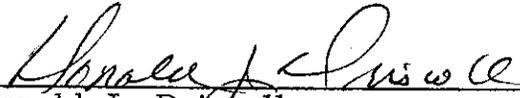
2] Mattera v. Cranston School Committee, November 3, 1982, Campbell vs. Providence School Committee, November 24, 1982, Cormier vs. Cumberland School Committee, October 15, 1984, Wallich vs. North Providence School Committee, October 31, 1984.

that the doctrine of election of remedy is applicable in this case.

Having considered the evidence and arguments around the issue of jurisdiction, we find that the appellant(s) did request arbitration on April 4, 1990 and that case is pending. Having made that election of remedies on that date, the appellant(s) is foreclosed from seeking relief through this office pursuant to §16-39-2 at a later date (May 30, 1990).

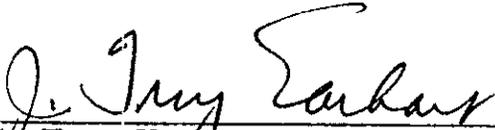
Accordingly, the appeal is dismissed.

3] Cranston Teachers Association vs. Cranston School Committee, 423 A.2d at 69.



Donald J. Driscoll
Hearing Officer

Approved:



J. Troy Earhart
Commissioner of Education

August 15, 1991