

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

RICHARD PHELAN
:

vs.
:

BURRILLVILLE
SCHOOL COMMITTEE
:

D E C I S I O N

August 26, 1991

Held:

School Committee failed to prove existence of particular financial exigency alleged to be the reason for reduction of tenured teacher's position, and therefore did not have good and just cause as required by R.I. G. L. §16-13-3 to reduce tenured teacher's position.

Introduction

This matter concerns an appeal to the Commissioner of Education by Richard Phelan, a tenured teacher, from a decision of the Burrillville School Committee to reduce his employment from full-time to a .6 position.¹

For the reasons set forth herein, we find that the School Committee has failed to establish good and just cause for the reduction of Appellant's teaching position. Accordingly, we sustain the appeal.

Background

Appellant, a tenured teacher, commenced his employment with the Burrillville School Department in September 1985 as a full-time music teacher in the elementary and secondary schools. Appellant remained a full-time teacher in the Burrillville School Department through the 1989-90 school year.

By letter dated February 26, 1990, the Superintendent of Schools informed Appellant that the Superintendent would recommend to the School Committee that it "not offer you a contract for continued employment for next year." (Resp. Ex. 2²).

On or about February 25 or 26, 1990, the School Committee submitted to the Budget Board a requested budget of \$17,072,077 for the 1990-91 school year, a proposed 16.4% increase over the previous year's budget.

1] This appeal was heard on October 31, 1990. Briefs were subsequently filed, and the record in this proceeding closed on April 16, 1991.

2] A copy of the Superintendent's February 26, 1990 letter to Appellant is attached as Appendix A.

By letter dated March 1, 1990, the Superintendent informed Appellant that "at its February 28, 1990 meeting the Burrillville School Committee voted not to renew your teaching contract for the 1990-91 school year." (Resp. Ex.4).

At the end of March 1990, the Budget Board recommended to the Town Council a school budget of \$15,653,009. In June 1990 the Town Council approved the budget in the amount recommended by the Budget Board. The approved 1990-91 budget of \$15,653,009 represented a 7.6% increase from the previous year. Thereafter, Appellant was offered a .6 teaching position in the Music Department for the 1990-91 school year. Appellant requested a hearing before the School Committee concerning the reduction of his teaching position.

The School Committee conducted a hearing on August 9, 1990 at which Appellant was represented by counsel. By letter dated August 31, 1990, the Superintendent informed Appellant that the School Committee at its August 30, 1990 meeting "affirmed its prior action that due to a reallocation of personnel in the Music Department, a reduction in staff is required and since you are the least senior member of the Music Department, your position is to be reduced by .4. The Committee finds that the reduction of your teaching position from full-time to .6 is justified and affirms said reduction of the position." (Resp. Ex.8).

Positions of the Parties

The School Committee contends that a budget crisis in 1990 resulted in a financial exigency to which the School Committee responded by imple-

menting an extensive budgetary reduction plan. Part of this plan called for the elimination of one music position systemwide. Appellant's position was reduced to .6 because, following the elimination of a .4 nontenured music position, Appellant was the least senior member of the Music Department.

Appellant contends that the Superintendent's letters to him did not satisfy the requirement of R.I.G.L. §16-13-4 that the governing body of the schools provide the teacher with a statement of cause for dismissal; that a financial exigency cannot constitute good and just cause for the termination of a tenured teacher under Exeter-West Greenwich Regional School District vs. Exeter-West Greenwich Teachers' Association; ³ that the enactment of R.I.G.L. §16-13-6 establishes that the good and just cause standard does not authorize the termination or suspension of a teacher for economic reasons; that assuming a bona fide financial exigency may constitute good and just cause for the termination of a tenured teacher, the School Committee did not establish such financial exigency in this matter; and that the reduction of Appellant's position was motivated by his grievance-filing activity, not any financial exigency.

Discussion

Appellant initially argues that at no time did the governing body of the schools, i.e., the School Committee, provide him with notice of the reasons for his dismissal as required by R.I.G.L. §16-13-4. We note, ⁴

3] 489 A.2d 1010 (R.I. 1985).

4] R.I.G.L. §16-13-4 provides in pertinent part that "Statement of cause for dismissal shall be given the teacher in writing by the governing body of the schools at least one month prior to the close of the school year."

however, that the Superintendent of Schools notified Appellant by separate letters of his intended recommendation to the School Committee (Resp. Ex. 2; Appendix A) and the resulting action taken by the School Committee (Resp. Ex. 4).⁵ In view of these letters, and recognizing that pursuant to R.I.G.L. §16-2-11 the superintendent of schools is the chief administrative agent of the school committee, we find that the School Committee met its statutory obligation to provide Appellant with a statement of cause for dismissal.⁶

Under R.I.G.L. §16-13-3 a tenured teacher may be dismissed only for "good and just cause." In the 1981 case of Barry and Healey vs. Warren School Committee,⁷ the Commissioner of Education directly addressed for the first time the issue of the "nonrenewal of a tenured teacher's contract because of financial exigency."⁸ The appellants in Barry and Healey were informed by the superintendent's letter of February 26, 1980 that the school committee had voted on the previous day to reduce the appellants' work day for the 1980-81 school year. The letter stated that the reduction

5] The minutes of the February 28, 1980 School Committee meeting state that the Superintendent "shared with the Committee the 'lay-off' letter which he sent" to school staff members. The minutes further set forth the Superintendent's recommendation that the contracts of 35 staff members, including Appellant, not be renewed, and that the Superintendent's recommendation was approved by unanimous vote of the School Committee.

6] See Barber v. Exeter-West Greenwich School Committee, 418 A.2d 13, at 18-19 (R.I. 1980).

7] Commissioner of Education, January 26, 1981.

8] The Commissioner's characterization of the action at issue in Barry and Healey as a "nonrenewal" of a contract predated the case of Ciccione vs. Cranston School Committee, discussed infra.

was "entirely dependent upon budgetary considerations." Relying on Krotkoff v. Goucher College, 585 F.2d 675 (4th Cir.1978), the Commissioner of Education concluded that a bona fide financial exigency may constitute good and just cause for the dismissal of a tenured teacher, and that the reduction in appellants' work day was valid.

The Board of Regents, in the appeal of the Commissioner's decision in Barry and Healey,⁹ found that a reduction in a tenured teacher's work day and pay amounts to a partial termination or dismissal and therefore must be grounded on good and just cause. The Board of Regents agreed with the Commissioner that a bona fide financial exigency may constitute good and just cause, but it held that the burden of proving the existence of a bona fide financial exigency and that the financial exigency was the bona fide reason for the tenured teacher's dismissal rests with the local school committee. Finding that the school committee failed to present sufficient evidence to establish a bona fide financial exigency, the Board of Regents sustained the appeal.

The Commissioner of Education again addressed the issue of the termination of a tenured teacher for financial reasons in Arnold and Clifford¹⁰ vs. Burrillville School Committee. The appellants in Arnold and Clifford were tenured teachers who were notified by the superintendent's letter of February 26, 1981 that the school committee had voted the previous day to terminate their employment at the end of the 1980-81 school year.

9] Board of Regents, May 27, 1982.

10] Commissioner of Education, July 9, 1982 and May 5, 1983.

The letters attributed the school committee's action to the uncertainty of adequate funding of schools because of budget cuts anticipated to be made at the financial town meeting, and to the possibility that, as a result of program curtailments necessitated by the budget cuts, more senior teachers might elect to occupy the positions held by the appellants. In April 1981 the voters at the financial town meeting approved an appropriation which represented a reduction from the budget the school committee had requested, but an increase from the previous year's appropriation.

In his initial decision in Arnold and Clifford, the Commissioner held that the school committee successfully met its burden of showing that a bona fide financial exigency was the bona fide reason for the termination of appellants' employment. In so holding, the Commissioner found that "the Committee took several significant -- even radical -- steps to deal with its fiscal plight before deciding to terminate the appellants' employment" (emphasis added) and that it was "clearly established that these terminations were made only after several other meaningful money-saving measures were adopted." (emphasis added). The Commissioner rejected the appellants' contention that the school committee was required to eliminate or reduce other programs and staff positions before deciding to terminate the employment of tenured teachers.

11] In setting forth the positions of the parties, the Commissioner noted the school committee's contention "that, as a result of the reduction in its budget request by the Financial Town Meeting, it was forced to make several adjustments in its programs for the 1981-82 school year in order to 'live within' the appropriation that it received." (emphasis added).

12] The Commissioner observed that the school committee "had already cut very close to the bone; it was not required to cut even more deeply before deciding upon these terminations. As important a value as tenure is, it is not the only value; our schools exist to educate, not to provide unconditional job security."

The Board of Regents remanded the case to the Commissioner for consideration of the appellants' request to present evidence concerning an alleged surplus of funds existing at the end of the school committee's 1981-82 fiscal year.¹³

On remand, an audit report for the fiscal year ending June 30, 1982 was admitted into evidence. The audit report revealed inter alia, that during the 1981-82 fiscal year the school committee received approximately twice the amount of revenue from local sources than had been projected in its April 1981 budget request, and that the school committee completed the 1981-82 fiscal year with a surplus.

In his decision on remand, the Commissioner found that "given its experience in the 1980-81 fiscal year" (emphasis added), the school committee's revenue projections were reasonable notwithstanding that it ultimately received substantially more revenue than it had projected. It was the Commissioner's opinion that "the School Committee could not have reasonably foreseen that it would have revenue from local sources in excess of the amount it had anticipated prior to the beginning of the 1981-82 fiscal year. . ." (emphasis added). Thus, the Commissioner found that the additional revenue from local sources received during the 1981-82 fiscal year was genuinely unanticipated, that the school committee was faced with a bona fide financial exigency, and that the school committee did in fact terminate appellants' services because of the financial exigency.

The Commissioner's findings and conclusions in Arnold and Clifford¹⁴ were upheld by the Superior Court. The Court expressly approved the

13] Board of Regents, February 24, 1983.

14] Clifford and Arnold vs. Board of Regents, et al, PC 83-4787, August 20, 1987.

Board of Regents' holding in Barry and Healey that a bona fide financial exigency may constitute good and just cause for the termination of a tenured teacher's services, and that the burden of showing the existence of a bona fide financial exigency which served as the bona fide reason for the dismissal rests with the school committee. In sustaining the Commissioner's finding of a bona fide financial exigency in Arnold and Clifford, the Court agreed with the Commissioner's finding on remand that the additional revenue received by the school committee during the 1981-82 fiscal year was genuinely unanticipated by the school committee. The Court observed that "the Committee did the best job of budgeting with the information that was available to them."

15

In Boyd vs. Warren School Committee,¹⁵ the Commissioner of Education found that the school committee failed to prove the existence of a bona fide financial exigency which would provide good and just cause for appellant's suspension from employment.¹⁶ The Commissioner found as follows:

In the case at hand the School Committee has simply failed to document and prove a state of fiscal exigency. All that it has shown is that its budget was cut and that it took certain steps to meet the problem (footnote omitted). It entered no proof on the question of whether the cuts it made, including Mrs. Boyd's dismissal, were proportionate to the problems it faced, or whether these cuts were in excess of what was required to meet the situation. We, therefore, find that the School Committee has failed to prove the existence of a fiscal exigency sufficient to justify the suspension of Mrs. Boyd.

15] Commissioner of Education, March 5, 1985.

16] The suspension in Boyd was of indefinite duration and therefore treated as the equivalent of a dismissal.

Teacher tenure was the subject of the Rhode Island Supreme Court's decision in Cicccone v. Cranston School Committee.¹⁷ This 1986 case concerned a tenured teacher who was informed by the superintendent's letter of March 2, 1982 that the school committee at its February 22, 1982 meeting had voted to suspend him at the end of the 1981-82 school year because of budgetary reasons. The teacher claimed that both R.I.G.L. §16-13-2,¹⁸ relating to the automatic continuation of annual teaching contracts, and R.I.G.L. §16-13-4,¹⁹ relating to the procedures to be followed in the dismissal of a teacher, applied to the suspension of a tenured teacher. The Supreme

17] 513 A.2d 32 (R.I. 1986).

18] R.I.G.L. §16-13-2 (1981 Reenactment) provided:

Teaching service shall be on the basis of an annual contract, except as hereinafter provided, and such contract shall be deemed to be continuous unless the governing body of the schools shall notify the teacher in writing on or before March 1 that the contract for the ensuing year will not be renewed; provided, however, that a teacher, upon request, shall be furnished a statement of cause for dismissal or nonrenewal of his contract by the school committee; provided further, that whenever any such contract is not renewed or said teacher is dismissed, said teacher shall be entitled to a hearing and appeal pursuant to the procedure set forth in §16-13-4.

19] R.I.G.L. §16-13-4 (1981 Reenactment) provided:

Statement of cause for dismissal shall be given the teacher in writing by the governing body of the schools at least one (1) month prior to the close of the school year. The teacher may, within fifteen (15) days of such notification, request in writing, a hearing before the full board. The hearing shall be public or private, in the discretion of the teacher. Both teacher and school board shall be entitled to be represented by counsel and to present witnesses. The board shall keep a complete record of the hearing and shall furnish the teacher with a copy. Any teacher aggrieved by the decision of the school board shall have right of appeal to the state department of education and shall have the right of further appeal to the superior court.

Court rejected both claims, finding that the notice provisions of R.I.G.L. §16-13-2 apply only to the nonrenewal of a nontenured teacher's annual contract, and that the appeal provisions of R.I.G.L. §16-13-4 apply only to tenured teachers who face permanent dismissal.

We infer from the holding in Ciccone that a tenured teacher is not entitled to receive notice of an impending termination or dismissal prior to March 1. A school committee may, in its own discretion, provide a tenured teacher with notice of such action prior to March 1. Regardless of the timing of the notice, the school committee must provide the tenured teacher with a statement of cause for the termination or dismissal pursuant to R.I.G.L. §16-13-4. If the statement of cause asserts a financial exigency as the basis for the termination or dismissal, the determination

20] The Court emphasized the distinction between the suspension and the permanent dismissal of a teacher, and the tenured teacher's right to request a hearing following suspension. R.I.G.L. §16-13-5, which concerns the suspension of a teacher, was subsequently amended to provide for a pre-suspension hearing. We note that we address in this proceeding the issue of the dismissal, not suspension, of a tenured teacher because of financial exigency.

21] R.I.G.L. §16-13-4 (1988 Reenactment) provides:

Statement of cause for dismissal shall be given the teacher in writing by the governing body of the schools at least one month prior to the close of the school year. The teacher may, within fifteen (15) days of the notification, request in writing, a hearing before the full board. The hearing shall be public or private, in the discretion of the teacher. Both teacher and school board shall be entitled to be represented by counsel and to present witnesses. The board shall keep a complete record of the hearing and shall furnish the teacher with a copy. Any teacher aggrieved by the decision of the school board shall have right of appeal to the state department of elementary and secondary education and shall have the right of further appeal to the superior court.

of whether the particular financial exigency as alleged by the school committee actually existed is to be made in accordance with the principles set forth in the cases previously discussed herein. As is evident from these cases, the inquiry concerning the existence of a financial exigency is not limited to the time at which the tenured teacher received a notice of termination or dismissal. Nor is the existence of a financial exigency established by a school committee's anticipated lack of funding. Rather, we find that the proper scope of inquiry concerns the entire process by which the school committee reached the ultimate decision to dismiss tenured teachers.

22

In conducting our inquiry as to whether a bona fide financial exigency exists in a particular case, we will consider such factors as

22] We find additional support for this finding in the cases of Lee vs. East Providence School Committee and Zuendoki vs. East Providence School Committee, Commissioner of Education, January 11, 1982. In those cases the school committee voted on February 10, 1981, not to renew the nontenured appellants teaching contracts for the 1981-82 school year because of, inter alia, "the anticipated reduction in Federal funds," (Lee) and the displacement of a senior teacher due to "a lack of Federal funds" (Zuendoki). The Commissioner, in determining whether the reasons given by the school committee for the nonrenewal of the contracts had a basis in fact, looked to the level of Federal funding as of July 17, 1981, the date the school committee rendered its written decision following the hearing requested by the appellants. We find these cases noteworthy in that the Commissioner looked to the funding situation as of the date of the school committee's written decision where nontenured teachers were involved. Even more reason exists for a broad inquiry into the surrounding circumstances where a tenured teacher, who requires good and just cause to be dismissed, is involved.

(1) the amount and timing of budgetary reductions imposed upon the school committee, (2) the money-saving measures other than tenured-teacher dismissals implemented by the school committee, (3) the extent of the inadequacy of the other money-saving measures, (4) the impact, if any, of any savings, windfalls, or economies realized by the school committee during the course of its efforts to deal with its financial predicament, and (5) the proportion that the amount saved as a result of the school committee's money-saving measures, including the amount saved from the dismissal of tenured teachers, bears to the budgetary shortfall. We also find, consistent with the review undertaken in Arnold and Clifford, that the determination of the existence of a financial exigency is to be made by reviewing the actions taken by the school committee and the information available to it from the time of the issuance of the dismissal notice to at least the end of the fiscal year in which the dismissal notice was given to the tenured teacher.

Turning to the parties' arguments concerning the financial-exigency issue in this case, we do not find merit in Appellant's contentions that financial exigency can not constitute good and just cause for the termination of a tenured teacher. Appellant argues that, under Exeter-West Greenwich Regional School District, a school system must adequately fund school budgets to honor its contractual obligations and meet its citizens' constitutional right to education. Appellant contends that a school committee

accordingly must honor the tenure commitment it made to its teachers. We note that the Superior Court in Arnold and Clifford rejected this argument, finding it to be directly contrary to the Board of Regents' policy established in Barry and Healey. We also find that Appellant's argument regarding R.I.G.L. §16-13-6 is inconsistent with the Board of Regents' decision in Barry and Healey. As for Appellant's assertion that the reduction in his position was motivated by activity related to his filing of a grievance approximately two years prior to receiving his dismissal notice, we find that this allegation is not established by the record evidence in this matter.

We now address the School Committee's claim of the existence of a financial exigency. We begin by reviewing the statement of cause provided to Appellant. We find that the Superintendent's letter of February 26, 1990 (Resp.Ex. 2; Appendix A) clearly ties Appellant's "continued employment for next year" to the maintenance of the amount of State aid received by the Town of Burrillville. Not only does the letter make spending reductions by the School Department contingent upon the maintenance of the level of State aid, it further states that the School Department, within limits, will look to the citizens of Burrillville" to help make up any financial shortfall." The letter further expresses the Superintendent's availability "over the next several months . . . to provide you with a financial update on our status."

The record in this proceeding shows that the Burrillville School Department received \$8,018,382 in State operations aid for the 1990-91

fiscal year. (Resp.Ex.7). This amount represented a 2.6% increase in the amount of State aid received by Burrillville in the 1989-90 fiscal year. (Resp.Ex.7).²³ We take official notice of the fact that the 1990-91 Rhode Island State Budget was passed by the House of Representatives on June 26, 1990, passed by the Senate on June 29, 1990 and signed into law by the Governor on June 30, 1990. In view of these facts, we find that the level of State aid appropriated to the Burrillville School Department for the 1990-91 fiscal year was, at a minimum, "maintained" from the previous year. We further find that the amount of State aid appropriated to the School Committee became known prior to the close of the 1989-90 fiscal year, the fiscal year in which Appellant received his termination notice.²⁴ Furthermore, even if we were to assume arguendo that the level of State aid was not maintained, or that a "financial shortfall" existed, we find that the School Committee failed to show what specific actions it took to fulfill its pledge to "look to Burrillville citizens to help make up" the shortage in funds.

23] The Superintendent testified that due to the opening of a new middle school in the 1989-90 school year, the School Department experienced a 37% increase in its bond indebtedness for schools and housing aid. (Tr.41). The record shows, however, a corresponding 35% increase in the amount of housing aid appropriated for Burrillville in the 1990-91 State budget. (Resp. Ex.7; Tr.41-50).

24] We take official notice of a July 12, 1990 memorandum from the Commissioner of Education notifying all superintendents of schools of the final 1990-91 State aid entitlements. Assuming arguendo that the School Committee actually became aware of the amount of its 1990-91 State aid by virtue of the Commissioner's memorandum, we find that, given the timing of the memorandum, both in relation to the passage of the budget and to the date of the hearing conducted by the School Committee with regard to Appellant's appeal, our consideration of the amount of State aid received by the Burrillville School Department for the 1990-91 fiscal year remains consistent with the previously-discussed scope of review to be undertaken in cases of this nature.

In view of the foregoing, we find that the School Committee has failed to prove the existence of a bona fide financial exigency and therefore did not have good and just cause to reduce Appellant's employment from full-time to a .6 position.

Conclusion

In view of our finding that the School Committee has failed to prove the existence of a bona fide financial exigency to justify the reduction of Appellant's teaching position, the appeal is sustained. The School Committee is hereby directed to reinstate Appellant to full-time status and meet forthwith, directly or through counsel, with Appellant to determine what compensation is owed him.



Paul E. Pontarelli, Esq.
Hearing Officer

Approved: August 26, 1991



Troy Earhart
Commissioner of Education