

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

ELIZABETH CALLAGHAN, et al :

vs. :

PROVIDENCE SCHOOL BOARD :

D E C I S I O N

October 4, 1991

Held: Nonrenewal of teaching contracts of several nontenured teachers on basis of noncompliance with residency requirement of City Charter was valid.

Travel of the Case

A letter of appeal to the Commissioner on behalf of the five (5) appellants was filed on May 6, 1991. The case was heard by the undersigned Hearing Officer on June 13, 1991. The record was closed upon completion of the transcript on July 5, 1991 and this Hearing Officer's subsequent receipt of a letter supplementing the transcript.

Jurisdiction to hear and decide the case lies under R.I.G.L. §16-39-2 and §16-13-4.

Issue

Was the nonrenewal of the appellants' annual teaching contracts by the Providence School Board valid?

Findings of Relevant Facts

- The appellants were nontenured teachers in the Providence Public Schools at the time of their nonrenewal by the School Board by its Resolution of February 21, 1990.
- The reason for nonrenewal of the appellants' contracts was that they had not complied with the residency requirement imposed on them by Section 1210 of the Providence Home Rule Charter.
- In each case, the appellants were notified at the time of nonrenewal that if they became residents by a specified date, which was subsequent to the termination resolution, they would be renewed. (Joint #1)

1] Identified for purposes of the record as the letter of Joint Exhibit 4.

2] The language was not identical in each case, nor was the "grace period" for establishing residency. We should list here the names of the other four appellants - Linda Dooley, Kathy Flaherty, Thomas Grillo and Susan Sullivan.

- None of the appellants met the residency requirement by the date set forth in their nonrenewal notices.
- In November of 1990 the residency provision of the Charter was repealed by popular vote of the electors of the City of Providence.
- Their termination was considered on appeal by all members of the Providence School Board at a hearing on April 10, 1991. By letter dated April 29, 1991 the Providence School Board affirmed its decision not to renew appellants' contracts for the 1990-91 school year. (Joint #3).
- At the time action was taken by the School Board terminating the appellants for their noncompliance with the residency provision, per diem substitutes were exempted from the requirement, a practice validated in an opinion rendered to legal counsel for the School Board from the City Solicitor. (Joint #2).

Decision

In Angelone vs. Providence School Board, decision of the Commissioner dated August 19, 1990, we upheld, albeit reluctantly, the layoff of teachers in the Providence School Department because of non-residency. The case before us has not been shown to be distinguishable on either

3] It is noted in the transcript that of the five (5) appellants, only Elizabeth Callaghan returned to employment in the Providence School Department during the 1990-91 school year. The record does not indicate on what basis she returned or whether her nonrenewal was rescinded for compliance with the residency requirement -- we assume that she did not comply with the residency requirement, as counsel would probably have indicated her appeal was moot.

the facts or the applicable law. In fact, the parties have incorporated⁴ by reference all of their arguments in the Angelone case in the record of this matter.

Counsel for the appellants urges a reconsideration of the Angelone decision, especially in light of the fact that a short time after the layoffs of the appellants, the Providence electorate repealed Section 1210 of the City Charter, doing away with the residency requirement altogether. However, at the time the action was taken by the School Board, residency was a validly-applied condition of employment for these teachers. It is unfortunate that action was not taken sooner to repeal this Charter provision, but at the time it was imposed on the appellants it was a valid reason for layoff and we so ruled in Angelone. The prerogative to rescind the appellants' termination because of repeal of the Charter's provision on residency was that of the School Board. It had opportunity to do so when it heard this matter on April 10, 1991, well after the November 1990 vote to repeal residency. The Board's policy decision not to rescind the appellants' nonrenewals at that time cannot be characterized as arbitrary and capricious.

In affirming these teachers' layoffs we must address two matters raised by the Providence Teachers' Union as issues not adequately explained in the Angelone decision. First is the propriety of a layoff accompanied by extension of a "grace period" for compliance which expires after the date of final action by the School Board. In our opinion the nonrenewal

4] Set forth at pages 3-5 of the Angelone decision, a copy of which is attached hereto as Appendix A.

of the appellants' contracts for school year 1990-91 was action that had to be taken in school year 1989-90, given the statute's requirements of timely notice and hearing. At the time of the School Board's vote, the appellants were in violation of the residency requirement, i.e., the reason proffered for the layoff was accurate. As we see it, the effect of giving the appellants a grace period was not to remove a valid reason for its action, but to provide that such action would be rescinded if and when the appellants subsequently complied with the residency requirement.

The appellants raise for consideration anew the claim that requiring residency of full-time teachers, and excluding per diem substitutes from such requirement discriminates against them in violation of their constitutional rights. In Angelone, this issue was raised, as we understood it, only for purposes of preserving the issue for subsequent review. The discussion of the issue in that case was limited for that reason. We would again observe that the language of the Charter, Section 1210, is broad and on its face requires residency of "all employees." While we may not agree with the construction of such language to include only regularly-employed individuals, such distinction, if an incorrect interpretation was made, would present a matter of violation of the City Charter, not a constitutional issue (and the School Board received from the City's own attorney his opinion that such a distinction was permitted under the Charter). According different treatment to regularly-employed and temporary, per diem substitute teachers does not in and of itself constitute an irrational classification, be-

5] At pages 7-8 of that Decision.

cause it furthers the legitimate objective of having all permanent city employees be drawn from residents of the City of Providence. The differing treatment given to temporary employees is not inconsistent with the objectives such a measure is designed to serve. As we noted in Angelone, the distinction also enabled school administrators to staff positions in city schools when there was no supply of resident teachers available, i.e., practical necessity. The classification is not irrational, or invidious for purposes of analysis under the Constitution's Equal Protection clause.

We affirm the School Board's decision and the appeals are denied.

6] While the Commissioner has already articulated his disagreement with the concept of residency as applied to public school teachers, we must recognize the weight of judicial authority which recognizes such measures as reasonable and furthering legitimate state (and municipal) interests in the context of constitutional challenges based on "irrationality." See the discussion at p. 460, The Law of Public Education, 3rd Ed., E. Edmund Reutter, Jr.


Kathleen S. Murray, Esq.
Hearing Officer

Approved:


Janice M. Baker
Interim Commissioner

October 4, 1991

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

LESLIE ANCELONE, et al

vs.

PROVIDENCE
SCHOOL BOARD

D E C I S I O N

August 16, 1990

Travel of the Case

On October 31, 1989 the eleven (11) teachers whose lay-off had been affirmed by the Providence School Board appealed the October 23 decision to the Commissioner of Education.

The matter was heard on December 12, 1989 by the undersigned Hearing Officer under authorization of Commissioner J. Troy Earhart.

The record of the case closed on January 10, 1990 upon the Hearing Officer's receipt of documentation agreed by the parties to supplement the evidence received at the December 12 hearing.

Jurisdiction to hear and decide the case lies under R.I.G.L. 16-39-2 and §16-13-4.

Issue

Was the non-renewal of the appellants' annual teaching contracts by the Providence School Board valid?

Findings of Relevant Facts

- 1
- All of the appellants were untenured teachers whose annual contracts with the Providence School Board were not renewed for the 1989-90 school year. (See: Joint Ex. II, and letter of Attorney Skolnik dated January 5, 1990, incorporated into the record of the case by agreement as Appellant's Ex. C).

1] The appellants are listed as follows: Leslie Angelone, Dwight Barrett, Joan Beall, Robert Betts, Carolyn Briggs, Joanne Doane, Angela Ionata, Dorothy Kelly, Janice Mesoletto, Luis Rivera and Audrey Romanelli.

- In each case the reason for the non-renewal of the appellants' contracts² was their failure to comply with the residency requirement, Section 1210 of the Providence Home Rule Charter. (See: Joint Ex. I, Transcript and Exhibits at hearing held September 11, 1989 before the Providence School Board).
- By Resolution dated October 23, 1989 (Resolution No. 1171) the Providence School Board affirmed the "termination" of the appellants' teaching contracts after a hearing held on September 1, 1989. (See: Joint Ex. II).
- Pursuant to a legal opinion rendered by the City of Providence's City Solicitor to School Board legal counsel, the residency requirement has not been imposed on per diem substitute teachers appointed by the Providence School Board. (See: letter and attached opinion from Attorney Joseph A. Rotella, dated December 15, 1989, incorporated into the record by agreement of the parties as Respondent's I).
- In addition, the residency requirement has not been applied to those serving as long-term substitutes in the City's schools. (See testimony of George West, Personnel Director of the Providence School Department, p. 10 of Transcript of the hearing before the School Board, Joint Ex. I).

2] Or in Ms. Beall's case, her anticipated failure to become a Providence resident by September, 1990. Note the wording of Resolution 841 relating to the non-renewal of her contract, as opposed to the Resolutions relating to the other appellants, for whom the time for establishing residency had already expired at the time the lay-off Resolutions were adopted, February 22, 1989.

Position of the Parties

The appellants claim that the imposition of the residency rule to terminate them (and we would assume other regular teachers hired on or after January 3, 1983 as well) has emasculated the policies behind important provisions of state law, namely teacher certification (§16-11-1 et seq.) and the interstate agreement on qualification of education personnel (§16-11-5). Their attorney argues quite forcibly that the residency requirement conflicts with and impedes the functioning of these provisions of state law. In addition, he argues that establishment of a residency requirement has resulted in the unavailability of qualified, certified staff to fill vacant positions in the Providence Public Schools, and, most currently, an overuse of staff holding "emergency" certificates and substitute teachers whose certification does not match the requirements of the classes in which they are teaching.

The appellants note, and have incorporated in the record of this case, testimony given on November 7, 1988 before the "City of Providence Residency Requirement Study Commission". (Appellants Ex.B). A fair summary of this testimony is that the residency requirement for certified school personnel has created or contributed to staffing shortages in many areas, especially, difficult-to-staff positions in bilingual education and special education. Predicating teacher lay-offs on residency (such as the non-renewal of the appellants) has generally exacerbated these staffing shortages and in addition has resulted in the actual displacement of fully-certified regular teachers from classrooms by a substitute or regular teacher not holding

the appropriate certification for a particular class.

The last argument made by the appellants in challenging the reason for their termination is that their non-renewal is the result of a discriminatory application of the residency requirement in that it has not been imposed on all employees of the City despite the clear language of Section 1210 of the Providence Home Rule Charter. Counsel disputes the legitimacy of a distinction between regular teachers and per diem/long-term substitutes, given the Charter's reference in Section 1210 to all employees.

Finally, the appellants allege that the School Board was required to follow the September 11, 1989 hearing on their lay-off with a decision setting forth the reasons for affirming its prior action, and the facts contained in the record on which it relied in sustaining their non-renewals. Counsel argues that Resolution No. 1171 is procedurally inadequate in this regard.

In response to these assertions the Providence School Board denies that the level of the School Department's use of substitutes/and the emergency certification process has risen as a result of a residency requirement for Providence teachers. It notes the general unavailability of certified teachers in the crucial areas of bilingual education and special education services.

As to the argument that the Providence Charter's residency requirement usurps the certification function by adding additional teacher qualifications beyond those established by the Board of Regents under §16-11-1 et seq. and the argument that required residency impedes the

3] Testimony of George West, Personnel Administrator of the Providence School Department, p.15 of Joint Ex. I.

interstate flow of educational personnel fostered by §16-11-5, the School Board notes the Rhode Island Supreme Court's decision upholding the Charter's residency provision as an exception to any inconsistent provisions of the General Laws. See; Local No. 799, Firefighters v. Napolitano, 516 A.2d 1347 (R.I. 1986). In the School Board's view, this decision puts to rest the issue of inconsistency of the residency requirement with other state laws in effect at the time of the General Assembly's validation of the Charter, and its express validation of Section 1210.

Decision

The concerns cited by counsel for the appellants as to the adverse impact in terms of staffing shortages, over-use of substitute teachers not holding appropriate certification, and diminution of the School Department's ability to deliver quality educational services, are all concerns expressed in testimony given by the Commissioner of Education and representatives of his staff in testimony which has been incorporated into the record before us.⁴ Despite our differences of opinion as to the wisdom and effectiveness of a residency requirement for certified school personnel, we must review the non-renewal of the appellants' teaching contracts on the basis of non-compliance with this provision keeping in mind that upon its express validation by the General Assembly in 1981 Section 1210's residency requirement became operative as a qualification for all Providence teachers, among others, hired on or after January 3, 1983 unless exempted by the Providence City Council.

4] See Appellants Ex. B, testimony of J. Troy Earhart, Commissioner of Elementary/Secondary Education and of Edward L. Dambruch, Director of Teacher Certification, Rhode Island Department of Education.

Given that the non-renewal of a non-tenured teacher's contract need not be accompanied by a showing of "good and just cause," and that, in our de novo review of the matter, we must determine only whether a valid reason for non-renewal exists, we are constrained to find that residency as a legislatively- approved requirement for Providence teachers, was a condition of continuing employment not met by the appellants. Stated another way, their non-residency provides a legitimate basis for non-renewal of their contracts for the 1989-90 school year. This would apply to all of the appellants, including Joan Beall because despite the language indicating termination of her contract at the end of the 1988-89 school year, what really was effected by this entire process was her non-renewal for the ensuing school year. Thus her contract's non-renewal didn't become effective until after the expiration of the time limit on her compliance with the residency rule.

In recognizing imposition of the residency rule as a valid reason for non-renewal of an untenured teacher in the Providence School System, it is not to be inferred that the School Board's decision to impose such a requirement, or forego the opportunity to request and obtain any necessary

5] We agree with the appellants that as an additional condition of employment it impedes both certification policies and the objectives of the Interstate Compact, but we would note that these are arguments which should have been considered by the Legislature when it validated the Charter.

6] Apparent limit, we might add, since we have no evidence, just counsel's arguments that August 30, 1989 was the deadline in her case.

waivers from the Mayor and City Council, will excuse the School Board from compliance with education laws and regulations requiring it (and the City) to establish public schools and staff them with adequate numbers of appropriately-certified personnel. In the context of our enforcement of special education regulations in the recent decision in Rhode Island Department of Education vs. Providence School Board, Commissioner's decision dated June 22, 1990, we made clear our position that:

We will not tolerate a situation where handicapped minority students are denied their Federal and State rights by reason of this residency requirement. (Decision at p. 10).

Our ruling today recognizing the Legislature's approval of a residency requirement and the School Board's decision to forego all efforts to obtain exemptions for these teachers, or other regular certified teachers, should not be misconstrued as approval of the residency requirement, or a sanctioning of its effects, when raised in the context of our responsibility to enforce education laws and regulations.

The next contention of the appellants is that their lay-off reflects discriminatory treatment in that city residence is not required of per diem or long-term substitutes. In explication of this claim, counsel stated:

Our position is that per diems, long-term substitutes are employees and it's inequitable, indiscriminate and unfair to carve out one group of employees and not make

it applicable to another group of employees. (Tr. p. 17) Counsel went on to state that the purpose of raising this constitutional issue was to preserve the ability to raise it should the matter be appealed to a forum wherein such claims are traditionally litigated - the Courts. Since

the appellants do not press for our analysis and decision on this issue (denial of equal protection of state laws based on the manner in which the Providence School Board has applied the residency rule to distinguish between permanent and temporary employees, not subjecting the latter group to the requirement) we will refrain from doing so. We cannot help but comment, however, that the distinction created by the Board between temporary and permanent employees is curious in light of the all encompassing language ("all employees") of the Charter. It would appear to be more an administrative distinction on the basis of practical necessity, rather than an invidious form of discrimination or an "irrational" classification, prohibited by the Equal Protection clause.

Finally, we find Resolution 1171 to be sufficient from a procedural standpoint, despite the argument presented that following the September 11, 1989 "lay-off" hearing, the appellants were entitled to a written decision which reaffirmed specific reasons for non-renewal and cited the evidence in the record supporting these reasons. We have held such procedural elements to be required as rudimentary due process to be afforded tenured teachers, dismissed for cause. See our Decision in Hobson v. South Kingstown School Committee, April 4, 1988. We have not ruled and are not now persuaded to find that such requirements attach to non-renewal of an untenured teacher at the close of a school year. Appellants cite no case law imposing such requirement generally. The Rhode Island Supreme Court's decision in Jacob v. Board of Regents,⁷ sets forth (1) that the School Committee must give a non-tenured teacher who is non-renewed a statement of

7] 117 R.I. 164 (1976)

cause prior to hearing and (2) a hearing at which the teacher is given opportunity to persuade and convince the Committee that it is mistaken in its decision. Given the nature of the hearing and the fact that it differs fundamentally from the hearing accompanying the dismissal of a tenured teacher in that there is no burden on the School Committee to establish good and just cause for termination, there is no logic to a requirement that following such hearing, a written decision reference evidence adduced which supports the School Committee's reasons. Thus, we do not agree that Resolution 1171 needed to be anything more than it was - a reaffirmance of the School Board's prior decision.

For the foregoing reasons, the appeal of the eleven (11) appellants is denied and dismissed.

Kathleen S. Murray

Kathleen S. Murray, Esq.
Hearing Officer

Approved: August 16, 1990

J. Troy Earhart

J. Troy Earhart
Commissioner of Education