

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JOSEPH R. ROUMELIS :  
:  
:  
vs :  
:  
:  
SCITUATE :  
SCHOOL COMMITTEE :  
:

DECISION

December 23, 1991

Held:

School Committee failed to meet its burden of proof in reducing employment of a tenured teacher from a .85 position to a .55 position.

### TRAVEL OF THE CASE

This matter was appealed to former Commissioner J. Troy Earhart on June 21, 1991. On July 5, 1991 the undersigned was designated to hear and decide this matter, in which the appellant, a tenured teacher, appeals the May 7, 1991 decision of the Scituate School Committee to reduce his employment from a .85 to a .55 teaching position.

The matter was heard on August 26, 1991 and the record of the case closed August 30, 1991.

Jurisdiction to hear this appeal lies under R.I.G.L.16-39-2 and 16-13-4.

### FINDINGS OF RELEVANT FACTS

- Joseph R. Roumelis was hired as a full-time teacher in the Scituate School System in November, 1985. (Tr.p.41).
- Mr. Roumelis is a tenured teacher in the system and since school year 1989-90 he has been employed less than full time, i.e., in a .85 position. (Tr.p.5, 41).
- Mr. Roumelis is certified to teach general science and agriculture at the secondary school level. (SC. Ex.D).
- During school year 1990-91 he taught both subjects. (SC.Ex.D). He taught 4.25 periods (2.5 sections of agriculture and 1.75 sections of science) out of a 5 period day or 85% of full time (SC.Ex.D).
- Part of his science teaching assignment in 1990-91 was as a one-on-one tutor for a special needs student. This assignment, accounting for .75 period or three hours a week, was established last year because otherwise the School Department could not fully occupy Mr. Roumelis at .85 of full time. (Tr.p.23).
- Effective 1991-92 Mr. Roumelis is scheduled to teach one class of general science (1.0 period) and 1.75 periods of junior high agriculture for a total of 2.75 periods, a schedule which reduces his employment to that of .55 of full time. (SC.Ex.E).

- On February 6, 1991, the School Committee notified Mr. Roumelis of the Superintendent's recommendation to reduce his position from a .85 teacher of agriculture and science to a .30 teacher of agriculture for school year 1991-92. (SC.Ex.B).
- The notice of February 6, 1991 indicated that Superintendent of Schools, Allen G. Brown's recommendation was based on "a substantial decrease in enrollment of students in the agriculture department and elimination of the science sections due to class size". (SC.Ex.B).
- After hearings on March 5 and May 7, 1991, the School Committee voted to reduce Mr. Roumelis' position to that of a .30 teacher of agriculture, with the authority given to the Superintendent to increase his position if course sign-ups warranted. (SC.Ex.F.; Tr.pp.26-27).
- The notice to Mr. Roumelis of the School Committee's decision indicated it was based on the Committee's finding:

that there will be a substantial decrease in enrollment of students in the agriculture department and elimination of a science section due to class size. (SC. letter of May 8, 1991. Ex.F.)
- Mr. Roumelis is the least senior teacher in both the agriculture and science departments. (Figure 4, SC. Ex.D).
- Enrollment in the agriculture department, grades 7-12 during school year 1990-91 was 240 students. (Tr.pp.31-32).
- Projected enrollment in the agriculture department, grades 7-12 for school year 1991-92 was 305 students at the time the School Committee voted to reduce Mr. Roumelis' position (Figure 3, SC.Ex.D).
- Mr. Roumelis' 1991-92 class assignment reflects the following changes: reduction in his agriculture teaching load by .75 period (elimination of 1.0 period of greenhouse and addition of .25 period of junior high agriculture) and reduction in his science teaching assignment of .75 (elimination of the one-on-one tutoring). His employment was reduced from 4.25 periods to 2.75

i.e., from a .85 position to a .55 position.

POSITION OF THE PARTIES

In closing argument,<sup>1</sup> counsel for the School Committee took the position that the facts showed no substantial decrease in student population which would warrant a suspension. He characterized the reduction in Mr. Roumelis' position as a termination of a tenured teacher under 16-13-4. From a factual standpoint, his analysis was premised on the fact that the reduction in time resulted only from elimination of the tutoring assignment.<sup>2</sup> In arguing that such action was supported by good and just cause, the School Committee argues that this assignment was created to make work for the appellant, whose .85 teaching schedule was not completely filled in school year 1990-91. The notice to the appellant was sufficient, he argues, because it cited as one of the reasons for reduction of his position "elimination of a science section due to class size" and this refers to the appellant's tutoring assignment.

Counsel for the appellant takes the position that in citing a decrease in enrollment in agriculture as one of the reasons for this reduction, and in failing to prove a decline, the School Committee has made an unsupportable attempt to suspend Mr. Roumelis under R.I.G.L.16-13-6. Counsel further argues that the elimination of a science section due to class size never happened. We understand his argument to be that this reason cited by the School Committee, refers to Mr. Roumelis' general science class which consisted of only nine students in the 1990-91 school year and for which future declining enrollment was anticipated. As the testimony showed, sign-ups for this class were sufficient for its retention in school year 1991-92. He notes that no evidence of decline in science enrollment (or other factors) were in-

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1) See pages 49-52 of the transcript.

2) After closing argument, a factual discrepancy was raised by the appellant's attorney because mathematically the action (as presented by the Committee) resulted in a reduction to 3.75 periods, or a .75 position, not .55. It was at this point that Superintendent Brown was recalled and testified concerning the additional steps taken, i.e., transfer of Mr. Roumelis' greenhouse course to another teacher, thereby reducing his schedule by an additional 1.0 period to 2.75 periods or 55% of full time.

troduced to substantiate any other reduction in Mr. Roumelis' assignments in this area. Thus, he takes the position that the burden of proof in either suspending or terminating a tenured teacher has not been met.

DECISION

As a tenured teacher in the Scituate School System, Mr. Roumelis is entitled to continued employment absent "good and just cause". In moving to reduce his employment from that of a .85 teacher to a .55 teacher the School Committee bears the burden of establishing good and just cause, consistent with the reasons provided to the tenured teacher.

In this case the School Committee offers two reasons for the appellant's reduced employment.<sup>3</sup> The first is that "there will be a substantial decrease in enrollment of students in the agriculture department" (emphasis added). While the Committee had before it, and placed in the record of the hearing before us some evidence of prior continuing decline in high school enrollment in agriculture (51.19% from 1986-1991), the Committee did not rely on this - - it did not cite prior continuing decline in its notice to the appellant,<sup>4</sup> nor did it present evidence that this prior decline in agriculture enrollment necessitated reduction in the appellant's teaching schedule, pursuant to guidelines well-established by the Commissioner's decisions in such cases as Hodgdon v. Cranston School Committee, September 9, 1982; Angell v. Cumberland School Committee, October 18, 1982 and by the Rhode Island Supreme Court in Bochner v. Providence School Committee, 490 A.2d 37 (R.I.1985). Instead, the School Committee confined its case to a projected future decrease in enrollment in agriculture, a decrease which did not materialize. As indicated in our findings of fact, enrollment in agriculture actually increased from

3) Typically such reductions have been treated as terminations, except where the reasons relied on by the School Committee have included that of declining enrollment. See Barry and Healey v. Warren School Committee, January 26, 1981; Comolli v. North Kingstown School Committee, December 19, 1986; Phelan v. Burrillville School Committee, August 26, 1991.

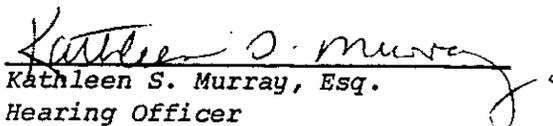
4) School committees are obliged to state in the letter of notice the date from which they intend to measure decline in enrollment if they are to support suspensions with evidence of prior continuing decline. Cersosimo v. Coventry School Committee, October 25, 1983.

240 students in 1990-91 to an enrollment (determined by spring sign-ups) of 305 students. Thus, the reason given for reduction in Mr. Roumelis's teaching schedule in the agriculture department has not been substantiated. For this reason, we conclude that the evidence does not support the reasons given for reduction of his agriculture department assignment from 2.5 sections to 1.75 sections and he should have remained employed at 2.5 periods (50%) of full time in that department.

As to the reduction in the appellant's position resulting from elimination of the one-on-one science tutoring assignment, we agree with the Committee that a school system should not have to continue to employ (even) a tenured teacher when there is no work for that person to do. However, for the Commissioner to determine that just cause supports the reduction in a tenured teacher's work day, some proof that the lack of an assignment for that teacher results from well-grounded reasons must be provided.<sup>5</sup> Otherwise, the concept of tenure would be undermined by the ability of the school system to lay-off tenured teachers simply by pointing to the fact that there is no position for that teacher. Such an analysis by a school committee begs the question. For this reason we conclude that the School Committee has failed to meet its burden of proof in effecting the reduction in Mr. Roumelis' science teaching assignment by .75 period of 15% from its previous level of 35%.

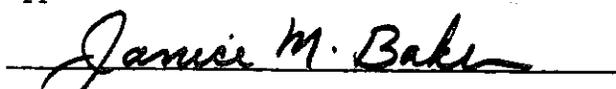
The appeal is sustained, and the appellant should be reinstated immediately to his .85 position and compensated for his prior lost earnings.

5) We could conjecture at this point that Mr. Roumelis had an unassigned period for a number of reasons which could constitute good cause, but the record contains only vague references to miscalculations of prior declining enrollment in science and the need for the appellant's time.

  
Kathleen S. Murray, Esq.  
Hearing Officer

December 23, 1991

Approved:

  
Interim Commissioner