

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

PAWTUCKET TEACHERS' ALLIANCE

and

LOUIS DROZD

VS.

PAWTUCKET SCHOOL COMMITTEE

DECISION

Held: Commissioner lacks
jurisdiction to decide
appeal concerning School
Committee's decision to
change teacher's grade
where School Committee
did not compel teacher
to change the grade.

September 1, 1992

Introduction

This matter concerns an appeal to the Commissioner of Education by the Pawtucket Teachers' Alliance and Louis Drozd from "the decision of the Pawtucket School Committee to alter a student's grade issued by Louis Drozd." (Joint Exhibit 1).¹

For the reasons set forth below, we deny the appeal.

Background

Louis Drozd taught biology at Tolman High School during the 1989-1990 school year. Following Mr. Drozd's assignment of first quarter biology grades, the parents of one of his students appealed their child's grade to Dr. Richard P. Charlton, the Superintendent of Schools. The Superintendent rejected the parents' appeal.

The parents appealed the Superintendent's decision to the School Committee. After hearing the appeal, the School Committee voted to change the student's grade, increasing it by 2 points. The Superintendent subsequently directed the principal of the high school to change the student's grade. The grade change was effectuated by an assistant principal at the high school.

Positions of the Parties

Appellants contend that the School Committee's altering of the student's grade was arbitrary, capricious, and in bad faith because the School Committee never provided Mr. Drozd with a

1 The Commissioner designated the undersigned hearing officer to hear this appeal. It was heard on October 23, 1991. On November 18, 1991 the Hearing Officer granted the request of the Teachers Alliance to add Mr. Drozd as an appellant in this matter. Following the receipt of the transcript of the hearing, the parties submitted briefs.

reason for its action. Appellants argue that Mr. Drozd has standing to bring this appeal because "he has an interest in maintaining the dignity of the grade he rendered in the performance of his teaching duties." (Appellants' brief, p. 3). According to Appellants, the ability to grade students is similar to that of the ability to teach, and the former should be undertaken only by certified teaching personnel, not school committees. Appellants assert that the School Committee's decision to alter Mr. Drozd's grade exceeded its authority.²

The School Committee contends that neither the Teachers' Alliance nor Mr. Drozd has standing to bring this appeal because neither is aggrieved by the School Committee's action as is required under R.I.G.L. 16-39-2.³ The School Committee asserts that it "did not order Mr. Drozd to take any action" concerning the grade. It argues that "once the teacher has submitted his grade, he loses any further interest in any appeal which might relate to his grade" provided that the school committee does not direct or order the teacher to take some action regarding that grade which is contrary to the teacher's beliefs. (School Committee's brief, p. 3). The School Committee further contends that this appeal has been rendered moot by Appellants'

-
- 2 Appellants have made it clear that while they are claiming that the School Committee acted improperly with regard to Mr. Drozd's grading authority, they are not requesting that the student's grade be changed from that assigned by the School Committee.
- 3 R.I.G.L. 16-39-2 states, in part, that "[a]ny person aggrieved by any decision or doings of any school committee" may appeal the matter to the Commissioner of Education.

stipulation that it is not asking the Commissioner to change the
grade awarded by the School Committee.⁴

Discussion

In Parate v. Isibor, 868 F.2d 821 (1989), the Sixth Circuit Court of Appeals considered a civil rights action brought by a nontenured university professor whose teaching contract had not been renewed. Plaintiff Parate alleged, in part, that the university had violated his First Amendment right to academic freedom by, among other things, ordering him to change a grade he had assigned a student.

In discussing the professor's right to academic freedom, the court stated that "[b]ecause the assignment of a letter grade is symbolic communication intended to send a specific message to the student, the individual professor's communicative act is entitled to some measure of First Amendment protection." Id. at 827. The court noted the substantial importance of the university professor's freedom to assign grades according to his own professional

4 The School Committee argued at the hearing that this appeal is barred by laches because it was filed 13 months after the School Committee notified Mr. Drozd of its decision to change his grade. The record shows that the Teachers' Alliance originally filed a grievance under the collective-bargaining agreement with regard to the grade change and sought to have the matter heard by an arbitrator. The School Committee filed a declaratory-judgment action in Superior Court. The court held that the grade-change issue is not arbitrable. The Teachers' Alliance appealed the Superior Court's decision. On July 15, 1992 the Rhode Island Supreme Court issued a decision holding that the School Committee's decision to change the student's grade is a matter subject to an appeal to the Commissioner of Education, and not arbitrable under the collective-bargaining agreement. Pawtucket School Committee et al. v. Pawtucket Teachers Alliance et al., No. 91-404-A. In view of our holding herein, we do not find it necessary to reach the School Committee's laches argument.

judgment, and it recognized that professors should retain wide discretion in their evaluation of the academic performance of their students. Id. at 828. The court observed that

the individual professor may not be compelled, by university officials, to change a grade that the professor previously assigned to her student. Because the individual professor's assignment of a letter grade is protected speech, the university officials' action to compel the professor to alter that grade would severely burden a protected activity. Id. at 828.

The court in Parate pointed out that the First Amendment guarantee of academic freedom is not violated by the university giving the student a different grade, but by the university's act of ordering the professor to change the grade. Id. at 829. The court stated that

even as a nontenured professor, [Parate] retains the right to review each of his students' work and to communicate, according to his own professional judgment, academic evaluations and traditional letter grades. Parate, however, has no constitutional interest in the grades which his students ultimately receive. If the defendants had changed Student "Y's" . . . grade, then Parate's First Amendment rights would not be at issue. Parate's First Amendment right to academic freedom was violated by the defendants because they ordered Parate to change Student "Y's" original grade. The actions of the defendants, who failed to administratively change Student "Y's" grade themselves, unconstitutionally compelled Parate's speech and precluded him from communicating his personal evaluation to Student "Y." (Footnote omitted; emphasis in original).

Although the Parate case concerned an alleged civil rights violation, we find the court's analysis instructive herein. We therefore note that Mr. Drozd exercised his independent professional judgment in grading his biology students. The grade at issue was changed by the administration at the high school

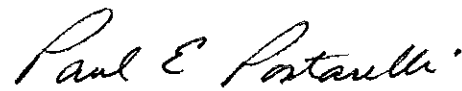
pursuant to the decision of the School Committee, the body responsible for the entire care, control, and management of the school district.⁵ Neither the School Committee nor the administration ordered or compelled Mr. Drozd to change the student's grade. Consequently, we are unable to find any right of Appellants, pursuant to the Parate case or otherwise, which has been considered and decided adversely to them by the School Committee. As the Rhode Island Supreme Court stated in Demers v. Collins, 98 R.I. at 317 (1964),

standing to invoke the appellate jurisdiction of the commissioner under Sec. 16-39-2 is established only by showing that the decision of the committee of which complaint is made adjudicated some right of the appellant and decided it adversely to him.

In the absence of such a showing by Appellants, we find we are without jurisdiction to decide this appeal.

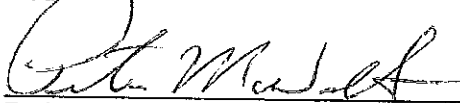
Conclusion

The appeal is dismissed for lack of jurisdiction.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

⁵ In Barnard v. Inhabitants of Shelburne, 216 Mass. 19, 102 N.E. 1095 (1913), the Massachusetts Supreme Court found that the school committee, as the body responsible for the care and management of schools, makes the final determination regarding educational questions concerning the public schools under its charge.