

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

LAWRENCE NEWSOME

vs.

NEWPORT SCHOOL COMMITTEE

DECISION

HELD: The appellant should have been employed under an annual contract and not as a substitute in January of 1991 when he took the place of a teacher who had retired.

December 21, 1992

TRAVEL OF THE CASE

This matter was brought to the Commissioner of Education for hearing and decision by letter of the appellant's attorney dated December 30, 1991. Hearings were held on March 17, 1992 and April 10, 1992. The record in this matter closed on September 3, 1992 upon submission of briefs by the parties.

Jurisdiction to hear this appeal lies under R.I.G.L. 16-39-1 and 16-39-2.

ISSUE

Should Lawrence Newsome have been employed as a regular teacher and not as a substitute during school years 1989-90 and/or 1990-91?

FINDINGS OF RELEVANT FACTS

- o During each school year commencing with 1985-86 through 1990-91 Mr. Newsome was employed as a substitute teacher in the Newport School Department. Appellant's Ex. 1.
 - o In school year 1989-90 one of Mr. Newsome's classroom assignments was long-term. He replaced a teacher at Rogers High School who was out on an extended sick leave from February 26, 1990 through the end of that school year. S.C. Ex. I and J; Tr. Vol I. pp. 18, 28-31.¹
 - o Consistent with the provisions of the Collective Bargaining Agreement in effect at that time, the appellant was paid during 1989-90 at a per diem rate of \$40 until working 135 days as a substitute, at which time he was paid retroactive to his first
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1. Testimony from both the principal at Rogers and the appellant was that Mr. Newsome started this long term assignment in January of 1990. Records of the Newport School Department clearly showed his long-term assignment in that position started February 26, 1990.

day of employment at step 4 of the salary schedule applicable to regular teachers in the system.² Appellant's Ex. 2, S.C. Ex. F.

- o In school year 1990-91 one of Mr. Newsome's classroom assignments was long term. He replaced a teacher at Rogers High School who had retired, and his assignment to that class was from January 2, 1991 through the end of that school year. S.C. Ex. G. Tr. Vol. I pp. 15-16, 22.
 - o Again, consistent with the contract, Mr. Newsome was paid at the per diem substitute rate until he had taught 40 consecutive days in his long-term assignment. At that time he was paid at step 5 of the salary schedule retroactive to his first day in that classroom assignment. He subsequently reached his 135th day as a substitute and was at that time paid "at step" retroactive to his first day of employment that school year. Appellant's Ex. 2, S.C. Ex. F.³
 - o During the appellant's long-term assignments in both 1989-90 and 1990-91, Mr. Newsome performed all of the duties of a regular teacher assigned to that class. Tr. Vol. I p. 18.
 - o At no point in either of the school years in question was the appellant accorded any of the fringe benefits provided for in the teachers' contract. Tr. Vol. I p. 27, 36.
 - o The appellant is also unaware of any retirement contributions

2. Minus the amount already paid to him as a per diem substitute.
 3. Minus the amount already paid to him as a per diem substitute and not including those days for which he was already paid "at step" by virtue of his 40-day assignment.

made on his behalf for any of the years in which he worked in excess of 135 days as a substitute for the Newport School Department.⁴

- o Mr. Newsome has been an unsuccessful applicant for at least three full-time mathematics positions in the Newport school system. One of these positions was posted in September, 1990 and two others in June of 1991. S.C. Ex. A and B. Tr. Vol. I pp. 84-89.
- o For the two mathematics positions posted on June 4, 1991 (S.C. Ex. B) Mr. Newsome asserted his candidacy in the form of a written request for a transfer submitted to the assistant superintendent of schools. Tr. Vol. I pp. 91-92.
- o When his request for a transfer to either of the two posted positions was denied, Mr. Newsome filed a grievance with Superintendent Donald J. Beaudette. App. Ex. 3.
- o After hearing the appellants claim, the school committee denied the grievance in a written decision issued November 22, 1991. App. Ex. 4.

POSITION OF THE PARTIES

Mr. Newsome points to two occasions in the course of his long-term employment relationship with the Newport School Department when he claims his employment should rightfully have been converted to that of a regular teacher. The first occasion

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4. A fact which caused counsel for the school committee to indicate in his memorandum (at page 6) that the school committee is prepared to make such contributions as are appropriate, to the extent they have not already been made. Chapter 16 of Title 16 would govern contributions on behalf of substitute teachers who become "regularly employed", i.e. work in excess of 135 days.

is in 1990 when he was assigned to replace a teacher on sick leave.⁵ The second occasion was at the very beginning of the second semester of the 1990-91 school year. At that point in time, although he was employed as a long-term substitute, he claims a true vacancy existed and under R.I.G.L. 16-13-2 he should have been employed as a regular teacher under an annual contract.

The position of the Newport School Committee is that the appellant's claims are barred under the doctrine of laches and that the school committee has never been presented with or acted upon the specific claims made by Mr. Newsome. Until such time as the school committee formally acts on Mr. Newsome's claims, the Commissioner lacks jurisdiction to hear this matter, the school committee argues.

On the merits of the appeal, the school committee's position is that in 1989-90 Mr. Newsome was at all times properly categorized as a substitute teacher and when he was placed in the long-term assignment on February 26, 1990 he was not filling a vacancy because the teacher whose class he assumed was not precluded from returning at any time during the remainder of the school year.

As to the long-term assignment begun by Mr. Newsome in January of 1991, the school committee concedes that because the teacher whose class Mr. Newsome assumed had retired, the position was vacant. However, the Committee claims unusual circumstances existed which excused it from filling the position. Those special circumstances were that the retired teacher continued to teach one course comprising "the position" and that the superintendent

5. a teacher who had also indicated his intent to retire at the end of school year 1989-90.

anticipated at that time that the position would be "absorbed" the following school year. Therefore, the committee sees no violation of statute in continuing Mr. Newsome on substitute status that year.

DECISION

Since it is our ruling that the appellant's claim to employment as a regular teacher commencing February 26, 1990 is without merit, we need not consider whether this claim is barred under the doctrine of laches. Based on the testimony of Superintendent Beaudette, the position assumed by Mr. Newsome on that date was that of a seriously ill teacher on sick leave. Although the teacher had indicated his intention to retire at the close of the 1989-90 school year, the teacher's right to return to his classroom at any point during that semester, when his health permitted, remained intact. Given these facts, the appellant did not fill a true vacancy. The school committee, by continuing Mr. Newsome as a substitute, did not thwart the purposes of the teacher tenure act.⁶ It simply continued to honor its full-time employee's contractual rights.

We understand the appellant's claim to "status" as a regular teacher in the Newport School System to be based also on the fact that in filling-in for this teacher on a long-term basis he performed all of the duties and had all of the responsibilities of a regular teacher. This, he argues, transformed his status as a substitute into that of a regular teacher. As we pointed out in

6. See the discussion of the Board of Regents in Freeman v. School Committee of the City of Pawtucket, December 11, 1980 that decision sets forth a full discussion of this principle its statutory basis, and the public policy it is designed to further.

the recent decision in Martin v. Barrington School Committee⁷ it is our opinion that the present statutory scheme as interpreted by our state supreme court in Berthiaume v. School Committee of the City of Woonsocket, 121 R.I. 243, 397 A2d 889 (1979), doesn't distinguish between the varying levels of responsibility and workload in the compensation required for substitute teachers. As we noted in Martin many school districts, through policy or specific provision of a collective bargaining agreement, have addressed this issue and provided greater compensation for long-term substitutes who actually perform the responsibilities of regular classroom teachers for a substantial period of time.⁸ The claim that a long-term substitute whose service is indistinguishable from a regular teacher should be "deemed to be" a regular teacher for compensation purposes was rejected in Martin. We find that such theory is similarly without merit as to the claim made by Mr. Newsome in this case. There is simply no statutory basis for converting a long-term substitute's status to that of a regular teacher because of the nature of his assignment or workload.

Upon review, we find Mr. Newsome's employment as a substitute in the long-term assignment commencing January 2, 1991 to be in violation of R.I.G.L. 16-13-2.⁹ As consistently interpreted and applied in numerous decisions of the Commissioner of Education,

7. Decision of the Commissioner dated June 29, 1992.

8. In fact such a provision was applicable to substitutes in Newport (including the appellant). See Article XVIII section B of the Collective Bargaining Agreement, Appellant's Ex. 2.

9. Which requires that teaching service shall be on the basis of annual contract and deemed continuous unless the teacher is notified of non-renewal on or before March 1st.

this statute requires that school committees fill teaching vacancies with regular teachers employed on the basis of an annual contract. The teacher for whom Mr. Newsome allegedly substituted had retired. While the retired teacher did continue to teach one course for the school department (an advanced course in computers) Mr. Newsome testified he assumed the bulk of that teacher's class load—two general math classes, two algebra courses and one supervision/planning class (Tr. p. 44). His assignment was full time. There was no expectation of the return of the regular teacher to teach those classes, i.e. a full-time vacancy existed and was filled by the appellant.

None of the "unusual circumstances" cited by the school committee negate the responsibility it had to fill this vacancy with a regular teacher. The factors cited - the possibility of absorbing the position,¹⁰ the fact that only one half of the school year remained,¹¹ or the fact that the retired teacher returned in a consultant capacity for one course, do not provide a compelling reason for non-compliance with the statute. Filling the position would not necessarily have resulted in overstaffing since the possible absorption of the position at the end of the year could have been the basis for timely notice of non-renewal of the appellant's teaching contract.

We find that R.I.G.L. 16-13-2 was violated by the circumstances of the appellant's employment in the Newport School Department from January 2, 1991 through the close of the school

10. See the Regents' decision in Freeman v. School Committee of the City of Pawtucket, supra.

11. See footnote 4, p. 3 of the Commissioner's decision in Daley v. North Providence School Committee, May 25, 1977.

year. Furthermore, we find that in applying to be "transferred" to two vacant positions at the close of the 1990-91 school year, and in pursuing a grievance which implicitly raised his statutory claim (that he should be accorded status as a regular teacher) the appellant raised these rights before the school committee in a timely fashion. His right to assert an individual remedy is not, therefore, time-barred.

We direct the parties to confer to attempt to resolve the issue of appropriate remedy in this case. If the parties are unable to do so within sixty (60) days from the date of this decision, we will reconvene to determine an appropriate remedy.

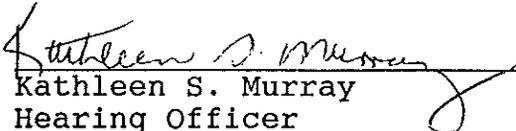
Factors for the parties' consideration in resolving the issue of remedy should be:

1. R.I.G.L. 16-13-2 provides no specific remedy
2. prior decisions of the Commissioner which accord specific individuals the right to appointment are, for the most part, cases in which the individual had recall rights or that individual was at some later point selected for the position.
3. if entitled to appointment to the position, the appellant received no timely notice of non-renewal under the statute.
4. the appellant was under a continuing duty to mitigate his damages.
5. the adjustment after reaching 135 days as a substitute in school year 1990-1991 would not have been paid had the appellant been appointed a regular teacher as of January 2, 1991.¹²
6. if the appellant is entitled to appointment as a regular teacher and continuing employment until notified of non-renewal, the appellant would be on probationary status until he has served three full and successive years of employment under annual contract.

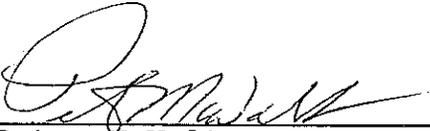
12. see Parente v. Smithfield School Committee, August 12, 1988 decision of the Commissioner.

7. Unsatisfactory performance, or even the fact that the school committee wished to find a better candidate would likely serve as a valid reason for non-renewal.

For the foregoing reasons, the appeal is sustained. The parties should notify the Commissioner if unable to agree to an appropriate remedy within sixty (60) days of the date of this decision.


Kathleen S. Murray
Hearing Officer

APPROVED:


Peter McWalters
Commissioner of Education

DATE: December 21, 1992