STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

CHERIE MARTIN

VS.

BARRINGTON SCHOOL COMMITTEE

DECISION

HELD: Compensation paid to the appellant for her services as a regularly-employed substitute was in compliance with statutory requirements.

June 29, 1992

Travel of the Case

By letter received at the Commissioner's office on October 17, 1991, Cherie Martin appealed a decision of the Barrington School Committee to deny her additional compensation for her employment during the 1989-90 and 1990-91 school years. Ms. Martin had been employed as a substitute teacher during those years, and sought additional compensation pursuant to the salary schedule in effect for regular teachers.

The matter was heard on December 19, 1991. The transcript was received on January 10, 1992 and thereafter the parties submitted memoranda in support of their respective positions. The record in the case closed on February 21, 1992.

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

Findings of Relevant Facts

- Beginning March 28, 1990, Cherie Martin was employed as a substitute teacher assigned to teach home economics at Barrington High School.
- Ms. Martin was hired as a substitute to replace a teacher who was seriously ill. She was told at that time that she would remain in the position until the regular teacher's return. Tr. pp. 20-21.
- Ms. Martin was advised sometime in April or May of 1990 that the regular teacher would not be returning that year. Tr. p. 21-22, and she remained in that position until the end of the school year.

- Commencing with orientation day of school year 1990-91, Ms. Martin was again employed as a substitute in the home economics class she had taught the prior semester. Tr. p. 23-24.
- At the beginning of school year 1990-91 she was told that the teacher for whom she was substituting was still very sick and would probably be absent until January, 1991. Sometime in the fall, Ms. Martin learned that the teacher's absence would continue even beyond January, 1991. Tr. p. 27.
- Mr. Gray, principal of Barrington High School communicated with the absent teacher about her medical condition during the second semester and recalls her indicating that her condition was such that her return was not likely (Tr. p. 58). Mr. Gray continued to be hopeful for her return that school year and told the teacher that she "could walk in on a Monday and tell me that Wednesday she would like to come back, and that could happen". Tr. p. 58-59.
- In March of 1991, the teacher for whom Ms. Martin was substituting applied for, and received, an advancement of 69.5 sick days from the "major illness bank". The advancement of sick leave indicated the teacher's intention to be out on sick leave for the remainder of the school year. Tr. pp. 45-46.
- Cherie Martin continued in the position for the balance of the school year. The teacher for whom she substituted did not recover and died during the following summer. Tr. p. 30.

- During the entire time (March - June of 1990 and September 1990 - June 1991) Ms. Martin functioned as a regular teacher for the class in which she substituted-administering tests, submitting grades, preparing and teaching classes, attending school open house, etc.
- Her compensation during the entire period was that of a long-term substitute. She was paid $110.00/ a day in school year 1989-90; $119.00/ a day in 1990-91 until the 136th day at which time she received a daily rate of $136.73, step 3 with a Master's degree under the contract in effect for regular teachers.

Position of the Parties

Counsel for Ms. Martin takes the position that during her period of employment as a home economics teacher, the appellant performed all the duties of a regular teacher. She performed these duties over a period in excess of an entire school year. The appellant does not assert that a "vacancy" in the home economics position was created when the regular teacher's illness forced her absence for such a long period of time.[1] Although the appellant accepts that she was properly classified as a "substitute", she nonetheless points to the fact that her service during this entire time was indistinguishable from that of a

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1 The regular teacher did not seek an approved medical leave of absence of specific duration. School administrators did not press her for more information on how long she anticipated being absent. They shared the teacher's hope of improved health and likelihood of return to school, and indicated their flexibility to accommodate her return to her teaching duties at any point in time that she indicated she was able to do so.

regular teacher. She cites the cases of Riccetelli (sic) v. North Providence School Committee[2] and Lauro v. Providence School Committee[3] for the proposition that under such circumstances a long-term substitute is "deemed to be" a regularly-employed teacher. It is argued that she thereby becomes entitled to compensation at the appropriate step of the salary scale in effect for regular teachers retroactive to her first day of teaching. Her counsel also argues her entitlement to other employment benefits under the provisions of the Barrington teachers contract.

The Barrington school committee, in its memorandum, points out that at all times during her employment Ms. Martin was a "substitute", taking the place of a teacher on indefinite sick leave. In support of its position that Ms. Martin was not filling an actual vacancy under such circumstances the school committee points to the Commissioner's decision in Lavallee v. Providence School Committee, November 12, 1981. The school committee points out that her compensation complied with the statutory requirement that teachers, including substitutes who become regularly-employed, that is serve at least 135 days in a school year, receive a salary according to a schedule which recognizes their years of service, experience and training. The school committee argues that it has fully complied with this statutory requirement by paying Ms. Martin according to the salary schedule in effect for regular teachers from her 136th day of employment forward

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2 Decision of the Commissioner dated May 25, 1977
3 Decision of the Commissioner dated November 21, 1977

during the 1990-91 school year. Counsel cites Berthiaume v. School Committee of the City of Woonsocket 121 R.I. 243, 397 A 2d889 (1979) in support of its contention that it has properly compensated the appellant, a long-term substitute in the Barrington school system, for her service in both of the school years in question.

DECISION

The facts in this case clearly indicate that Ms. Martin had all of the responsibilities and performed the functions of a regular classroom teacher for the home economics class at the high school from March of 1990 through June of 1991. Doing lesson plans, teaching, administering tests, chaperoning dances, etc. were all responsibilities which she assumed during this period of time. She performed these responsibilities in a manner which is summarized in a glowing letter of recommendation written by her principal at the end of school year 1990-91. Her job responsibilities in this long-term assignment differed substantially from those one would expect of a substitute whose classroom assignments change daily or are short-term. Yet, because she was employed as a substitute, and properly so, the applicable statute determining her compensation makes no distinction between the appellant and a substitute who was employed for the same number of days, but in a different classroom every day. While there certainly can be varying levels of responsibility and workload for substitute teachers, depending on the nature and length of their assignment, the present statutory scheme relating to the compensation of

long-term substitutes[4] doesn't take into account the nature of the substitute teacher's assignment. All substitute teachers who are employed more than 135 days, be they in one classroom or several, are to be compensated pursuant to a salary schedule recognizing their years of experience, but the payment need not be retroactive to the first day of their employment, even if they effectively perform the work of the regular teacher.

In Berthiaume, supra, the Rhode Island Supreme Court disagreed with the Board of Regents that section 16-7-29 (which requires regularly employed teachers to be paid according to a salary schedule) had been repealed by the school teachers arbitration act. The Court also disagreed with the decision of the Commissioner[5] that upon becoming regularly employed, substitutes were entitled to salary-schedule compensation retroactive to their first day of employment. The Court held that only from the 136th day of service forward must a substitute's salary reflect years of service, experience and training. Also, the court clearly indicated that compensation for regularly-employed substitutes and regular teachers need not be the same, noting:

> We perceive nothing in Sec. 16-7-29 that mandates equal payment for substitute and regular teachers. (Berthiaume at 895)

We would point out that the Court's discussion of compensation of regularly-employed substitutes contains no mention of a

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4 R.I.G.L. 16-7-29 and 16-16-1 which is incorporated in chapter 7 by R.I.G.L. 16-7-16 (h)

5 See Berthiaume et al v. School Committee of the City of Woonsocket, decision of the Commissioner dated August 16, 1976.

special rule applicable to those substitutes who serve for long periods in one classroom and in effect function as a regular teacher for all or substantially all of a school year.

It is our judgement that the Berthiaume case provides a uniform rule governing the compensation of substitutes who become regularly-employed, and that state law does not address or require additional compensation for those substitutes who have the responsibilities of a regular teacher as well. We interpret the Berthiaume decision as implicitly overruling the Commissioner's decision in the two cases cited by the appellant, Riccitelli and Lauro. To the extent that a separate theory of compensation for regularly-employed substitutes who functioned as regular teachers[6] survived Berthiaume (a 1979 case) it fell with the court's overturn of the Lauro decision in 1981.[7] While not discussing the exact issue of the status of a substitute who actually performs the work of a regular teacher, the court denied the substitute teacher's claim in its entirety. We interpret this decision as rejecting each and every theory on which Mr. Lauro based his claim to additional compensation, including the fact that he performed as a regular teacher during the period of his employment.[8]

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6 Which would appear to be a second basis on which the Commissioner decided Mr. Lauro and Ms. Riccitelli should be compensated as regular teachers.

7 In a matter captioned as School Committee of the City of Providence v. Board of Regents for Education, 429 A 2d 1297 (1981)

8 The Court explicitly rejected Mr. Lauro's claim that his termination just prior to his 135th day as a substitute improperly prevented him from attaining "regularly-employed" status.

In summary, the present statutory scheme does not support the appellant's claim to additional compensation for the school years in question. We do recognize that in certain situations an inequity in the statutorily-required compensation for substitutes may exist, but we note that many of the school districts, through policy or specific provision of the collective bargaining agreement, have addressed this issue.

The appeal is denied and dismissed.

Kathleen S. Murray
Hearing Officer

APPROVED:

Peter McWalters
Commissioner of Education

Date: June 29, 1992