

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATION

COMMISSIONER OF EDUCATION

LYNNE A. BIGOS
v.
SCITUATE SCHOOL COMMITTEE

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DECISION

HELD: The provision of the Scituate teachers' contract requiring partial credit for years of part-time teaching service contravenes state education law, section 16-7-29. The union is joined as a party and the matter continued for further proceedings.

DATE: March 19, 1993

TRAVEL OF THE CASE

This matter was appealed to the Commissioner of Elementary and Secondary Education on December 22, 1991. The Scituate School Committee had denied the request of a teacher in its system, Lynne A. Bigos, to receive additional credit for years of part-time teaching for purposes of her placement on the salary schedule. Per agreement of the parties, hearing on the appeal was held in abeyance pending the decision of the Rhode Island Supreme Court in D'Ambra v. North Providence School Committee 601 A2d 1370 (1992). After the court's issuance of its decision in D'Ambra, this matter was scheduled for hearing by agreement of counsel on July 14, 1992. Briefs were submitted, a process completed on November 27, 1992 at which time the record in this case closed.

ISSUE

Is the appellant entitled to additional credit for years of part-time teaching service and placement at a higher step on the salary schedule in effect for certified teaching personnel in Scituate?

FINDINGS OF RELEVANT FACTS

- o Lynne A. Bigos was initially hired by the Scituate School Committee as an itinerant teacher of remedial math. Tr. p10.
- o During school years 1982-83 through 1984-85 Ms. Bigos was employed under an annual contract on a part-time basis (3/5 time). In all respects she was "regularly employed" in the Scituate School System. (Stipulation Tr. p. 19)
- o Commencing with school year 1985-1986 and continuing to the present, Ms. Bigos has been employed as a full time teacher in the Scituate School System. (Tr. p. 13)
- o The collective bargaining agreement between the teachers' union and the Scituate School Committee provides that part-time teachers (defined as those who work less than 135 school days or the equivalent thereof) shall advance one step on the salary schedule every two years. (S.C. Ex. A, agreement between the Scituate School Committee and the Scituate Teachers Association 1988-1991)¹
- o Consistent with the provisions of the collective bargaining agreement described above, the appellant is credited with one year of service for every two years of part-time employment in the Scituate school system. (Tr. pp. 14-16; Appellants Ex. 2)

1. The relevant provisions of Article XXIV have been part of the collective bargaining agreement since 1978.

POSITION OF THE PARTIES

The Appellant:

In making her claim before the Commissioner, Ms. Bigos argues that the Rhode Island Supreme Court's ruling in D'Ambra v. North Providence School Committee² is controlling on the issue of whether her three years of part time employment qualify as "years of service" for purposes of credit on the salary schedule.³ If each year of part-time service were fully credited, the appellant would now be placed two steps higher on the salary schedule in effect for certified personnel in Scituate schools. Application of state statute (16-7-29) would require the additional service credit, argues Ms. Bigos.

Although counsel for the appellant recognizes the existence of a contractual provision providing that service credit for part-time teachers will be at the rate of one step for every two years of part-time service, he argues that the requirements of 16-7-29 cannot be varied or waived by the collective bargaining agreement.

SCHOOL COMMITTEE

Counsel for the school committee takes the position that section 16-7-29 is inapplicable to teachers who are beneficiaries of a collective bargaining agreement. He argues that the statute authorizing collective bargaining for certified teachers was passed by our legislature six (6) years after passage of R.I.G.L. 16-7-29, which requires inter alia that teachers be compensated pursuant to a salary schedule which recognizes "years of service, experience, and training". It is argued that :

A logical conclusion from this sequence is that teachers who are not beneficiaries of a collective bargaining contract would receive protection under 16-7-29 and those who are members of a bargaining unit receive protection under the agreement negotiated. (Brief of the school committee, p. 8)

We interpret this argument to mean that while section 16-7-29 is not repealed in general by the School Teachers Arbitration Act, it is effectively repealed as to teachers whose salaries and conditions of employment have become the subject of a collective bargaining agreement. The school committee goes on to note that, for the most part, any "protection" accorded to certified teachers by the provisions of 16-7-29 has been rendered unnecessary because its financial provisions have been superseded by the much more generous provisions of union contracts. From a practical

2. 601 A2d 1370 (1992)

3. The School Committee stipulated that during the school years in which Ms. Bigos was part-time i.e. a three-fifths (3/5) itinerant teacher, she was "regularly employed" as that term is used in R.I.G.L. 16-7-29. see Tr. p.19; Brief of the school committee p. 4.

standpoint, then, the school committee argues that 16-7-29 has become obsolete.⁴ Since the School Teachers Arbitration Act (28-9.3) is the later and "more comprehensive" statute, it should be controlling (i.e. the collective bargaining agreement it authorizes should be controlling) on the issue of service credit, the committee argues. Applying the contract, then, the appellant is given appropriate credit for her years of part-time service.

DECISION

Given that there is no dispute that this teacher was regularly employed during the years in question, the only issue before the Commissioner is whether the contract or section 16-7-29 of the General Laws determines how much credit should be given her years of part time service. Our Supreme Court's ruling in D'Ambra, supra, answered the question of whether 16-7-29's reference to "years of service" encompassed years of part-time teaching service. In light of the Court's construction of that phrase to include years of part-time employment, it is clear that there is a conflict between 16-7-29 and Article XXIV of the contract.⁵ One provides for a year of part time employment to be credited as one/half a year of service in determining Scituate teachers' placement on the salary schedule and the other provides full credit for each year of part-time service.

Our state legislature has very recently indicated its awareness of the provisions of 16-7-29. In its 1992 enactments the legislature amended 16-7-29 to remove the stated minimum salaries, and the \$300 maximum step increase. We view the legislature's action as reaffirming the few remaining requirements as to teacher salaries contained in section 16-7-29. We would also note that these amendments were made after the D'Ambra decision. If the Legislature disagreed with the court's interpretation of "year of service," it had opportunity to address this issue in its 1992 legislative session. We find that legislative history contradicts the school committee's arguments regarding the obsolescence of 16-7-29. There is also no basis to conclude the legislature intended to exclude from its coverage teachers who benefit from collectively-bargained employment contracts. The statute remains applicable to all certified personnel regularly employed in our public schools.

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4. As proof of its obsolescence, counsel notes that 16-7-29 has not been amended since its 1960 enactment; in point of fact, however, 16-7-29 was amended by our legislature in its 1992 session.
 5. We disagree with school committee counsel that the issue in this case involves a conflict between two statutes per se. We see the conflict as one between a specific provision of a collective bargaining agreement and a specific statutory provision. As pointed out by the Court in Berthiaume 28-9.3 and 16-7-29 are to be read consistently insofar as possible, and deemed in pari materia. See Berthiaume v. School Committee of Woonsocket. 121 RI 243 (1979).

The effect of a provision of a teachers' contract which is at odds with a statute is a matter we have ruled on previously. The Commissioner ruled in the case of Warwick Teachers Union on behalf of Mary Conway et. al. v. Warwick School Committee,⁶ that a provision of a collective bargaining agreement which is in conflict with a specific provision of state education law is invalid. In the Warwick case a provision of the collective bargaining agreement gave Warwick teachers credit for previous teaching experience, but only experience in the Warwick school system. This clearly contravened the provision of state education law (again section 16-7-29) which required that all in-state public school teaching experience be recognized and credited.

At the time of the Commissioner's ruling in the Warwick case, there was no Rhode Island case which stood for the proposition that a provision of a collective bargaining agreement at odds with a particular statute was invalid. See footnote 8 of the Warwick decision for citations of authority from other jurisdictions relied on in that ruling. Our Supreme Court had intimated in Belanger v. Matteson, 115 R.I. 332, 346 A2d124 (1975) that it would not uphold the contractual provision. The Court had stated:

The legislative mandate for good-faith bargaining is broad and unqualified and we will not limit its thrust in the absence of an explicit statutory provision which specifically bars a school committee form making an agreement as to a particular term or condition of employment. Belanger at 353.

More recently, in Pawtucket School Committee v. Pawtucket Teachers Alliance - A2d - No 91-404-A (July 15, 1992) and in Vose v. Rhode Island Brotherhood of Correctional Officers, 587 A2d 913 (R.I. 1991) our court has explicitly affirmed this principle of law.⁷ These cases lead us to conclude that Article XXIV of the contract in effect between the Scituate School Committee and the Scituate Teachers' Association stands in contravention of state education law. Before ruling as to the validity of article XXIV and before

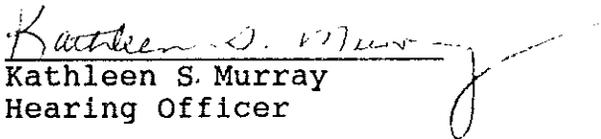
6. July 15, 1988 decision of the Commissioner; affirmed by the Board of Regents September 8, 1988.

7. Birkett v. Chatterton 13 RI 299 (1881), cited by the court in the Pawtucket case as precedent in our jurisdiction actually dealt with the invalidity of an illegal contract, not an invalid provision of an otherwise legal contract.

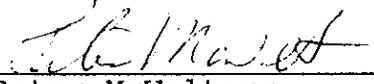
addressing the appropriate remedy of the appellant in this matter, we direct that the Scituate Teachers' Association be joined as a party to this case. We incorporate herein the reasons for such joinder set forth in the recent case of Laliberte v. Pawtucket School Committee,⁸ a case involving validity of a "step freeze" negotiated by the Pawtucket school committee and the teachers' union.

This matter is continued for further proceedings consistent with this decision.

8. Decision of the Commissioner dated July 29, 1992.


Kathleen S. Murray
Hearing Officer

Approved


Peter McWalters
Commissioner of Education