

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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DONALD RICHARD

VS.

WARWICK SCHOOL COMMITTEE  
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DECISION

Held: Appeal is barred by laches because nontenured teacher did not request a hearing before the School Committee within a reasonable time.

Date: November 23, 1993

## Introduction

This matter concerns an appeal by Donald Richard from the Warwick School Committee's failure to employ him as a teacher for the 1991-1992 school year.<sup>1</sup>

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

## Background

Appellant is a nontenured teacher. He holds teaching certificates in secondary Spanish and K-12 guidance counselor.

On September 5, 1990, the School Committee appointed Appellant to a .4 position teaching Spanish.

In November 1990 the School Committee hired a full-time guidance counselor. Appellant filed a grievance pursuant to the applicable collective-bargaining agreement claiming that he should have been appointed to the guidance counselor's position before a person outside of the bargaining unit was hired. The grievance was not resolved and went to arbitration.

By letter dated February 20, 1991, the School Committee informed Appellant that it had voted "to suspend your employment as a teacher effective at the close of the 1990-91 school year." (Joint Exhibit 1). The letter further stated that

The specific reason for the action is that the School Department anticipates a change in the student enrollment patterns for elective and other primary subject areas.

The individual hired as guidance counselor did not receive a notice from the School Committee.

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<sup>1</sup> The Commissioner of Education designated the undersigned hearing officer to hear this appeal. A hearing was held on January 14, 1993, and the record in this matter closed on March 8, 1993.

In an award dated January 13, 1992, the arbitrator denied Appellant's grievance concerning the guidance counselor's position. (School Committee Exhibit 1).

On January 15, 1992 the Warwick Teachers' Union requested on Appellant's behalf a hearing before the School Committee. The request stated that "[r]ecent facts have come to light which raise questions regarding the lay-off of Donald Richard." (Joint Exhibit 4).

The School Committee conducted a hearing on March 3, 1992. With regard to the timing of the appeal to the School Committee, Appellant's representative stated at the hearing that "the question about what entitlement if any Mr. Richards (sic) may have had was prompted by [the] Supreme Court decision" in D'Ambra v. North Providence,<sup>2</sup> issued on January 10, 1992. (Joint Exhibit 5, p. 9).

The School Committee denied Mr. Richard's appeal in a letter dated March 6, 1992. (Joint Exhibit 6).

Appellant was not recalled to employment during the 1991-1992 school year. The individual hired as guidance counselor in November 1990 remained employed for the 1991-1992 school year.

Article 6-3.2(D) of the collective-bargaining agreement between the School Committee and the Teachers' Union states that

Beginning September 1, 1979, if a teacher has had part-time, continuous service in the Warwick School System, such service shall be prorated in determining seniority. (Joint Exhibit 2).

#### Positions of the Parties

In his opening statement at the hearing Appellant contends that,

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2 601 A.2d 1370 (1992).

as a regularly-employed teacher for the 1990-1991 school year, his statutory rights were violated by the School Committee's failure to recall him for the 1991-1992 school year when other individuals hired after him continued in employment or were recalled for that school year.

In his closing argument, Appellant asserts that he was suspended from employment pursuant to R.I.G.L. 16-13-6.<sup>3</sup> Citing the D'Ambra decision, Appellant argues that there is no difference between regularly-employed part-time and full-time teachers for purposes of seniority under R.I.G.L. 16-13-6. Appellant claims that the School Committee violated the statute by laying him off while continuing to employ the less senior guidance counselor. Appellant requests that he be made whole for the salary and benefits he did not receive for the 1991-1992 school year.

Relying on the Commissioner's decision in Igoe vs. Scituate School Committee, January 2, 1980, the School Committee contends that this appeal is untimely and should be dismissed under the doctrine of laches. On the merits, the School Committee argues that Appellant's layoff did not violate any of his statutory rights because: (1) he was not suspended pursuant to R.I.G.L. 16-13-6; (2) if he had been suspended under that statute, no less-senior Spanish teachers were retained and the School Committee was not obligated to "bump" a non-Spanish teacher, i.e., the guidance counselor; and (3) given the statute's failure to articulate any

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3 R.I.G.L. 16-13-6 states that "A school board may, by reason of a substantial decrease of pupil population within its school system, suspend teachers in such numbers as are necessitated . . . in the inverse order of their employment . . ."

rules of seniority, Appellant's statutory seniority rights are to be determined by the collective-bargaining agreement, which provides in Article 6-3.2(D) that Appellant is less senior than the guidance counselor.

#### Discussion

In Igoe vs. Scituate School Committee, a nontenured teacher was notified of nonrenewal by letter dated February 21. The teacher requested a hearing before the school committee by letter dated July 23. The teacher stated that she delayed asking for a hearing pending the results of a budget meeting, her efforts to gain reappointment, and her applications for other positions. She argued that she did not wait an unreasonably long time to request a hearing and that the doctrine of laches was not applicable.

The Commissioner held that "the appellant did not request a hearing under Section 16-13-2 within a reasonable time after she received notification on non-renewal." (Decision, p. 8). It was found that the facts of the case did not justify the teacher's failure to "promptly" request a hearing before the school committee. (Ibid., p. 9). In so finding, the Commissioner stated that

Although the concept of "a reasonable time" is inherently flexible, it is not standardless. (The fact that tenured teachers are only allowed fifteen days to request a hearing after they are notified of their dismissal [General Laws Sec. 16-13-4] is certainly of some relevance to the question of how much time non-tenured teachers should be allowed to request a hearing under similar circumstances.) What constitutes "a reasonable time" may vary to some extent from case to case, but there must always come a point where the line between reasonableness and non-reasonableness is crossed. It is our opinion that in this case that line was crossed at some point long prior to July 23. (Ibid., p. 8).

We find the Igoe case to be controlling, and that the appeal must be denied because Appellant did not request a hearing before the School Committee within a reasonable time

Appellant's 11-month delay in requesting a hearing from the School Committee is significantly longer than the 5-month delay found to be unreasonable in Igoe. As justification for the delay, Appellant relies on the Supreme Court's January 10, 1992 decision in the D'Ambra case. Appellant asserts that the basis of his claim herein arose from the Court's decision in that case. In D'Ambra, however, the Supreme Court affirmed the decisions of the Commissioner and the Board of Regents, issued on January 3, 1990 and August 9, 1990, respectively. The Commissioner held, and the Board of Regents agreed, that the part-time teacher in D'Ambra served as a regularly-employed teacher from 1979 to 1983 and that upon her appointment as a full-time teacher, she was entitled to credit for those years of service for purposes of placement on the salary schedule under R.I.G.L. 16-7-29.<sup>4</sup>

In its decision of January 10, 1992, the Supreme Court approved the Commissioner's determination of the teacher's employment status and salary entitlement in D'Ambra. The Court did not express or accept any novel reasons or arguments to support the Commissioner's decision. Given this background, we do not find that the Supreme Court's decision in the D'Ambra case justified Appellant's delay in requesting a hearing regarding

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4 R.I.G.L. 16-7-29 provides that communities shall establish "a salary schedule recognizing years of service, experience, and training" for all regularly-employed certified personnel in the public schools.

his February 20, 1991 notice.

We also find that the record fails to establish any "recent facts" which would excuse the untimeliness of Appellant's request.<sup>5</sup> We note that by the time Appellant requested a hearing, half of the school year for which he is seeking backpay and benefits had elapsed. In addition, the time preceding the school year during which many hiring and staffing decisions are made had long since passed without Appellant contesting his February 20, 1991 notice. We find that the Appellant's unreasonable delay in requesting a hearing has worked to the School Committee's prejudice. We therefore hold that this appeal is barred under the doctrine of laches.<sup>6</sup>

#### Conclusion

Appellant did not request a hearing before the School Committee within a reasonable time after receiving the Committee's

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5 The following exchange occurred between Appellant and his representative at the March 3, 1992 hearing before the School Committee:

- Q. So why did you wait to put forth this claim here until January of 1992?
- A. 'Cause the arbitration just got over with in December. So when that was over with, then we got our results back.
- Q. The arbitration did not deal with this issue?
- A. No, no, it did not.
- Q. You knew that it did not?
- A. Right. (Joint Exhibit 5, p. 6).

The record does not indicate why, other than the Supreme Court's decision in the D'Ambra case, Appellant did not pursue "this issue" before the School Committee prior to January 1992.

6 In view of our holding, we do not address the substantive issues raised by this appeal.

notice of February 20, 1991.

The appeal is denied.

Paul E. Pontarelli  
Paul E. Pontarelli  
Hearing Officer

Approved:

Peter McWalters  
Peter McWalters  
Commissioner of Education

Date: November 23, 1993