

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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DONNA LALIBERTE ET AL.

vs.

PAWTUCKET SCHOOL COMMITTEE  
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DECISION

Held: Provision of the collective-bargaining agreement containing a salary schedule for teachers for the 1991-1992 school year is invalid for being in conflict with R.I.G.L. 16-7-29's requirement of an annual step advancement for certified personnel; School Committee and Teachers' Alliance are directed to meet with regard to the establishment of a salary schedule for the 1991-1992 school year which is consistent with the statute.

June 22, 1993

### Introduction

On July 29, 1992 we issued a decision in this matter holding that R.I.G.L. 16-7-29 requires a school committee to establish a salary schedule for regularly-employed certified personnel which provides for an annual step advancement. We continued this matter for the purpose of joining the Pawtucket Teachers' Alliance as a party before determining whether provisions of the collective-bargaining agreement at issue herein are in conflict with R.I.G.L. 16-7-29. A hearing in this proceeding was held on August 27, 1992. Appellants and the School Committee subsequently submitted memoranda.

For the reasons set forth below, we find that the salary schedule for the 1991-1992 school year contained in the collective-bargaining agreement is invalid under R.I.G.L. 16-7-29. We further find that neither the collective-bargaining agreement nor the statute provides for any specific monetary relief to Appellants. Accordingly, we will direct the School Committee and the Teachers' Alliance to meet with regard to the establishment of a salary schedule for the 1991-1992 school year which is consistent with R.I.G.L. 16-7-29.

### Background

At the time of the execution of the collective-bargaining agreement and the filing of the appeal herein, R.I.G.L. 16-7-29 provided that

Every community shall establish and put into full effect by appropriate action of its school committee a salary schedule recognizing years of service, experience, and training, beginning at a minimum of not less than four thousand dollars (\$4,000) and rising to a maximum of at least six thousand dollars (\$6,000)

for all certified personnel regularly employed in the public schools and having no more than twelve (12) annual steps, with no annual step providing an increase of more than three hundred dollars (\$300). The term "school year" as applied to the salary schedule shall mean the ten (10) calendar months beginning in September and ending the following June.<sup>1</sup>

Effective September 1, 1991, the School Committee and the Teachers' Alliance entered into a 3-year collective-bargaining agreement. (School Committee Exhibit 1). Article VIII of the agreement, entitled "Monetary Compensations," states that "[e]ffective September 1, 1991, the salary schedule shall be established pursuant to Appendix A." (see Attachment 1). Appendix A of the agreement, entitled "Pawtucket School Department Teacher Scale 1991-1992," contains a salary schedule. It also includes the following language:

APPENDIX A - FREEZE  
NO STEP. (see Attachment 2).

Article VIII of the agreement provides for a \$1,000 severance payment to any teacher employed as of September 8, 1991 "who would have received a step increase during the 1991-1992 School Year . . . ." It further provides for salary schedules for the 1992-1993 and 1993-1994 school years.

Article XI of the agreement, entitled "Savings Clause," states in pertinent part that

If any provision of this Agreement is or shall at any time be contrary to law, then such provision shall not be applicable or performed or enforced, except to the extent permitted by law. In the event

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<sup>1</sup> R.I.G.L. 16-7-29 was amended on July 13, 1992 to eliminate the salary schedule's \$4,000 minimum and \$6,000 maximum amounts, and the \$300 limit for any annual step. The amendments do not affect our construction of the statute with regard to the appeal herein.

that any provision of this Agreement is or shall at any time be contrary to law, all other provisions of this Agreement shall continue in effect.

It is undisputed that the salary schedule for the 1991-1992 school year was the same as that in effect for the 1990-1991 school year, and that each of the Appellants remained on the same step of the salary schedule for the 1991-1992 school year as she had occupied in the 1990-1991 school year.

#### Positions of the Parties

Appellants contend that the step freeze for the 1991-1992 school year contained in the collective-bargaining agreement is inconsistent with R.I.G.L. 16-7-29 and therefore invalid. They argue that, under the savings clause of the contract, the step freeze is not applicable and cannot be enforced. Appellants assert that it is the obligation of the School Committee, not the Teachers' Alliance, to establish the salary schedule, and that the School Committee therefore should be ordered to remedy this matter by advancing Appellants one step on the salary schedule set forth in Appendix A of the agreement and paying them the difference in salary.

The School Committee contends, inter alia, that the salary schedule for the 1991-1992 school year complies with R.I.G.L. 16-7-29 because the monetary compensation received by teachers in that year increased at each step by the provision of the \$1,000 severance payment. The School Committee therefore argues that teacher salaries were not frozen, and that the teachers' monetary compensation for 1991-1992 recognizes additional experience and service. The School Committee asserts that the deferral of the \$1,000 payment does not violate R.I.G.L. 16-7-29.

The School Committee further contends that the step freeze is an integral part of a monetary package which was bargained for by both parties to the contract, and thus cannot be severed from Article VIII. The School Committee argues that other methods of payment could have been agreed upon to implement this monetary package. Consequently, if the salary schedule for the 1991-1992 school year is found to be illegal, it is by virtue of a mere drafting error on the part of both parties to the contract. Fairness therefore dictates that Article VIII of the contract be voided in its entirety and the remainder of the agreement be left intact as provided in the savings clause.

The Pawtucket Teachers' Alliance did not take any position with regard to the issues raised by this appeal.

#### Discussion

As we stated in our earlier decision in this matter, it is well established that a provision of a collective-bargaining agreement which is in conflict with a specific provision of Rhode Island education law is invalid. Warwick Teachers Union on behalf of Mary Conway, Richard Dickson and Mary Phillips vs. Warwick School Committee, Commissioner's Decision, January 15, 1988. See also Vose v. Brotherhood of Correctional Officers, 587 A.2d 913 (R.I. 1991).

The Conway case also concerned R.I.G.L. 16-7-29. There the Warwick School Committee and the teachers' union negotiated a contractual term which, for purposes of determining teachers' initial placement on the salary scale, required that prior teaching experience be continuous and in the Warwick school system. Relying

on decisions of the Commissioner and the Rhode Island Supreme Court, the Commissioner found that R.I.G.L. 16-7-29 requires a community to recognize prior teaching service in the public schools of all Rhode Island cities and towns, not just the schools of the community which is placing the teacher on its salary schedule. The Commissioner in Conway therefore held that R.I.G.L. 16-7-29 "operates as a bar to a contractual provision providing credit for less-than-all public school teaching in this state in placing teachers on a salary scale," and that the teachers "are entitled to placement on the salary scale of the Warwick school system in accordance with their prior teaching service in the public schools in Rhode Island" with appropriate back pay. (Decision, pp. 6-7, 9).

We must also hold in this matter that R.I.G.L. 16-7-29 operates as a bar to Appendix A of the collective-bargaining agreement.

As we stated in our earlier decision in this proceeding, R.I.G.L. 16-7-29 requires an annual step advancement on the salary schedule for regularly-employed certified personnel. While the statute does not require that the annual step advancement result in a salary increase, it does require that teachers advance on the salary scale every year until they have exhausted the steps of the schedule. Appendix A of the contract, which contains the salary schedule for the 1991-1992 school year, directly contradicts the statute's requirement of an annual step advancement by virtue of its "FREEZE NO STEP" language. Because Appendix A is the contract provision containing the actual language which denies any step advancement on the salary scale for the 1991-1992 school year,

we find it to be void in its entirety.

The savings clause of the collective-bargaining agreement states that if a particular provision of the agreement is contrary to law, all other provisions are to continue in effect. With the invalidation of Appendix A and the salary schedule contained therein, there is no basis in either the remaining provisions of the collective-bargaining agreement or the statute upon which to establish a salary schedule for the 1991-1992 school year. Unlike the Conway case, in which teachers were placed on incorrect steps of a valid salary schedule, we have found the very basis for determining the appropriate salary for Appellants, i.e., the salary schedule set forth in the contract, to be invalid.

At the same time, it is clear from the record in this case that the parties intended there would be no salary increase for teachers in 1991-1992 other than the severance payment provided in Article VIII.<sup>2</sup> As we have previously stated, the failure to provide an annual salary increase does not conflict with R.I.G.L. 16-7-29. However, in this case, a wage freeze for the 1991-1992 school year was articulated in the contract as a denial of a step advancement, which is inconsistent with the statute. If the wage freeze had been articulated as part of a salary schedule which provided for a step advancement, it would not be barred by the statute.

In the absence of any contractual or statutory basis to

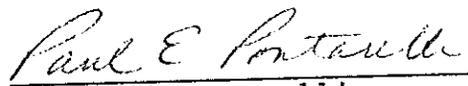
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2 We find that Article VIII's provision of a \$1,000 severance payment to any teacher "who would have received a step increase" in 1991-1992 does not conflict with R.I.G.L. 16-7-29 because, unlike Appendix A, it can be interpreted as referring to the denial of a salary increase.

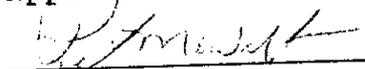
determine a salary schedule for the 1991-1992 school year, we must, pursuant to R.I.G.L. 28-9.3-1 <sup>3</sup> et seq., direct the School Committee and the Teachers' Alliance to meet so that the School Committee may fulfill its obligation under R.I.G.L. 16-7-29 to establish a salary schedule for the 1991-1992 school year. It is our hope that, upon meeting, the parties will abide by their 1991-1992 wage agreement and articulate that agreement in contractual language which establishes a salary schedule providing for a step advancement as required by the statute.

Conclusion

Appendix A of the collective-bargaining agreement between the Pawtucket School Committee and the Pawtucket Teachers' Alliance denies teachers a step advancement on the salary schedule and is therefore invalid as being in conflict with R.I.G.L. 16-7-29. The School Committee and the Teachers' Alliance are hereby directed to meet forthwith with regard to the establishment of a salary schedule for regularly-employed certified teaching personnel for the 1991-1992 school year which is consistent with R.I.G.L. 16-7-29.

  
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Paul E. Pontarelli  
Hearing Officer

Approved:

  
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Peter McWalters  
Commissioner of Education

Date: June 22, 1993

3 The School Teachers' Arbitration Act grants certified teaching personnel the right to bargain collectively with school committees "concerning hours, salary, working conditions and all other terms and conditions of professional employment." R.I.G.L. 28-9.3-2. (emphasis added).

ARTICLE VIII  
MONETARY COMPENSATIONS

SECTION 1. SALARY SCHEDULE.

1) Effective September 1, 1991, the salary schedule shall be established pursuant to Appendix A.

Any teacher employed in the Pawtucket School Department as of September 8, 1991, who would have received a step increase during the 1991-1992 School Year will receive severance payment of one thousand (\$1,000) dollars to be paid when that individual leaves the employ of the Pawtucket School Department.

2) Effective September 1, 1992, the salary schedule shall be established pursuant to Appendix B.

3) Effective September 1, 1993, the salary schedule shall be established pursuant to Appendix C.

4) One half (1/2) of the last paycheck for each year of this contract shall be paid during the first week of July.

5) The extra salary increment of \$400 which is paid to special education teachers shall not be paid to any teacher whose employment as a special education teacher in the Pawtucket School Department commences after August 1, 1978.

APPENDIX A - FREEZE  
NO STEPPAWTUCKET SCHOOL DEPARTMENT  
TEACHER SCALE  
1991-1992

STEP	BACHELORS	MASTERS EQUIVALENT	MASTERS	MASTERS + 30	DOCTORATE
1	21,038	22,088	22,363	22,663	23,163
2	23,095	24,145	24,420	24,720	25,220
3	25,152	26,202	26,477	26,777	27,277
4	27,208	28,258	28,533	28,833	29,333
5	29,265	30,315	30,590	30,890	31,390
6	31,322	32,372	32,647	32,947	33,447
7	33,379	34,429	34,704	35,004	35,504
8	35,435	36,485	36,760	37,060	37,560
9	37,492	38,542	38,817	39,117	39,617
10	39,549	40,599	40,874	41,174	41,674
+20	39,899	40,949	41,224	41,524	42,024
+25	39,949	40,999	41,274	41,574	42,074
+30	40,099	41,149	41,424	41,724	42,224

## DEPARTMENT HEADS

PERIODS	RATES	AMOUNT
6-9	0.02	791
10-20	0.04	1582
21-30	0.06	2373
+30	0.08	3164