STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATION

COMMISSIONER OF EDUCATION

JOSEPH A. MAGLIOCCO
V.
MIDDLETOWN SCHOOL COMMITTEE

DECISION ON REMAND

Held: Mr. Magliocco's remedy for due process violation should be modified to include back pay, but not reinstatement. This remedy renders moot the issue of "cause" for not appointing him as head football coach for the 1989 season at Middletown High School, such that a hearing to determine if "cause" existed for his non-appointment for that year is not necessary.

Travel of the Case

In our prior ruling in this matter[1] we found that at the time the Middletown School Committee took action on the selection of a football coach for the fall, 1989, season at Middletown High School, Joseph Magliocco had a legitimate claim of entitlement to reappointment as head coach. By virtue of a well-known, long established, mutually-accepted institutional practice in the Middletown School System at that time, Mr. Magliocco had a claim of reemployment, or in this case, reappointment, which rose to the level of a constitutionally-protected property interest.[2] As a result, the Commissioner ordered that the matter be remanded to the School Committee so that local school officials could provide the appropriate hearing to the appellant. Nominal damages in the amount of one($1) dollar were also awarded.

Subsequent to the decision, the matter was appealed to the Board of Regents and heard before the appeals committee, which voted to recommend that the Commissioner's decision be affirmed. Both parties then requested that the appeals committee reconsider the case. The School Committee requested reconsideration on the basis of the ruling of the Rhode Island Supreme Court in Blanchette v. Stone et al, 591 A 2d 785 (R.I. 1991) and counsel for Mr. Magliocco requested further relief for Mr. Magliocco (in the nature of back pay and interim reinstatement) on the basis of the United States District Court's ruling in Del Signore v. DiCenzo, 767 F. Supp 423 (D. R.I. 1991). The Board of Regents ruled that the Commissioner should first determine the applicability of the cases cited.

The matter was remanded to the Commissioner on May 14, 1992. In lieu of oral argument, counsel submitted written briefs on the effect each case should have on our prior decision in this matter. Submission of briefs concluded on December 14, 1992, and the record on remand closed at that time.

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[1] decision of the Commissioner dated June 14, 1990

[2] contrary to statements in the School Committee brief to the Board of Regents, the decision did not establish tenure rights for all coaches in Rhode Island. On the contrary, we would assume that the factual situation which gave rise to the property interest was somewhat unique in Rhode Island. The decision clearly was confined to the facts existing with regard to coaches in the Middletown School System at that time.

Review of the case cited by the School Committee, Blanchette v. Stone, supra, indicates that the issue in that case was the applicability R.I.G.L. 36-5-7 to provide "tenure in his position" for Leon Blanchette, a member of the Rhode Island State Police. Without the protections of this statute, state law clearly gave the superintendent the ability to "retire" members of the State Police, with the approval of the Governor, when they had served for twenty (20) years. The Court found the provisions of 42-28-22 of the General Laws applicable and concluded that after twenty (20) years of service, members of the State Police had no job security. Consequently Blanchette had no "property interest" in continued employment and his dismissal was not subject to due process protections. In the instant case, the appellant's property right requiring due process protections was found to have its basis in institutional practice of the School Committee and mutually explicit understandings over a period of fourteen (14) years. Although the appellant argued in his brief that a statutory basis for tenure for athletic coaches also existed, this claim was rejected as without merit. Since the property right was found to stem from a factual situation peculiar to Middletown, and not to originate in state statute, we find that Blanchette does not, and should not, alter our prior ruling in this case. Mr. Blanchette's entire claim to continued employment was premised on state statute and the ruling that the "tenure" statute did not control was dispositive of his case. We therefore reaffirm our finding that Mr. Magliocco was entitled to due process protections at the time a head football coach was selected for Middletown High School for the fall, 1989 season.

The case of Del Signore v. DiCenzo, supra, is advanced on remand as a basis for enlarging the scope of the remedy granted by the Commissioner in the June 14, 1990 decision. In Del Signore, Judge Pettine ruled that a policeman's demotion from the position of sergeant to patrolman in the North Providence Police Department must be accompanied by those due process procedures set forth in the Loudermill decision.[3] Since Mr. Del Signore had not received the required due process, the court ordered that he be given a pre-demotion hearing and that ancillary to that relief, he be awarded back pay from

[3] Cleveland Board of Education v. Loudermill; 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985) in which the United States Supreme Court ruled that oral or written notice of the charges and the evidence against an employee together with opportunity to respond were required prior to termination. Judge Pettine noted in Del Signore, footnote 3 page 428 that such limited pre-demotion process was predicated on the availability of a full post-demotion hearing.

the time of his demotion and be reinstated to the rank of sergeant until the time of such hearing. Del Signore at 429. In ordering reinstatement and back pay, the District Court noted that it interpreted Loudermill as making available such ancillary equitable relief even absent a showing that the employment action was unjustified.[4] Additionally, the court noted a split in the circuits on the issue and the lack of precedent in the First Circuit on the availability of such relief. In reinstating Mr. Del Signore and ordering back pay, the court indicated it was persuaded by the courts[5] that had allowed ancillary relief, and noted "compelling policy reasons for adopting this approach". Del Signore at 429.

We do not interpret Del Signore to mean that the relief accorded in every case of this type must include all three elements-order for a hearing, reinstatement and back pay. Del Signore stands for the proposition that such relief is available and may, in the appropriate case, be ordered. In fact, in the case cited by Judge Pettine as persuasive, Brewer v. Parkman, 918 F 2d 1336 (8th cir 1990) the court declined to reinstate the employee even though it recognized its authority to do so. Consistent with the concept that equitable relief is tailored to the evidence in each case and a matter within the discretion of the decision maker, we decline to order reinstatement of Coach Magliocco. We find it inappropriate to order reinstatement in this case, especially at this point in time, because subsequent to the 1989 football season, any claim to continued employment would have existed only if the Middletown School System kept in effect the policy and practice which gave rise to our finding that a property right existed in the spring of 1989.[6] Given the possibility that the appellant's property right could be and was extinguished in

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[4] prior to Loudermill, the 1978 Supreme Court case of Carey v. Piphus, 435 U.S. 247, 98 S. Ct. 1042, 55 L. Ed. 2d 252 was cited for the proposition that only an order for the required hearing and nominal damages were available to a public employee absent a showing that the employment action was unjustified.

[5] Irizarry v. Cleveland Public Library, 727 F. Supp. 357 (N.D. Ohio 1989) and Brewer v. Parkman, 918 Fd 1336 (8th cir. 1990); note, however that the court of a appeals in Brewer, while endorsing both back pay and reinstatement as available remedies declined to order reinstatement in that particular case. Brewer at 1341 - 1342

[6] there was evidence in the record before us of some preliminary steps undertaken by Superintendent Wheetley to discontinue the policy providing for re appointment of all coaches, absent "cause". Testimony was that coaching positions filled in the spring were posted and that the members of the School Committee were informed that "all jobs were up for application" at its June 8, 1989 meeting. We have no information in the record with regard to whether coaches were ever subsequently notified, by the Superintendent or School Committee, that the policy and practice of the prior fourteen (14) years would change, or that the policy in fact changed.

years subsequent to 1989 it would be inappropriate to order reinstatement. Consistent with this finding, we order that Mr. Magliocco be awarded back pay for the fall, 1989 season only. Again, any claim of entitlement to continued employment beyond the fall of 1989 would be conditioned upon continuation of the policy and practice of the Middletown School Committee.

The effect of our ruling with regard to back pay for the 1989 season is that it renders unnecessary any hearing on the existence of cause for Mr. Magliocco's non-appointment as football coach for that year. In enlarging the scope of the equitable remedies for the due process violation to include back pay,[7] the underlying issue of the existence of cause for non-appointment for that year has been rendered moot. The record before the Commissioner contains no facts regarding whether the policy and practice of appointing incumbent coaches, absent cause, continued beyond the 1989 season. Certainly if it was not terminated, any claim for additional back pay for subsequent years, or even reinstatement, can be addressed through a separate appeal to the Commissioner for the year(s) in question. We find that any dispute of the parties as to these subsequent years is not before us and even if it were could not be addressed, given that the record on appeal in this case closed in October of 1989.

The decision and order entered in this matter on June 4, 1990 is modified as indicated herein.

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7 as we have done in light of the ruling of the District Court in Del Signore v. DiCenzo, supra.

Kathleen Sullivan Murray

Kathleen S. Murray
Hearing Officer

Approved:

Peter McWalters, Commissioner

May 27, 1993
Date