

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

WESTERLY SCHOOL  
COMMITTEE  
VS.  
TOWN OF WESTERLY

DECISION

Held: School committee's budget of \$19,080,516 was insufficient to meet its collective bargaining agreements and other obligations incurred in providing mandated educational services. Additional appropriation of \$455,000 is needed to cover the school deficit for fiscal year 1992-93.

Date: August 18, 1993

### Background and travel of the case:

On March 16, 1993, the Commissioner of Education was notified that continuing informal efforts to resolve the budgetary dispute between the Westerly School Committee and the Town of Westerly had proved unsuccessful.<sup>1</sup> The undersigned was assigned to hear the matter on March 26, 1993.

An extended hearing process began on April 26, 1993, concluding with the seventh hearing date on July 7, 1993. In the interim, counsel for the Town of Westerly was provided with access to voluminous budgetary and expenditure records of the school committee. The record in the case closed on August 2, 1993 upon receipt of the final transcript. At the request of the parties, the decision in this matter has been expedited.

Jurisdiction to hear this appeal lies under R.I. G.L. 16-39-1.

### Findings of Relevant Facts:

- The Westerly Town Council adopted the town budget at its annual fiscal affairs meeting on April 15, 1992. (Town Ex. A)
- The amount appropriated for operation of the town's public schools was \$19,080,516. (Town Ex. A)

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<sup>1</sup> Intervention by the Commissioner of Education had been requested by the Westerly School Committee on July 13, 1992. See S.C. Ex. 6G. As recently as December of 1992 a member of the Commissioner's staff was acting as a special visitor to mediate a resolution. The record is unclear as to the recommendations, if any, made by the Department of Education as a result of this process. We would note that the budget reconciliation process provided for in R.I.G.L. 16-2-21.1 was repealed by Ch. 133 P.L. 1992, effective July 1, 1992.

- By referendum submitted to the voters of the town on May 14, 1993 an increase in the school budget to the amount of \$19,868,150 was rejected. (Town Ex. A; S.C. Ex. 6G)
- On June 9, 1992 the School Committee adopted a reconciled school budget in the amount of \$19,080,516. It also notified the Town Council that the reconciled budget would not enable the committee to comply with its contractual and legal obligations. (S.C. Ex. 6B)
- At the time it adopted a reconciled school budget, the School Committee sought an additional \$1,118,010 appropriation to support its educational program, i.e. \$20,198,526. (S.C. Ex. 6C)
- After several meetings between the Superintendent of Schools, Andrew S. Carrano and both the Town Manager, Joseph Pellegrino and Finance Director, Pasquale Perri, the School Committee voted on October 26, 1992 to seek a lesser amount, \$19,527,632. (S.C. Ex. 6F and Tr. Vol. I p. 30)
- On October 26, 1992, when the School Committee projected its budgetary needs at \$19,527,632 the Superintendent noted that even with additional cost savings measures "we will need a minimum of \$200,00 to \$300,000 to complete this fiscal year". (S.C. Ex. 6F)
- On September 18, 1992 the School Committee, through Superintendent Carrano, requested that additional unanticipated state aid to education in the amount of \$207,000 be added to funds already appropriated to Westerly schools and made available to the School Committee. (S.C. Ex. 6D)
- The \$207,000 in additional unanticipated state aid to education was retained by the Town and not made available to the School Committee. (Tr. Vol. I p. 23)
- Prior to the appropriation by the Town Council, the School Committee and the Westerly Teacher's Association negotiated a reduced salary increase of five (5%) percent, which resulted in a \$278,000 reduction in overall budgetary needs for fiscal year 1992-93. (Tr. Vol. III pp. 25-26, Vol. VII p. 74)
- Subsequent to the appropriation by the Town Council, the School Committee effected considerable reductions in the cost of its educational program. Cost saving measures included, but were not limited to, self-insuring medical insurance and workers compensation programs, re-routing of buses and

re-scheduling of services to kindergarten children, class consolidation, and creation of in district programs for two different categories of handicapped children. See testimony of Dr. Carrano Vol. V. pp. 14-17 and Dr. Hawk, Special Education Director for Westerly Schools. Vol. II pp. 41-42, 64, 68.

- For the 1992-93 school year, the School Committee also requested relief from certain requirements imposed by basic education program regulation, special education regulations, and requirements imposed by 16-21-1 (b) -- "school bus monitors". (Tr. Vol. III pp. 46-53, Vol. IV p. 7)
- Additionally, the School Committee requested of the State Fire Marshal's office waivers or deferrals of certain fire code requirements which would require improvements to school buildings and additional equipment. (Tr. Vol. IV p.9, S.C. Ex. 17-D)
- During school year 1992-93 four non-mandated programs were eliminated. (Tr. Vol. V p. 42)
- The School Committee has formally requested that the pension payment due on its June, 1993 teacher payroll be deferred to fiscal year 1993-94. (Tr. Vol. V p. 87)
- The amount of this pension payment is approximately \$200,000. (Tr. Vol. VI p. 4) This amount, which the School Committee has not budgeted for in fiscal year 93-94, will be paid during that fiscal year.
- Despite several cost-savings measures implemented in the special education program area, increased student enrollment has resulted in a deficit in this program of \$198,479. (Tr. Vol. VI p. 86)
- The excess cost or deficit resulting from the School Committee's self-insured medical insurance program as of the close of this fiscal year was \$50,000 - \$55,000. (Tr. Vol. VII p. 2)
- During fiscal year 1992-93 "unaffiliated" staff of the School Committee, including administrators, received a four (4%) percent salary increase the cost of which was \$27,000. (Tr. Vol. VII p. 63)
- Unaffiliated staff had received no base salary increase for fiscal year 1991-92, but had received salary increments paid because of an individual's attainment of an advanced degree. (Tr. Vol. VII pp. 4, 69, and 90)

- As the fiscal year 1992-93 progressed, attempts were made by the School Committee to confine line item expenditures to amounts budgeted under the \$19,080,516 reconciled budget. (Tr. Vol. VII p. 10)
- Pursuant to an agreement between town officials and the School Committee, when expenditures exceeded monies budgeted for a particular line item, the budget was not amended to reallocate monies to cover the over-expenditure. (Tr. Vol. VII pp. 31,65)
- Both a line item deficit in many spending areas and a bottom line deficit resulted. The total deficit between amount appropriated to the School Committee for fiscal year 1992-93 and expenditures is (pre audit) 450,000 - 455,000.

#### Position of the Parties:

##### Town of Westerly

The Town questions whether there was ever a genuine attempt by the School Committee to conform its expenditures for fiscal year 1993 to the approved budget. Subsequent to adopting the reconciled school budget i.e. a budget conforming to the amount appropriated by the Town Council and confirmed through voter referendum, the School Committee, it is argued, proceeded to spend at a much higher level. The Town solicitor points out that line item expenditures were not limited to line item appropriations, or allocations. Salary increases to unaffiliated staff, not required by any collective bargaining agreement, were voted on and approved by the School Committee even after, counsel notes, its adoption of a budget which did not provide money for such increases.

The position of the Town is that the deficit documented by the exhibits and testimony of Carol Miller, Business Manager of the school department, results not from underfunding, but from a conscious plan of overspending on the part of the schools officials. Counsel would concede that some expenditures, such as certain

special education program costs were both unanticipated and mandated at the time of the appropriation by the town. However, counsel for the town argues that other expenditures, especially for personnel at the high school, could be reduced if, for example, all department heads were required to carry the full teaching load permitted by the teachers' contract.

The town views the 19,080,516 appropriation as establishing an absolute maximum for school expenditures for the fiscal year 1993. Other municipal departments must "live within" their budgets, and so, he argues, must the school department.

#### The School Committee

The position of the School Committee is that all of the expenditures during fiscal 1992-93 were required by contract or necessary to provide educational services required by law. Counsel notes that the deficit established at year-end arises even after substantial cost-savings measures were instituted. In response to the claim that all teachers are not teaching the full number of courses permitted under the collective bargaining agreement, the committee argues that this is actually an efficient practice. If teachers were not used to do such things as class scheduling and servicing of computers, additional administrators and technicians would have to be hired, at greater cost.

The School Committee views the school budget as a flexible document which expands and contracts as the costs associated with providing mandated education services fluctuates.

## Decision

This case points out the existing tension in Rhode Island education law with regard to school spending. The statutes clearly prohibit deficit spending on the part of local school committees. R.I.G.L. 16-9-1. Equally clear is the obligation of a community to fund the school budget in such a way as to enable school committees to meet financial obligations resulting from collective bargaining agreements and other obligations incurred in the providing of services mandated by law. Exeter-West Greenwich Regional School District v. Exeter-West Greenwich Teachers' Association et al, 489 A 2d 1010, 1020 (1985). As we understand it, a school committee, the members of which are convinced that the appropriating authority has not provided sufficient funds to operate the required school programs, must seek relief in the way of an order for an additional appropriation. Our statutory scheme really does not permit the alternative of spending at a level which exceeds or will exceed the appropriation, i.e. deficit spending. We wish to make it clear that our consideration of the Westerly School Committee's claim here should not indicate approval of deficit spending by school committees.

We understand that the legislature's 1992 repeal of fact finding and the budget reconciliation process provided for in R.I.G.L. 16-2-21.1 may have been accompanied by some confusion as to the process to be followed. There is a suggestion on this record of participation of both parties in an informal process utilized by the Department of Education to resolve this budgetary dispute. In this particular case, we are unaware of the process and its outcome. In any event, that process could not have resulted in a binding order to increase the Town's appropriation for operation of Westerly's schools. We thus reaffirm our denial of the Town's motion to dismiss this appeal under the doctrine of election of

remedies. Simply because the School Committee may have invoked the assistance of the Commissioner or participated in some other informal and non binding process prior to its appeal on March 16, 1993 it did not thereby waive its right to appeal to the Commissioner under R.I.G.L. 16-39-1. If anything, the School Committee should have exercised that right sooner to avoid placing itself in a deficit spending position.

The record in this case establishes the Westerly School Committee's entitlement to an additional \$455,000 to cover the cost of operating the school system during 1992-93. The evidence shows that the cost projected by school officials on October 26, 1992, i.e. \$19,527,632 was in fact very close to the actual cost of operating the school system during fiscal 1993, i.e. 19,535,516. Of course the expenditures projected on October 26, 1992 are not identical to those in the year-end summary of expenditures actually made. As the testimony of Dr. Carrano and Dr. Hawk indicated, substantial savings were effected in many areas over the course of this school year. Concurrently, expenditures unanticipated at the time the school budget was developed and at the time of the Town appropriation were required to be made. For the most part, the unanticipated expenditures were due to increased enrollment and, as was the case in special education, costs incurred in the hiring of staff for an in-district program which replaced a more costly method of making out-of-district special education placements.

The initial assessment of the Superintendent that the appropriation was insufficient to provide education to students in the Town of Westerly in conformance with contractual and legal mandates (Tr. Vol. V pp. 27, 29) remained unchanged. His opinion also stands uncontradicted on the record before us. There

is no evidence that in its operation of schools the School Committee provided programs beyond those required by the Basic Education Program.<sup>2</sup> Similarly the record shows no cost inefficiencies in the manner in which the School Committee chose to provide these mandated programs and services.

What the Town did attempt to demonstrate was that additional savings could have been effected if all teachers employed by the School Committee, including all department chairpersons, taught the maximum load permitted by the collective bargaining agreement. The record shows that some teachers are not in fact teaching the full load of classes permitted under this contract. Some are involved in maintenance of computers (Tr. Vol. V p.78) in instruction of other teachers in the use of computers in their subject areas (Tr. Vol. VI p. 14) in class scheduling (Tr. Vol. VI pp. 14-15, 53-54) and administrative functions (Tr. Vol. VI p. 22). In all of these instances, the evidence showed that the alternative to using teaching staff for these duties<sup>3</sup> would cost the school district much more money. It was also established that the head of the physical education department does not have any teaching duties because he functions as chair of the health education department and athletic director as well.

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<sup>2</sup> Board of Regents Regulations (revised March, 1989); the sole exception is in its use of the English Department chair to mentor gifted and talented students in a non-credit bearing writing course. We do not have proof of the cost savings which would result from this teacher's use of the .5 course time to teach a credit-producing course.

<sup>3</sup> which would include filling vacant administrative positions and hiring a computer maintenance technician. The alternative to using the .25 FTE for two teachers involved in upgrading computer skills of classroom teachers is not established on the record. We would assume some type of staff development program would be required.

In sum, the decision to utilize several teachers for non-teaching duties was not shown to be inefficient. On the contrary, these steps were established as yet another cost-savings strategy undertaken by the School Committee.

Finally, the Town has categorized the four (4%) percent raise for "unaffiliated" staff whose conditions of employment are not subject to collective bargaining as neither mandated nor contractual. The town argues that the resulting expenditure (twenty-seven thousand (\$27,000) dollars) need not be funded by the town.

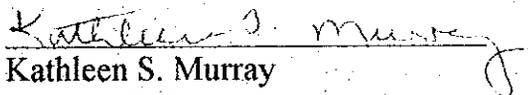
The School Committee has the authority to employ all certified and non-certified school department personnel and fix their salaries. Both state statute and decisional law accord to school committees the right to enter into employment contracts. R.I.G.L. 16-2-18, 16-2-9(b); Hardy v. Lee, 36. R.I. 302, 90A.383 (1914)<sup>4</sup> Certainly, for teachers the present method of determining salaries and other terms and conditions of employment is the collective bargaining process pursuant to R.I.G.L. 28-9.3-1 et seq. With regard to other school personnel, the fixing of salaries may be accomplished through the collective bargaining process or it may, as it was with this group of "unaffiliated" employees, be determined almost unilaterally by the School Committee. Once salaries are fixed, the School Committee as well as the Town is bound by this contract.

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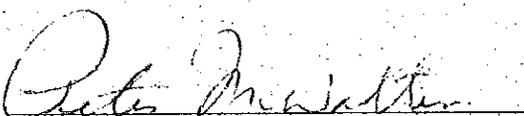
<sup>4</sup> The Hardy case was cited by our R.I. Supreme Court in the Exeter-West Greenwich case as affirming the authority of school committees to enter into employment contracts which were binding on the municipality.

Any salary increase approved results from the School Committee's exercise of its statutory authority.<sup>5</sup> These employment contracts have the same effect as contractual obligations as those agreements resulting from the collective bargaining process. The community is equally obligated to fund them.

For the foregoing reasons, we sustain the School Committee's appeal and order the appropriation of an additional \$455,000 dollars to meet school expenses for the 1992-93 fiscal year.

  
Kathleen S. Murray  
Hearing Officer

Approved:

  
Peter McWalters, Commissioner

<sup>5</sup> Its specific right to fix the salary of its Superintendent is set forth in R.I.G.L. 16-2-9 (a) (12).