

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

MEREDITH ANDREOZZI ET AL

V.

WARWICK SCHOOL COMMITTEE

DECISION

Held: The School Committee violated R.I.G.L. 16-13-2 when it continued per diem substitutes in true vacancies during school year 1992-93. The remedy is for the appellants to be given full status as regular teachers.

August 23, 1993

### Travel of the Case

On April 16, 1993 the nine appellants<sup>1</sup>, through their attorney filed an appeal from a decision of the Warwick School Committee made at its April 13, 1993 meeting. At that meeting the School Committee approved certain recommendations of its Superintendent with regard to the status, salary and benefits to be accorded some twenty-eight individuals. All but two<sup>2</sup> of these individuals had taught in the Warwick school system during school year 1992-93. The school committee's decision with regard to a group of teachers, including the nine appellants, was to grant (or confirm a previous decision to grant) them retroactive compensation at the appropriate salary step with benefits, rather than the per-diem substitute rate.

The undersigned was designated to hear and decide this matter on April 29, 1993 by Commissioner Peter McWalters. A hearing was held on June 15, 1993. Post-hearing memoranda were filed by the parties and the record in the case closed on July 23, 1993.

Jurisdiction to hear this appeal lies under R.I.G.L. 16-39-2.

### Findings of Relevant Facts

- On September 15, 1992 a justice of the Rhode Island Superior Court ordered certain striking school teachers in Warwick to return to work under the provisions of a three year contract commencing in 1988 and expiring August 31, 1991. See order of Judge Pederzani dated September 15, 1992.

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<sup>1</sup> Meredith Andrezzi, Vicki Venditelli, Chester Palmisciano, Beverly Hoag, Grace Fisher, Gary Gorman, Deborah Mercurio, Sheila Reynolds and Susan Ascoli.

<sup>2</sup> Both Beverly Hoag and Judith Healey had been employed during the school year in other school systems. S.C. Ex. A.

- In response to this order, the Warwick School Department reconfigured class sizes in accordance with the 1988-91 agreement, resulting in a need to create additional teaching positions and staff those positions.
- The appellants<sup>3</sup> were part of a group of twenty-six teachers hired by the Warwick School Department to fill these positions. Appellants Ex. I-A and I-C. Tr. pp. 24-25.
- All of the appellants were hired as per-diem substitute teachers between September 14 and 16, 1992 and they worked for the entire school year. Tr. pp. 24-25, 114. Appellants Ex. I-A and I-C.
- All of the appellants had prior teaching experience in the Warwick school system. Tr. p. 75. Some had worked in a long term substitute capacity, some in one-year only positions and others as per diem substitutes. Tr. pp. 94-105.
- None of the appellants had previously been appointed to permanent regular teaching positions in the Warwick school system.<sup>4</sup> Tr. p. 23.
- All of the appellants had, prior to being retained to fill the positions described above, been interviewed. Their appointments were not preceded by the selection process usually followed in selecting a permanent teacher. Tr. p. 57 and 116.
- Each of the appellants has on file letters of recommendation from their respective principals for prior years of substitute teaching service. Tr. p. 133.
- At some point in late winter or early spring a decision was made to compensate the appellants as if they had served as regular teachers throughout the entire school year. Tr. p. 119.
- Subsequently, the appellants were paid at the appropriate step of the salary schedule in effect for regular teachers, and accorded health and other benefits as regular teaches, retroactive to the beginning of the school year. Tr. pp. 119-123.

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<sup>3</sup>Except for Beverly Hoag who had previously taught in Warwick but was on "lay off" status and under contract with another school system for school year 1992-93. Tr. 20-22.

<sup>4</sup>Except for Beverly Hoag who previously was a regular teacher.

- Throughout most of the 1992-93 school year, the Warwick School Committee and the Warwick Teachers' Union were involved in litigation with respect to whether the 1988-91 collective bargaining agreement governed the relationship between them.
- Throughout most of the 1992-93 school year the Warwick School Committee and the Warwick Teachers Union were attempting to negotiate a successor agreement to the 1988-91 contract.
- Upon reversal of the Pederzani order by the Rhode Island Supreme Court, Superintendent Tarlian decided to maintain the class configuration and resulting staffing levels in place at that time, October 2, 1992. He testified that again reconfiguring classes would be educationally unsound and cause chaos in the school system. Tr. pp. 48-50.
- None of the appellants except Beverly Hoag received non-renewal notices on or before March 1 of the 1992-93 school year, but it was anticipated at the time of hearing that each would be sent the usual letter acknowledging their per-diem substitute service during the school year. Tr. p. 137.

#### Position of the Parties

##### The Appellants:

Counsel for the appellants argues that they filled true vacancies during school year 1992-93 and that their service was indistinguishable from that of regularly employed teachers. He cites a line of Commissioner's decisions which interpret and apply R.I.G.L. 16-13-2 and set forth the obligation of school committee's to employ teachers on the basis of annual contract. Although it is not an argument that is explicit in the appellants' memorandum, we understand their position to be that simply compensating them as regular teachers retroactively to their first day of service and giving them health and other fringe benefits does not accord them the "full status" they should have had as regular teachers in the Warwick system. Missing from the benefits given to them by the School

Committee on April 13, 1993 was "full status" complete with continuing employment rights.

### The School Committee

The attorney for the Warwick School Committee cites the extraordinary circumstances that prevailed in the Warwick School system during 1992-93. He argues that the unusual facts concerning the appellants and the nature of their teaching service during school year 1992-93 require the Commissioner to "exempt" their service from the requirements of R.I.G.L. 16-13-2. There was uncertainty as to the status of the 1988-91 collective bargaining agreement and a question of whether it would be enforced by a court or the state Labor Relations Board. As a result:

...it was not until April 8, 1993<sup>5</sup> that the School Committee knew, finally, that the 1988-91 collective bargaining agreement would be applied by the courts of this state to the 1992-93 school year.  
(Memorandum of the School Committee p.12)

One could not, it is argued, determine if the positions filled by the appellants were true vacancies until late in the school year. Coupled with the lack of finality of any order enforcing the 1988-91 contract's class size requirements was the ongoing possibility that negotiations would produce a new contract, with different requirements.

Under these circumstances, the School Committee argues, the appellants should not be treated as regular teachers for their service in 1992-93.

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<sup>5</sup>When the Rhode Island Supreme Court denied the School Committee's petition for a Writ of Certiorari.

### Decision

This case involves a very difficult interpretation and application of R.I.G.L. 16-13-2. The issue of whether the appellants should be accorded continuing employment rights, or should be deemed to have held regular teaching appointments is a close question. Not only are the facts unusual, but the defense, or excuse if you will, for not observing R.I.G.L. 16-13-2's requirements is not that the appellants were "substitutes",<sup>6</sup> but rather that the term of the positions they held was indefinite throughout the 1992-93 school year.

It is our conclusion that as the school year 1992-93 progressed, continuation of these positions until the end of the year became more likely and less remote. The status of the positions was affected by the status of negotiations for a new contract. The prospect of a new contract for school year 1992-93 became more remote, depending on one's level of optimism, as the school year progressed. Given Superintendent Tarlian's testimony concerning the chaos that would result and the educational unsoundness of undoing existing class configurations, we must find that the prospect of a new contract which would result in changes to class sizes during 1992-93 became unlikely.

We also do not agree that the torturous litigation during school year 1992-93 made continuation of these positions a remote possibility. While it is true that all appeals of the November 10, 1993 decision and order of the State Labor

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<sup>6</sup>Taking the place of an absent regular teacher.

Relations Board<sup>7</sup> were not exhausted until April 8, 1993, at the time of the Labor Board decision the requirement to maintain these positions became likely. We do not agree with the School Committee's assertion that prior to April 8, 1993 it had "no idea whether the positions being occupied on a per-diem substitute basis by the appellants were, in fact, true vacancies" (emphasis added, memorandum of the Warwick School Committee p.14). In our view, the definiteness of the legal proposition that the 1988-91 was controlling on the parties grew as the year progressed and as decisions of the Labor Board and Mrs. Justice Famiglietti of the Superior Court confirmed its applicability<sup>8</sup>. Undoubtedly a genuine difference of professional opinion existed on the legal issue (and probably still exists), however we must give some import to the resolution of this issue by the Labor Board and by the review and ultimate disposition of the issue by the Superior Court. The School Committee took the risk of giving these decisions little or no weight in continuing to fill the positions with per diem substitutes.

Even if at its inception the nature of the appellants service was properly that of per diem substitutes, later in the school year, and, certainly no later than the Superior Court's decision of February 26, 1993 the positions they filled were true vacancies.

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<sup>7</sup>Which found the expired agreement to be in full force and effect pending the parties agreement to a new contract. This resulted in the contractual obligation to determine class size based on the concept of "weighting".

<sup>8</sup>The bench decision of Judge Famiglietti was issued on February 26, 1993.

In granting the appellants the compensation and fringe benefits of regular teachers retroactive to the beginning of the school year, the School Committee has made its own determination as to the status of the appellants' employment. It has done so, we understand, in the context of complying with the Labor Board's order that it "make whole any affected employees for any losses sustained as a result of its departure from the terms of the 1988 CBA".<sup>9</sup> In not granting the appellants full status as regular teachers, we believe that the School Committee has acted inconsistently with its own determination as to the nature of their teaching service. In any event, given our analysis, we find that as a remedy for violation of R.I.G.L. 16-13-2, the appellants here are entitled to full status as regular teachers.

We recognize the emergency nature of the appellants' initial hiring and the fact that their placement in the particular positions was not preceded by the thorough screening process described by Superintendent Tarlian. However, we must balance these facts with the fact that had their service been unsatisfactory at any point in the school year, the School Committee could have resorted to its customary screening process and filled these positions with other teachers. The School Committee could also have terminated any rights to continuing employment the appellants have by furnishing any or all of them with a nonrenewal notice on or before March 1st, as provided for in 16-13-2.

In conclusion we find that under state law the School Committee should have filled the positions held by the appellants with regular teachers and it violated 16-13-2 in retaining the appellants as per diem substitutes after February 26, 1993.<sup>10</sup>

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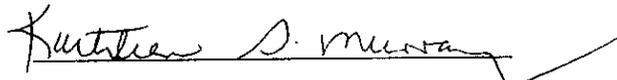
<sup>9</sup>Labor Board decision of November 10, 1992 case No. ULP 4647 at page 18.

<sup>10</sup>The date of affirmance of the Labor Board's order.

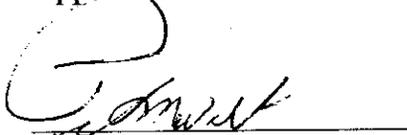
We further find that a partial remedy to this violation has been effected by the School Committee in its decision to pay the appellants additional compensation and fringe benefits.<sup>11</sup> We direct, as an additional remedy, that the appellants be afforded full status as regular teachers, with rights to continuing employment during the 1993-94 school year, unless they were given a non-renewal notice as provided for in R.I.G.L. 16-13-2.<sup>12</sup>

We feel constrained to add that if the positions held by the appellants had been eliminated (and this was not the testimony before us), or if there was any evidence of unsatisfactory performance by the appellants, we would find it inappropriate in this case to give them rights to continued employment in the 1993-94 school year. Based on the record before us, this is an appropriate remedy.

The appeal is sustained.

  
Kathleen S. Murray, Hearing Officer

Approved:



Peter McWalters, Commissioner

August 23, 1993

Date

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<sup>11</sup>We would note that under our decision state law would drive a different result as to the date of entitlement to additional compensation.

<sup>12</sup>It is our understanding that Beverly Hoag has in fact been given a nonrenewal or lay off notice, while the other appellants have not.