

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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DENISE C. THAYER	:
	:
vs.	:
	:
COVENTRY SCHOOL COMMITTEE	:
	:
	:

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DECISION

Held: Position of nursing technical assistant at the West Bay Area Career and Technical Education Center is a municipal employee of the Coventry School Committee and therefore subject to the residency provision of the Coventry Home Rule Charter.

September 20, 1993

## Introduction

This matter concerns an appeal by Denise C. Thayer from the "decision of the Town of Coventry that [she is] not eligible for a non-certified position at the West Bay Career and Technical Career Center" because she is not a resident of the town of Coventry. (June 16, 1992 letter of appeal -- Appellant's Exhibit 14).<sup>1</sup>

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

## Background

On or about September 19, 1991, the Coventry school department posted a hiring notice for the position of nursing technical assistant at the West Bay Area Career and Technical Education Center.<sup>2</sup> The posting listed the minimum qualifications for the position and set forth the following terms and conditions of employment:

This is a five (5) hour, 180 day position with salary, benefits and hours of work to be in accordance with School Committee Agreement. Residency in the Town of Coventry is a requirement.

On September 20, 1991, Appellant submitted an application for the nursing technical assistant position. As requested on the application, Appellant provided her address. She is a

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1 This appeal was assigned to the undersigned hearing officer. A hearing was conducted on August 28, 1992. The record in this matter closed on October 30, 1992.

2 The West Bay Area facility is one of 3 types of area vocational-technical centers provided for in the Regulations of the Board of Regents Governing the Management & Operation of Area Vocational-Technical Centers in Rhode Island. The other types of facilities are area vocational-technical high schools and area vocational skill centers. (Section III).

resident of the town of Exeter.

It is undisputed that Appellant was determined to be the top candidate for the nursing technical assistant position. A September 23, 1991 School Department document entitled "Recommendation for Appointment -- Personnel Data Sheet" lists Appellant's name with the assignment of "nursing technical assistant -- West Bay." The document further provides for a "salary/step & rate" of "Step 1 -- \$6.86/hourly" with health insurance benefits and a "requested School Committee action date" of December 10, 1991. (Appellant's Exhibit 2).

Appellant began working as a substitute nursing technical assistant at the West Bay Area Center on or about November 12, 1991. She received \$4.45 per hour with no benefits. Appellant testified that the director of the Center told her that the starting salary for the position was \$6.86 per hour, but that he had talked to the superintendent about the inability to hire anyone at that rate, and the starting salary would therefore be \$8.08 per hour once she was appointed by the School Committee.

In a December 2, 1991 memorandum from the director of personnel to the superintendent, the personnel office recommended Appellant for the position. (Appellant's Exhibit 3).

Appellant's appointment was never submitted to the School Committee for confirmation because school department officials eventually noticed that Appellant did not meet the residency requirement.

The residency requirement is based on Section 15.02 of the Coventry Home Rule Charter. Section 15.02 states as follows:

Residence of Employees. Every regular and full-time employee of the town, except the certified personnel of the school department and those offices specifically exempted herein shall, during their continuance of office, reside in the Town of Coventry; provided, however, the council may, by resolution, specifically exempt a particular person from the provisions hereof if the council shall declare that it is impossible to find a resident of the town to meet the requirements of the position to be filled.

Upon being notified that her name could not be submitted to the School Committee for confirmation, Appellant met with the superintendent and the director of the West Bay Center. Superintendent Raymond E. Spear told Appellant that he considered the Town Charter to be binding, and he advised her to ask the School Committee for a hearing if she wished to pursue the matter further. Appellant made such a request and was heard by the School Committee on January 14, 1992. As described in the minutes of the School Committee meeting, the Committee concluded that the Town Charter "precludes the right of the Superintendent to appoint a non-resident for confirmation by the School Committee." (Appellant's Exhibit 10). Pursuant to the Charter's residency provision, the School Committee directed the superintendent to seek a waiver of the residency requirement from the Town Council in this case.

The superintendent submitted a waiver request. On April 22, 1992 he sent a letter to Appellant stating, in part, that

the Town Council has failed to act on the request for a waiver and as such, places us in a position of the necessity to inform you that Town Charter constraints and your current place of residency are in conflict and therefore, we will not be able to consider you for regular full time employment with the Coventry Public Schools. (Appellant's Exhibit 11).

Appellant remained employed at the West Bay Center as a substitute nursing technical assistant.

With regard to the salary of the position, Director of Personnel William Lyons testified that, had Appellant been confirmed by the School Committee, her rate of pay would have been \$6.86 per hour as set forth in the salary schedule in the applicable collective-bargaining agreement.<sup>3</sup> Mr. Lyons further testified that the director of the West Bay Area Center does not have the authority to determine rates of pay for prospective employees. Superintendent Spear testified that rates of pay are governed by the salary schedules in the collective-bargaining agreements. The superintendent did not recall any conversation with the director of West Bay regarding the rate of pay for the nursing technical assistant position.

Superintendent Spear also testified that, as of the 1991-1992 school year, the West Bay Area Center was funded through state reimbursement to the Coventry school district of a percentage of Center expenditures, state direct pay, and tuitions paid on a per pupil basis by each of the participating schools.

Regional vocational schools were established by R.I.G.L.

16-45-1. It states as follows:

The state board of regents for elementary and secondary education is hereby authorized and empowered to establish and maintain regional

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3 Mr. Lyons testified that the parties to the agreement are the Coventry School Committee and the Coventry Teachers' Alliance/School Related Personnel, and that the bargaining unit consists entirely of Coventry School Department employees. Substitute employees are not covered by the agreement. Superintendent Spear testified that prior to being added to the bargaining unit, technical assistants received \$8.08 per hour without any benefits.

schools for vocational and technological training and instruction and for proper maintenance of the schools, and for these purposes the department of elementary and secondary education shall appoint and remove necessary instructors, teachers, and other employees, determine their compensation, fix the standards and terms upon which the students shall be received and instructed therein and discharged therefrom, and make all rules and regulations necessary for the control, management and operation of the schools.

Pursuant to the Regulations of the Board of Regents Governing the Management & Operation of Area Vocational-Technical Centers in Rhode Island, "the state shares its responsibility for the management and operation of the centers with the school districts which use the facilities." (Section III). The Regulations define "administering school districts" as "those where the area centers are located and which agree to operate the centers," and "participating school districts" as those "which are geographically situated near the area centers and whose residents are served by these facilities." (Section III).<sup>4</sup>

With regard to the staffing of area vocational centers, Section III(B)(1) of the Regulations states that the administering school district shall "hire all certified and non-certified personnel." Section IV(A) provides that area vocational center directors, assistant directors, guidance counselors, cooperative education coordinators, and vocational evaluators shall be appointed by the superintendent with the consent of the school committee of the administering school district and the prior approval of the Commissioner of Education. The salaries, fringe

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4 The participating school districts for the West Bay Area Center are Coventry, North Kingstown, Exeter, and West Greenwich.

benefits, and travel expenses of the center directors and assistant directors "shall be set by the school committee with the approval of the Commissioner of Education and shall be reimbursed 100% by the state." The salaries, fringe benefits, and travel expenses of the guidance counselors, cooperative education coordinators, and vocational evaluators are to be set by the administering school district "consistent with the appropriate local collective bargaining agreement and shall be reimbursed 100% by the state."

In addition, Section IV(A)(8) states that

All other area vocational-technical center teachers and school personnel shall be appointed by the superintendent of the administering school district with the consent of the school committee. The director of the area vocational-technical center shall participate in the interview and selection of candidates for these positions.

Pursuant to Section IV(A)(1), the director of the area center "shall be responsible for operation and direction of the center and report directly to the office of the superintendent of schools of the administering school district."

The Department of Education is responsible for the evaluation and approval of area center programs. [Section III(A)].

Rhode Island General Law 16-12-9 provides that "No city or town shall require that an individual reside within the city or town as a condition for appointment or continued employment as a school teacher."

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5 Section III of the Regulations states that "The Commissioner of Education or the Commissioner's designee is the person to (1) determine compliance with these regulations and (2) mediate disputes arising thereunder."

### Positions of the Parties

Appellant contends that, under the Board of Regents' regulations, the Commissioner has jurisdiction over all issues concerning management and employment at area vocational-technical schools. While Appellant recognizes that Coventry is the administering school district, it argues that "the Town of Coventry is acting in an administrative function and not a policy making function." (Memorandum, p. 2). Appellant asserts that the Coventry Home Rule Charter is inapplicable to the position at issue because vocational education is a state, not a local, function. Appellant claims that the residency provision of the Charter was not specifically validated by the legislature. Finally, it contends that Section 15.02 of the Home Rule Charter violates the Equal Protection Clause of the 14th Amendment in these circumstances and therefore is unconstitutional. Appellant requests that the Commissioner award damages in the amount of the difference between the \$4.45 and \$8.08 hourly rates of pay.

The School Committee contends that Appellant has no right to appeal this matter to the Commissioner because the Committee never rendered a decision with regard to her employment application. In the alternative, the School Committee claims that the appeal is untimely. The School Committee argues that Section IV(A)(8) of the Board of Regents' Regulations places the sole responsibility for hiring area center personnel with the local school department. It cites Cummings v. Godin, 119 RI 325, 377 A.2d 1071 (1977), for the proposition that school committee employees are municipal

employees, and argues that, because the residency provision of the Charter was validated by the legislature, Appellant cannot be hired by the School Committee. Furthermore, by consenting to the seeking of a residency waiver, Appellant acknowledged the application of the Charter and is estopped from now claiming that the Charter does not apply to the nursing technical assistant position at the West Bay Area Center.

#### Discussion

We find that Appellant has the right to appeal this matter to the Commissioner.

The record shows that Appellant was rated the top applicant for the nursing technical assistant position at the West Bay Area Center. She received the recommendation of the personnel office and began working at the Center as a substitute. Yet Appellant's name was never submitted to the School Committee for confirmation.

The record clearly shows that the School Department's failure to submit Appellant's name to the Committee was based on Appellant's lack of residency in the town of Coventry and the perceived applicability of Section 15.02 of the Coventry Home Rule Charter. Although the failure to submit Appellant's name to the Committee due to lack of residency resulted in the absence of any formal action by that body, the effect on Appellant was the same as if the Committee had declined to confirm her appointment. In either case, she was denied employment at the Area Center because she did not reside in the town of Coventry.

We also note that at the hearing provided Appellant on January 14, 1992, the School Committee took the position that the

Home Rule Charter precluded the appointment of a non-resident to the area center. Consistent with this position, the School Committee directed the superintendent to seek a waiver from the Town Council pursuant to the residency provision in the Home Rule Charter.

Given these circumstances, we find that a dispute exists concerning the application and effect of the regulations governing the area vocational-technical centers. We further find that Appellant is a person aggrieved by a decision of a school committee under a law relating to education. The appeal procedure set forth in R.I.G.L. 16-39-2 therefore is applicable herein.

We next address the School Committee's argument that the appeal in this matter is untimely.

By letter dated April 22, 1992, the Superintendent notified Appellant that the Town Council had failed to act on the waiver request and Appellant therefore could not be considered for regular full-time employment in light of her residency status. (Appellant's Exhibit 11). By letter dated June 16, 1992, Appellant appealed this matter to the Commissioner.

In Berthiaume et al. v. School Committee of the City of Woonsocket, 121 R.I. 243, 250, 397 A.2d 889 (1979), the Rhode Island Supreme Court stated that

the equitable defense of laches comprehends not mere delay but delay that works a prejudicial disadvantage to another. See, e.g., Pukas v. Pukas, 104 RI 542, 545-46, 247 A.2d 427, 429 (1968); Arcand v. Haley, 95 RI 357, 364, 187 A.2d 142, 146, (1963); Nelson v. Dodge, 76 RI 1, 14, 68 A.2d 51, 58 (1949). The mere passage of time is insufficient to invoke the defense of laches; what is crucial are the changes brought about by the passage of time. See Rebelo v. Cardoso, 91 RI 153, 163, 161 A.2d 806, 811 (1960).

It is clear from the record that Appellant, upon learning of the residency issue regarding her appointment, seized every opportunity to pursue her claim that residency was not a valid reason to deny her the position in question. She met with the superintendent. She requested a hearing before the School Committee. She agreed to seek a waiver from the Town Council. When notified that the Town Council had failed to act on the waiver request, she appealed the matter to the Commissioner.

The School Committee argues that the passage of time from April 22 to June 16 renders the appeal untimely. However, no showing has been made that the passage of time worked to the School Committee's detriment or prejudice. Nor has it been shown that the delay impeded the Committee's presentation of its case at the hearing. Rather, the record shows that Appellant made clear her intent to pursue her claim to the nursing technical assistant's job. Applying the standard set forth in Berthiaume to the circumstances herein, we do not find Appellant's appeal is barred by laches.

As for the merits of Appellant's claim, we find that the nursing technical assistant at the West Bay Area Center is a municipal employee and therefore subject to the residency provision of the Coventry Home Rule Charter.

In Cummings v. Godin, the Rhode Island Supreme Court reviewed a provision of the Woonsocket Home Rule Charter which prohibited city employees from holding elective offices. The provision had been invoked with regard to a Woonsocket public school teacher.

In addressing the issue of whether public school teachers are city employees and therefore covered by the charter provision, the Court noted the defendant's reliance on City of Pawtucket v. Pawtucket Teachers' Alliance, 87 R.I. 364, 141 A.2d 624 (1958),

where this court stated that under the Rhode Island Constitution education was a state function, and, as such, was carried out by the cities and towns, through their school committees, as agencies of the state government. 119 R.I. at 330.

To further quote the Court in Cummings:

In City of Providence v. Local 799, Int'l Ass'n of Firefighters, 111 R.I. 586, 589, 305 A.2d 93, 95 (1973), this court stated that a body having no statewide authority and performing no state-wide function is not a state agency. Thus, school committees are agencies of the state, but are not "state agencies," since they act only on matters of local concern. Moreover, this court explicitly stated in City of Pawtucket v. Pawtucket Teachers' Alliance, supra, that the cities and towns, through their school committees, perform a state function based upon a delegation of power from the General Assembly. Thus, the school committees, although exercising a portion of the state's power over education, are, nonetheless, municipal bodies, and their employees, including public school teachers, are municipal employees. (emphasis in original). Ibid.

As previously noted, R.I.G.L. 16-45-1 authorizes the Board of Regents to establish and maintain regional vocational-technical schools. Pursuant to the Board's vocational-technical regulations, "the state shares its responsibility for the management and operation of the centers with the school districts which use the facilities." We find that the regulations' delegation of authority to administering school districts in the area of vocational-technical education is akin to the delegation of authority discussed in Cummings v. Godin.

In both instances of delegation, the cities and towns, through their local school committees, carry out the state function of education. In the area of vocational-technical education, the specific authority to hire all certified and non-certified school personnel has been delegated to the superintendent and school committee of the administering school district. As set forth in the regulations, and as demonstrated in the record herein, the administering school district hires area center staff and determines their terms and conditions of employment. The record also shows that the area center at issue herein is funded by reimbursements and payments to the administering school district. We therefore find that the delegation of authority in the area of vocational-technical education and the school district's exercise of that authority does not change the nature of the school committee of the administering district. Under Cummings v. Godin, the school committee remains a municipal body, and the employees it hires in performing its vocational-technical education function are municipal employees.

This finding is further supported by the existence of an "administering school district" approach to the management and operation of area vocational-technical schools, as opposed to a "regional school district" approach in which authority is shared among several cities and towns. Under the regulations, the school committee of the administering school district enters into employment relationships with the school personnel needed to staff the area center. No new district-wide entity is created to operate and manage the area center nor does any school committee

from the participating districts become involved in the staffing of the area center. The responsibility to hire area center staff rests with the superintendent and the school committee of the administering school district.<sup>5</sup>

We therefore find that the position of nursing technical assistant at the West Bay Area Center is an employee of the Coventry School Committee. Because the School Committee remains a municipal body, the nursing technical assistant is a municipal employee, and the residency provision of the Coventry Home Rule Charter applies to that position.<sup>6</sup> Based on Appellant's lack of residency in Coventry, we hold that the failure to appoint her to the nursing technical assistant position for this reason was not improper.<sup>7</sup>

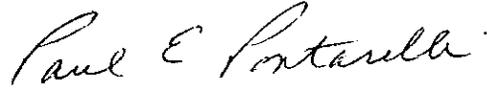
#### Conclusion

In performing its responsibilities as the administering school district of the West Bay Area Career and Technical Education Center, the Coventry School Committee remains a municipal body. Area Center staff hired by the School Committee are municipal employees and therefore subject to the residency

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- 5 As previously noted, the regulations require the prior approval of the Commissioner with regard to certain administrative positions.
  - 6 We take official notice of Public Laws, 1973 -- Chapter 4, which "ratified, confirmed, validated and enacted" all election procedures in the Coventry Home Rule Charter and all other provisions requiring ratification, confirmation, validation or enactment by the General Assembly.
  - 7 With regard to Appellant's constitutional challenge to the residency provision, we do not find this to be a proper forum or proceeding to determine the validity of a provision of the Home Rule Charter. See Greene v. McElroy, 360 U.S. 474 (1959).

provision of the Coventry Home Rule Charter. The School Committee did not act improperly by failing to appoint Appellant to the Area Center position of nursing technical assistant because she does not reside in Coventry.

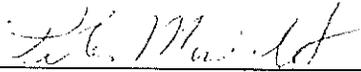
The appeal is denied.



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Paul E. Pontarelli  
Hearing Officer

Approved:



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Peter McWalters  
Commissioner of Education

Date: September 20, 1993