

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

LYNNE A. BIGOS

V.

SCITUATE SCHOOL COMMITTEE

AND SCITUATE TEACHERS'

ASSOCIATION

DECISION

Held: The appellant is entitled to additional salary for those school years in which she was improperly placed on the salary schedule. The Commissioner is without jurisdiction over the claim of the School Committee for contribution from the Scituate Teachers' Association for all or part of the monies owed to the appellant.

Date: October 3, 1994

Travel of the Case

On March 19, 1993 a decision was issued by the Commissioner in this matter. That decision found a provision in the Scituate Teachers' Contract to be in conflict with the recent interpretation of R.I.G.L. 16-7-29 made by the Rhode Island Supreme Court in D'Ambra v. North Providence School Committee, 601 A2d 1370 (1992). The principle elucidated by the Supreme Court in D'Ambra was that years of part-time service of teachers regularly employed by a school district qualify as years of service for purposes of credit on the salary schedule. Pursuant to the collective bargaining agreement in effect for Scituate teachers, Ms. Bigos had advanced one step on the salary schedule for every two years of part-time service.

Prior to ruling on the validity of the conflicting contractual provision, the undersigned hearing officer joined the union as a party to the appeal. Decision on the appropriate remedy for the appellant was also deferred.

On May 27, 1993 further hearing in the matter was held. At that time counsel for the Scituate Teachers' Association entered a special appearance, contesting the authority of the Commissioner's office to join the union as a party to this appeal. Additional arguments and evidence were received at this hearing. Following submission of briefs by the School Committee and the Teachers' Union, a process completed on November 18, 1993, the record in this matter closed.

Issue

Should the Scituate Teachers' Association pay all or part of the additional salary owed to Ms. Bigos under the theory that the School Committee has a right of contribution against the Union?

Position of the Parties

School Committee

Counsel for the School Committee argues that there is no dispute with respect to the amount of back pay owed Ms. Bigos¹, only a dispute as to whether the teachers' union shares all or part of its liability to the appellant. In his brief, he argues that the School Committee has a right of contribution against the Scituate Teachers' Association. As the basis for its claim the School Committee points to the fact that the provision requiring reduced credit for years of part-time teaching service was contained in an agreement negotiated and agreed to by both the Union and the School Committee. This fact, and the relationship which exists between the parties to a contract makes them jointly and severally liable to the appellant for additional salary owed to her. Counsel argues further that principles of equity require the union to share the burden of this financial liability, since it received financial concessions from the School Committee when the union, in 1978, gave up its contract proposal to advance part-time teachers one step every year. The school committee, as additional support for its claim, argues that when the union agreed to the provision which disadvantaged part time teachers, it breached its duty of fair representation to part-time teachers. It is actually the breach of this duty which resulted in the loss of salary to the appellant, and, as a result, counsel argues that the Union, and not the School Committee, is liable for the losses she has incurred.

As to the Commissioner's jurisdiction to rule on its claim of contribution, the School Committee argues that an issue of school law is presented because the

¹ Exhibit 2, which shows salary losses resulting from the appellant's advancement on the salary schedule in accordance with the contract's provision, was agreed to be accurate. Tr. pp. 9-10.

claim arises out of a contract between a school committee and a teachers' union (Tr. p. 15) and out of the relationship between a school committee and a teachers' union (Brief p. 5).

If the Commissioner declines to exercise jurisdiction over the contribution claim of the School Committee, it will be forced to pursue this claim in Superior Court. Counsel argues that this will be inefficient, since it will further delay adjudication of all issues in this dispute. Also, counsel argues that the case will then be decided in a forum which has no expertise in school law.

The broad authority of the Commissioner under Title 16 Chapter 39 is cited as the basis for authority to join parties necessary for proper adjudication of a dispute. Here, since the issue relates to the validity of a provision of a contract negotiated by the Union, the Commissioner properly joined the absent party to that contract, i.e. the Scituate Teachers' Association.

Position of the Scituate Teachers' Association

Counsel for the teachers' union entered a special appearance to contest the jurisdiction of the Commissioner to join the Teachers' Association as a party to this dispute. He notes that neither the statute (Title 16 Chapter 39) nor the rules governing hearings before the Commissioner of Education empower the Commissioner, or a designated hearing officer, to join parties to an appeal. The Union additionally argues that even if the Commissioner is authorized to join it as a party, the claim asserted against the Association by the School Committee is not an educational dispute over which the Commissioner exercises jurisdiction under Title 16, Chapter 39. Counsel characterizes the claim asserted against the union in this proceeding as a claim for contribution based on common law principles of equity, the Rhode Island Joint Tortfeasor Statute, and/or breach of the Union's

duty of fair representation. Such a claim is not premised on a law relating to schools or education.

On the merits of the School Committee's claim for contribution, the Union takes the position that a precondition of such a claim does not exist here, since it has no common liability or obligation to Ms. Bigos for back salary. The School Committee, and not the Union, had the sole and primary responsibility for the payment of salary to Lynne Bigos.

Position of the Appellant

In noting that this appeal was held in abeyance while the parties awaited the ruling of our state Supreme Court in D'Ambra v. North Providence School Committee, counsel for Ms. Bigos objected to the further delay associated with adjudication of the School Committee's claim of contribution. His position was essentially that given the March 19, 1993 ruling of the Commissioner that the contract's provision for reduced credit contravened R.I.G.L. 16-7-29, Ms. Bigos is entitled to the amount of back salary which the School Committee agreed was the differential between what she was paid, and what she would have been paid if her placement on the salary schedule were controlled by state law and not the contract.

Decision

In the prior decision in this matter, we ruled that a conflict existed between R.I.G.L. 16-7-29 and Article XXIV of the contract between the Scituate School Committee and the Scituate Teachers' Association. Prior to ruling as to the validity of Article XXIV and before addressing the issue of remedy for the appellant, the Union was joined as a party to these proceedings. The purpose for joining the Scituate Teachers Association was to provide the Union with an opportunity to state its position with regard to Article XXIV and its validity in

light of its conflict with state education law. As in the recent case of Laliberte et. al. v. Pawtucket School Committee, decision of the Commissioner dated July 29, 1992 and June 22, 1993, the case before the Commissioner directly affected the validity of a collective bargaining agreement. As in Laliberte, it was our conclusion that proper adjudication of the issue of validity of a provision of a contract should be preceded by opportunity for both parties to that contract to present their positions and arguments.²

Having stated the purpose for joinder of the union, i.e. proper adjudication of the issue of validity of Article XXIV of the contract, we reject the Union's argument that the Commissioner lacks authority to join necessary parties to appeals brought under 16-39-1 and 16-39-2 of our General Laws. This authority is inherent in the power of the Commissioner or hearing officers designated to hear appeals, to fairly and effectively adjudicate educational disputes. As was noted in the Laliberte decision the remedy in such cases could require participation by the Union. In Laliberte both the School Committee and the Teachers Alliance were directed to meet to establish a new salary schedule which would be consistent with R.I.G.L. 16-7-29. The salary schedule which was part of the contract was ruled invalid.

In finding that the Commissioner's authority to join necessary parties to educational disputes is inherent in our statute, we would note that in the state of New York where the Commissioner has similar authority to decide educational disputes, the Commissioner's power to join additional parties is made explicit through regulation. See part 275.1 of Regulations of the Commissioner of Education (8NYCRR) Part 275 Parties and Pleadings. We do not find the lack of

² In a similar case the Commissioner ruled on the validity of a provision of the Warwick Teachers' contract in 1988. The hearing officer had before her both parties to that agreement --no joinder was necessary. See Warwick Teachers' Union, on behalf of Mary Conway et. al., decision of the Commissioner dated January 15, 1988.

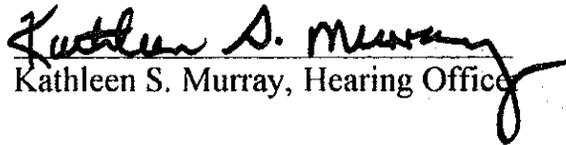
an explicit rule in our own "Procedures for Appeals to and Hearings Before the Commissioner of Education", to be a bar to the joinder of the Scituate Teachers Association in this appeal.

We do agree with the Association, however, that the Commissioner lacks jurisdiction over the claim of the Scituate School Committee that it is entitled to contribution from the Union for all or part of the monies due Ms. Bigos. The School Committee admits that, in seeking contribution from the Teachers' Association, it presents an issue of first impression which does not fit neatly into any particular legal theory. (School Committee brief p. 6). In reviewing the description of the legal bases for this claim in the School Committee's brief³ it is clear that the claim is not founded on an educational statute, nor does it arise under any law relating to schools or education.

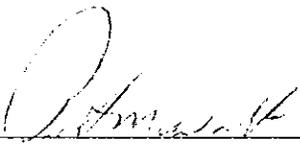
We are not unmindful of the School Committee's argument that the record has been made and arguments presented on its claim of contribution in this forum and that it would therefore be inefficient for the Commissioner not to adjudicate this issue. In a prior case where our jurisdiction was doubtful we proceeded to decide the merits on the theory of efficiency, only to be reminded by the Board of Regents of the limitations of the Commissioner's authority to decide only those controversies arising under a law relating to schools or education. See LaPierre v. Cranston School Committee decision of the Commissioner dated August 12, 1988; Board of Regents decision dated May 11, 1989. We thus refrain from deciding a controversy over which the exercise of the Commissioner's jurisdiction would be tenuous, at best. The claim of contribution is denied and dismissed and should be asserted in the appropriate forum.

³ Which include elements of joint and several liability, indemnity; failure of consideration, joint tortfeasors and general equitable principles.

The record regarding validity of Article XXIV is essentially that compiled at our prior hearing. We find on the basis of that record that Article XXIV is invalid because it conflicts with R.I.G.L. 16-7-29. Since her advancement on the salary schedule should have been controlled by state law, Ms. Bigos is entitled, and the School Committee is directed to pay, the additional salary shown by Appellant's Exhibit 2, together with any additional salary she may have become entitled to by virtue of her inappropriate placement on the salary schedule for those school years subsequent to 1991-92 (the last year covered by Exhibit 2) plus statutory interest.


Kathleen S. Murray, Hearing Officer

Approved:


Peter McWalters, Commissioner

October 3, 1994
Date