

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

LAWRENCE NEWSOME  
V.  
NEWPORT SCHOOL COMMITTEE

Decision on Remedy

Held: The appropriate remedy for the school committee's employment of the appellant as a substitute, in violation of R.I.G.L. 16-13-2, is to compensate him for his substitute teaching at the rate of a teacher employed under annual contract.

Date: March 24, 1995

### Travel of the Case

In a decision dated December 21, 1992 the Commissioner held that R.I.G.L. 16-13-2 was violated by the circumstances of Lawrence Newsome's employment as a substitute in the Newport School system. From January 2, 1991 through the close of the school year, Mr. Newsome was employed as a long-term substitute at Rogers High School in a position which had become a true vacancy because of the regular teacher's retirement in December of 1990.

The parties were directed to confer in an attempt to agree upon an appropriate remedy for the appellant and to notify the Commissioner's office if they were unable to do so. On January 27, 1993 counsel for the appellant notified the hearing officer of the inability of the parties to agree upon an appropriate remedy. He requested that an additional hearing be scheduled to decide this issue.

The hearing schedule proceeded by agreement of the parties on April 6, 1993; May 18, 1993 and November 18, 1993. The record in the case closed upon submission of memoranda by the parties on April 8, 1994.

### Issue

What is the appropriate remedy for the school committee's employment of Lawrence Newsome as a substitute teacher in violation of R.I.G.L. 16-13-2?

### Findings of Relevant Facts

- The vacant position which was filled by Lawrence Newsome in a substitute capacity from January 2, 1991 until the end of the school year was eliminated by the school department at the end of the 1990-91 school year. Stipulation December 2, 1993; Tr. 5/18/93 p. 97.
- During his lengthy service in the capacity of substitute teacher in the Newport school system, Mr. Newsome's performance was routinely evaluated. Tr. pp. 58-66. Appellant's Ex. 7. These evaluations consistently note that Mr. Newsome's performance as a substitute teacher was excellent. Appellant's Ex. 7.

- On December 11, 1990 Mr. Newsome was a substitute at Thompson Junior High School in Newport. At some point during the school day, Mr. Newsome argued with a student and in the course of the argument he put his hands against the boy's chest and pushed him. This was observed by the school nurse who reported what she saw to the assistant principal. Tr. 5/18/93 pp. 41-45.
- As a result of the above-described incident, the principal at Thompson Junior High School requested that Mr. Newsome not be assigned to substitute at Thompson again. Tr. 5/18/93 p. 56.
- During the month of November, 1991 when Mr. Newsome was substituting at Rogers High School, the principal received complaints from a parent and two students regarding three allegedly inappropriate remarks made by Mr. Newsome in class. Tr. 4/6/93 pp. 87-96.
- As a result of his receipt of these complaints, the principal of Rogers High School notified Mr. Newsome that he was dismissed from his substitute assignment until further notice. Tr. 4/6/93 S.C. Ex. M.
- Mr. Newsome admitted that he had directed a female student to remove her legs from the top of her desk using inappropriate, sexually-oriented language. Tr. 5/18/93 p.12; Tr. 4/6/93 p. 92; S.C. Ex. M.
- Lawrence Newsome was an applicant for three math positions in the Newport School system: one at Rogers High School; one at Thompson Junior High School and one at the Alternate Learning Project. He was not selected to fill any of these mathematics positions. Tr. 4/6/93 p.22; 5/18/93 p. 95 S.C. Ex. K, L, and P.

### Position of the Parties

#### The School Committee

In its brief, the Newport School Committee argues that if it violated R.I.G.L. 16-13-2<sup>1</sup>, then the appropriate remedy would have been to post and fill the position with a permanent regularly-appointed teacher in January of 1991. Any remedy fashioned at this point in time would be moot, the committee argues, because the position which was found to be a true vacancy, and filled by Mr.

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<sup>1</sup> Throughout these proceedings, the school committee maintains that no violation of the statute occurred.

Newsome in a substitute capacity, was eliminated at the end of the 1990-1991 school year. Also, the school committee points out that it ultimately paid the same compensation to Mr. Newsome as it would have for a regularly-appointed teacher.<sup>2</sup> The school committee has also agreed to make whatever retirement contributions are required for Mr. Newsome. School Committee brief pp. 5-6.<sup>3</sup>

As for the argument that an appropriate remedy should include Mr. Newsome's actual appointment to a position in the school system, the school committee argues that this would be unjust. Given that Mr. Newsome was an applicant for several regular teaching positions, and was never selected for a position, the committee implicitly argues that his credentials are not at the level of those candidates considered qualified for full-time teaching positions in the Newport school system. Additionally, the committee argues that any remedy personal to Lawrence Newsome would have to take into account his performance as a substitute teacher. It is submitted by the school committee that the record contains evidence of inappropriate and unprofessional conduct by Mr. Newsome, conduct which caused his eventual removal from the list of acceptable substitutes at both Thompson Junior High School and Rogers High School.

### The Appellant

Counsel for the appellant construes the initial holding of the Commissioner in this matter to be that Mr. Newsome's status was that of a regularly employed teacher and not a substitute teacher. Given this premise, it is the appellant's position that his employment as a teacher under annual contract should have continued until proper notice of nonrenewal was given. Since the appellant did not receive a non-renewal notice until February of 1993, effective "at the end of

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<sup>2</sup> By virtue of provisions of the collective bargaining agreement which govern compensation of long-term substitute teachers.

<sup>3</sup> To the extent such contributions have not already been made as required by 16-16-1, 16-16-5 and 16-16-22 of the General Laws.

the 1992-93 school year" he argues he is entitled to additional compensation for school years 1991-92 and 1992-93. Elimination of the "Spiratos" position (filled by Mr. Newsome) at the end of the 1990-91 school year should have no effect on Mr. Newsome's right to continuing employment, since there was at least one other math vacancy to which Mr. Newsome could and should have been transferred in the subsequent school year. Additionally, he argues that without a timely notice of non-renewal citing elimination of the position he held, any displacement of Mr. Newsome from the school system was procedurally defective.

Finally as to the purported evidence of unsatisfactory performance, the appellant argues that such evidence is at best inconclusive. Even if such evidence were sufficient to justify his displacement, or the nonrenewal of the annual teaching contract he is "deemed" to have held, the evidence was never properly presented at a hearing before the Newport School Committee. It is the school committee, and not the Commissioner, which must respond to and take any appropriate action on allegations of unsatisfactory performance of a teacher under annual contract. It has not done so in Mr. Newsome's case. Therefore, the appellant argues, the Commissioner cannot constructively non-renew the appellant for the School Committee. If the allegations of inappropriate and unprofessional conduct are viewed as the basis for non-renewal, and provide the basis for limiting his employment as a regular teacher to the period January-June of 1991, this would, he argues, essentially be an illegal "retroactive" non-renewal of his annual teaching contract.

#### Decision

The prior ruling in this matter was that the circumstances of Lawrence Newsome's employment as a substitute from January 2, 1991 through the close of that school year violated R.I.G.L. 16-13-2. Further, we ruled that Mr. Newsome's right to assert an individual remedy was not time-barred.

In the hearing on remedy, Mr. Newsome essentially argues that he is entitled to back pay as a regular teacher for the period September 1991-June 1993. His claim for additional compensation is based on the premise that he was or is deemed to be a regularly employed teacher for the term January-June 1991. This initial premise misconstrues the prior ruling in this matter.<sup>4</sup> If Lawrence Newsome is deemed to be a regularly appointed teacher, there would be little point to a hearing on the issue of remedy. He would already have become entitled to full status in the position he filled, with rights to continued employment and compensation as a regular teacher. Mr. Newsome's entitlement to appointment in the position he filled as a substitute was not determined in the prior decision in this matter. The text of the decision particularly at pages 8 and 9 clearly indicates that Mr. Newsome's actual appointment to a full time position was the primary issue to be considered in determining an appropriate remedy. The discussion of factors to be taken into account in determining the remedy is also an indication that Mr. Newsome was not automatically appointed to the position by virtue of the statutory violation which was found to have occurred.

Our premise in approaching an individual remedy in this case is, therefore, different from that of the appellant. We do not initially consider what employment and compensation rights he had as a teacher appointed to a position and employed under annual contract but rather whether he should be entitled to appointment or deemed appointed to the position in the first place.

Prior decisions of the Commissioner which have accorded specific individuals the right to appointment are, for the most part, cases in which the individual had recall rights or was at some later point selected for the position.<sup>5</sup>

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<sup>4</sup> The appellant has apparently focused upon the summary of the holding on the front page of the December 21, 1992 decision which contains the statement "the appellant should have been employed under an annual contract..." and concluded that he was so employed.

<sup>5</sup> See Daley v. North Providence School Committee, May 25, 1977; Lavallee v. Providence School Committee, November 21, 1981.

The Commissioner's decision in the recent case of Andreozzi et al. v. Warwick School Committee<sup>6</sup> did accord a group of "substitutes" full status as regular teachers as a remedy for violation of 16-13-2. Extension of "full status" to this group was determined to be an appropriate remedy, despite the fact that they were not on a recall list, nor were they selected for these positions after the customary screening process. Under the unusual facts particular to Andreozzi, it was determined that, given the evidence of satisfactory performance for the entire school year, these individuals were entitled to rights to continued employment for the 1993-94 school year. It was noted, however, that had there been any evidence of unsatisfactory performance, such remedy would not be appropriate.

Also an important factor in the Andreozzi decision was its timing, i.e. August 23, 1993, well after the March 1st deadline for notice of nonrenewal. Certainly whether or not these positions were continued into the 1993-94 school year was a factor to be considered in determining whether a remedy requiring reemployment of these teachers in 1993-94 would impose a practical or financial hardship on the school committee. Since the record showed that the positions had not been eliminated, it was found to be appropriate to grant the appellants rights to continued employment for the subsequent school year.

The record before us in this matter contains some evidence that Mr. Newsome's generally good performance as a substitute was punctuated by at least two incidents - one in which Mr. Newsome pushed a student during an argument and another in which he used inappropriate language to a female student. On these facts alone, we conclude that a remedy giving him, in effect, an appointment as a regular teacher would be inappropriate.

There is also evidence that Mr. Newsome's credentials have not "measured up" to standards imposed on those selected for vacancies in mathematics in the

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<sup>6</sup> Decision dated August 23, 1993.

Newport school system. The record indicates he competed unsuccessfully for three vacancies in the school system. This fact, coupled with evidence of two incidents of inappropriate classroom conduct, convinces us that a remedy which in effect granted Mr. Newsome appointment as a regular teacher would be inappropriate.

Even if the record demonstrated that Mr. Newsome's credentials and past performance made him well-qualified for appointment to the vacancy in question, a remedy appointing him to the vacant position would have an unduly punitive effect on the school committee. The fact is that the position was eliminated at the end of the school year in 1991.

Given all of the factors to be considered and the record before us, it would be an appropriate remedy for the school committee to compensate Mr. Newsome for his services at the same rate it would have paid a teacher employed under annual contract. Mr. Newsome performed all of the duties that a regular teacher assigned to the class would have performed from January through June 7, 1991.<sup>7</sup> Had it complied with the statute, the school committee would have employed a teacher under annual contract at the appropriate step of the salary schedule. This ruling results in no additional compensation to the appellant, since by virtue of the collective bargaining agreement he has been paid at the appropriate step of the salary schedule for the entire period he filled the vacancy in question. If there were no contractual provision adjusting the appellant's compensation we would direct that such additional compensation be paid. Under the circumstances, the school committee should proceed to make the retirement contributions identified, if it has not already done so.

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<sup>7</sup> See Findings of Relevant Facts page 2 of the December 21, 1992 decision of the Commissioner in this matter.

Kathleen S. Murray  
Kathleen S. Murray, Hearing Officer

Approved:

P. McWalters  
Peter McWalters, Commissioner

March 24, 1995  
Date