



## Introduction

This is an appeal by Karen Nixon, Marie Pugliese, Judith Tassinari and Alda Blackwood from a decision of the Cranston School Committee to terminate their employment as teachers at the end of the 1992-1993 school year.<sup>1</sup>

For the reasons set forth below, we sustain that portion of the appeal concerning the termination of Appellant Pugliese.

## Background

Appellants taught in the Cranston school system during the 1992-1993 school year. Appellant Pugliese, a tenured teacher, was a home economics teacher in an .8 position. Appellants Nixon and Tassinari, non-tenured teachers, were full-time mathematics teachers. Appellant Blackwood, a nontenured teacher, taught Spanish in a .4 position.

On February 8, 1993, the School Committee passed several resolutions stating that 42 teachers, including Appellants, "be terminated at the close of the school year" for various reasons. [Joint Exhibit 5]. The reason given for terminating Appellants Pugliese, Nixon, and Tassinari was that their positions "must now be made available for more senior teachers who will be returning from approved leaves of absence." [Joint Exhibit 5]. The reason for terminating Appellant Blackwood was that "there may be program consolidation and changes in student distribution, and as a result, more senior teachers may take a current position." [Joint Exhibit 5].

Appellants were given notice of their termination and the reasons for the action in letters dated February 9, 1993. These

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1 This matter was referred to the undersigned hearing officer and a hearing was conducted on November 16, 1993. Both parties filed briefs following the hearing.

letters advised Appellants that the School Committee had "voted to terminate your employment as a teacher in the Cranston School System at the close of the 1992-1993 school year." [Joint Exhibits 1(b), 2(b), 3(b), and 4(b)].

Subsequent to the School Committee's action, the teachers who were expected to return to the positions held by Appellants Pugliese and Nixon had their leaves of absence extended. The teacher scheduled to return to the position held by Appellant Tassinari did in fact return, but to a different school. As for Appellant Blackwood, the need for additional French classes at a different school resulted in the transfer of a Spanish teacher who bid into Ms. Blackwood's position.

The collective-bargaining agreement between the School Committee and the Cranston Teachers' Alliance states that "laid off" employees who have been employed in the Cranston school system for two full years "shall be placed on a recall list in order of seniority and by certification."<sup>2</sup> [Joint Exhibit 8]. The agreement further provides that "[a]s positions within the school system become available, employees on the recall list shall be offered employment in their area of certification by seniority."

Of the 42 teachers who were terminated in February 1993, 36 were recalled to employment prior to Appellants' July 19, 1993 appeal hearing before the School Committee. The recalled teachers returned to work without any interruption in their seniority.

Although the particular teachers who were expected to return to the positions held by Appellants Pugliese and Nixon did not actually do so, those Appellants were not recalled because other teachers with

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2 Employees who are terminated for performance-related reasons do not have recall rights.

greater seniority in their respective certification areas moved into their positions following other personnel actions in the system. In the case of Appellant Pugliese, a high school home economics position was reduced subsequent to the School Committee's vote on February 8, 1993. As a result of that reduction, a high school home economics teacher with greater seniority than Appellant Pugliese transferred to the junior high school in which Appellant Pugliese had been teaching. The home economics positions at the junior high school were then reduced from 1.4 to 1.0. Following these actions, Appellant Pugliese was offered a .4 high school position, which she declined.

#### Positions of the Parties

Appellants initially contend that they were suspended, not terminated, from employment by the School Committee. They argue that, unlike a termination, their dismissal was not permanent because they retained recall rights. Appellants point to the return of the 36 "terminated" teachers and assert that their termination has no basis in R.I.G.L. 16-13-3 and 16-13-4 because those statutes relate only to the permanent dismissal of teachers. Appellants claim that, as suspended teachers, they are entitled to continued medical and insurance benefits under R.I.G.L. 16-13-5 pursuant to the Commissioner's decision in Stubits v. East Greenwich School Committee.<sup>3</sup>

With regard to Appellant Pugliese, it is argued that, if the teachers are found to have been terminated, her termination was improper because the School Committee failed to demonstrate the statutorily-required "good and just cause" to dismiss a tenured

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3 January 27, 1993.

teacher. Appellants rely on the absence of any wrongdoing by Ms. Pugliese and the fact that, contrary to the statement of cause, the teacher senior to Appellant Pugliese did not return from leave.

The School Committee contends that the notices provided to the teachers and the resolutions passed by the Committee establish that Appellants were terminated, not suspended, from their employment. It asserts that Appellants' retention of recall rights under the collective bargaining agreement has no bearing on the parties' statutory rights and obligations over which the Commissioner has jurisdiction.<sup>4</sup>

The School Committee further argues that it followed proper procedures and used valid reasons in terminating Appellants. With regard to Appellant Pugliese, the Committee asserts that the return of a more senior teacher from a leave of absence provides sufficient cause to terminate a tenured teacher, and that the validity of this reason "must be judged at the time of the termination notice."<sup>5</sup>

[Brief, p. 11, emphasis in original]. The School Committee also contends that the appeals of Ms. Nixon and Ms. Blackwood are moot because those Appellants indicated that they were employed elsewhere when they declined offers to return to teaching in Cranston.

### Discussion

Given the fact that the recall offers made to Appellants Nixon and Blackwood were for more limited positions than they held in the 1992-1993 school year, we do not find that their rejection of these

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4 The Committee requests that we reconsider the Stubits decision if Appellants are found to have been suspended.

5 The Committee cites Abilheira v. Providence School Committee, July 23, 1984, and Barry and Healy v. Warren School Committee, January 26 and October 29, 1981, respectively in support of these assertions.

offers or their employment elsewhere renders their appeal moot.

Turning to the merits of this case, R.I.G.L. 16-13-2 states that the annual contract of a nontenured teacher "shall be deemed to be continuous unless the governing body of the schools shall notify the teacher in writing on or before March 1 that the contract for the ensuing year will not be renewed . . ." R.I.G.L. 16-13-3 provides that tenured teachers "shall be considered in continuous service and shall not be subject to annual renewal or nonrenewal of their contracts." R.I.G.L. 16-13-3 further states that

No such tenured teacher shall be dismissed except for good and just cause. Whenever a tenured teacher in continuous service is to be dismissed, the notice of such dismissal shall be given to the teacher in writing on or before March 1st of the school year in which the dismissal is to become effective.

Two sections of the teachers' tenure law address the suspension of teachers. R.I.G.L. 16-13-5 states that a teacher may be suspended for good and just cause, and R.I.G.L. 16-13-6 provides for the suspension of teachers because of a substantial decrease in pupil population. R.I.G.L. 16-13-6 mandates that teachers shall be suspended in the inverse order of their employment, and that suspended teachers shall be reinstated in the inverse order of their suspension.

We do not find merit in Appellants' contention that they were suspended from employment in February 1993. As previously noted, the School Committee passed resolutions on February 8, 1993 that Appellants be "terminated." On the following day, notices were sent to Appellants advising them of the School Committee's vote to "terminate" their employment. At no time did the School Committee inform Appellants they were being suspended from their teaching

positions. It is clear to us in light of these facts that in February 1993 the School Committee exercised its right under R.I.G.L. 16-13-2 and 16-13-3 to dismiss tenured teachers and nonrenew the contracts of nontenured teachers on or before March 1st.

The existence of a provision in the teachers' collective-bargaining agreement granting recall rights to "laid off" employees does not change the nature of the School Committee's action. In addressing Appellants' contention, we must exercise our authority to interpret the teachers' tenure statute. The statute, among other things, authorizes a school committee to nonrenew, dismiss, and suspend teachers. Clear distinctions are drawn among these actions, and a school committee has the statutory power to undertake each of these actions. We do not find, nor do we believe we could find, that the recall rights provision in the collective-bargaining agreement transforms a "termination" action, which we consider to be a non-renewal or dismissal under the statute, into a suspension. In our view, contractual recall rights are not necessarily inconsistent with a statutory nonrenewal or dismissal. More importantly, contractual provisions cannot alter the rights and duties conferred by the teachers' tenure statute. If we were to conclude that the recall rights provision of the contract transformed the School Committee's action into a suspension under the statute, we would in essence be finding that the School Committee contractually abdicated its statutory authority to nonrenew and dismiss teachers. The Rhode Island Supreme Court has ruled that a contract cannot have this effect. Vose v. Rhode Island Brotherhood of Correctional Officers, 587 A.2d 913 (1991).

The remaining issue in this matter is whether the dismissal of Appellant Pugliese, a tenured teacher, is supported by good and just cause.

In the Abilheira case, the Providence School Committee terminated the employment of a tenured home economics teacher because "a teacher with greater seniority [was] returning to employment in the Providence School System." [Decision, p. 2]. The appellant disputed the truthfulness of the School Committee's reason, claiming that the real reason for her termination was the reduction of the number of home economics teachers at her school.

The Commissioner found that the Lucie Hall, the teacher on leave, "had greater seniority than the appellant and that she did in fact return from a leave of absence to teach home economics in Providence in the 1983-84 school year." [Decision, p. 3]. As for the appellant's claim regarding the real reason for her termination, the Commissioner stated that

It is true that the above-discussed reduction in force in the home economics program at Roger Williams Middle School did occur. It is also true that, but for the return of Ms. Hall, the appellant would have retained her job even after the reduction in force. Therefore, the return of Ms. Hall from her leave of absence can properly be said to be the reason for the nonrenewal of the appellant's contract. [emphasis in original, Decision, p. 3, footnote 4].

The Commissioner concluded by finding that the reason given by the School Committee for its action was the real reason, and that this reason constituted good and just cause to terminate a tenured teacher.

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6 The Commissioner's decision was affirmed by the Board of Regents on February 14, 1985.

In the Barry and Healey case, the Warren School Committee voted in February 1980 to reduce the appellants' positions because of "budgetary considerations." [January 26, 1981 decision, p. 2]. In June 1980 the school committee adopted a budget and notified the appellants that the budget "would limit your working day to 60%." Ibid. The appellants contended that, as tenured teachers, economic reasons did not constitute good and just cause for their termination. The Commissioner, finding "no indication whatsoever in the record that the financial exigency with which the School Committee was faced was not entirely bona fide," [Ibid. p. 7], concluded that the school committee had good and just cause for its action.

Following a remand by the Board of Regents, the Commissioner considered additional evidence regarding school committee expenditures and a projected surplus for the 1980-1981 school year. The appellants relied on the additional evidence to argue that no bona fide financial exigency existed when the school committee reduced their positions. The Commissioner disagreed, and reaffirmed his earlier decision denying the appeal. [October 29, 1981].

In the appeal of the Commissioner's decision on remand, the Board of Regents found that a reduction in a tenured teacher's position amounts to a partial termination or dismissal and must be grounded on good and just cause. The Board of Regents agreed with the Commissioner that a bona fide financial exigency may constitute good and just cause to dismiss a tenured teacher, but it concluded that "the School Committee has the burden of showing that a bona fide financial exigency existed at the time of its decision and that such exigency was the bona fide reason for its termination of the services

of a tenured teacher." [May 27, 1982 decision, p. 3]. The Board held that the school committee failed to present the type of evidence necessary to establish a bona fide financial exigency, noting that the Commissioner's statement regarding the absence of any indication in the record that the financial exigency facing the school committee was not entirely bona fide "seems to reflect the incorrect view that once the School Committee shows an anticipated shortfall in its budget, the burden somehow falls on the tenured teacher to show the nonexistence of a bona fide financial exigency." [Ibid., p. 4]. The Board therefore sustained the appeal.

We find merit in Ms. Pugliese's appeal because we are unable to conclude that the return of the more senior teacher from leave is the real reason for the reduction in Appellant's position.

The School Committee informed Appellant Pugliese in February 1993 that she was being terminated because "a position must now be made available for a more senior teacher who will be returning from an approved leave of absence." [Exhibit 1(b)]. Appellant Pugliese was not provided with any other reason for her dismissal from her .8 junior high position. It is undisputed, however, that the more senior teacher referred to in the termination notice did not in fact return from her leave of absence. Instead, reductions were made in home economics positions at two schools and a more senior home economics teacher transferred to Appellant Pugliese's school. As a result, Appellant Pugliese was offered a reduced position at the high school.

The School Committee did not make reference to these other personnel actions in the statutorily-required March 1st statement of

cause to Appellant Pugliese. We therefore cannot say, as we did in Abilheira, that but for the return of the more senior teacher on leave, Appellant Pugliese would have retained her .8 position. In reaching this conclusion, we reject the School Committee's contention that good and just cause must be determined at the time of the termination notice.

In the case of a nontenured teacher, a school committee's non-renewal decision is to be based, and later is supportable, on circumstances existing as of the March 1st statutory deadline. See discussion in Marshall and Beaulieu-Gonsalves v. Burrillville School Committee, June 8, 1994.<sup>7</sup> This has never been held to be the standard in the case of a school committee's dismissal of a tenured teacher. For instance, in the Abilheira case the Commissioner made a specific finding that the teacher with greater seniority than the appellant did in fact return from her leave of absence to teach in the 1983-84 school year. In Barry and Healey, the Board of Regents held that the school committee's showing of an anticipated budget shortfall did not satisfy its burden of proving that its decision was based on a bona fide financial exigency.<sup>8</sup> These cases demonstrate that, in the case of a tenured teacher, the school committee's burden to establish good and just cause extends beyond the circumstances which existed at the time the dismissal notice was issued. This

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7 We find that the School Committee's nonrenewal of Appellants Nixon, Tassinari, and Blackwood is supported by the circumstances which existed at the time of its action.

8 In Phelan v. Burrillville School Committee, August 26, 1991, we stated that the existence of a financial exigency is to be determined by reviewing the actions of the school committee and the information available to it subsequent to the time it issued the dismissal notice to the tenured teacher.

definition of the school committee's burden is consistent with the type of status that tenure confers upon a teacher. Given the content of the notice to Appellant Pugliese and the events which precipitated the offer of a .4 position, we hold that the School Committee failed to meet its burden because the notice did not state the real reason for the reduction of Appellant's teaching position.

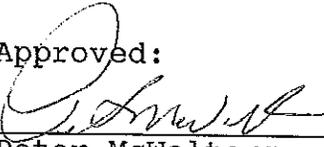
We therefore sustain the appeal of Ms. Pugliese.

Conclusion

In terminating Appellants' employment, the School Committee exercised its statutory authority to dismiss tenured teachers and nonrenew the contracts of nontenured teachers. Appellants were not suspended from employment under the teachers' tenure statute. The reasons for the nonrenewal of Appellants Nixon, Tassinari, and Blackwood are supported by the circumstances existing at the time of the School Committee's action. The School Committee has failed to establish good and just cause for the dismissal of Appellant Pugliese because the reason set forth in her termination notice is not the real reason for the reduction of her position. We therefore order the School Committee to reinstate Appellant Pugliese to her .8 position and to meet with her forthwith to determine the amount of compensation she is owed.

  
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Paul E. Pontarelli  
Hearing Officer

Approved:

  
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Peter McWalters  
Commissioner of Education

Date: March 28, 1995