

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

BRENDA FRANCO AND AMY HORNE

VS.

WEST WARWICK SCHOOL COMMITTEE

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DECISION

Held: School Committee violated
R.I.G.L. 16-13-2 by hiring
Appellants as long-term
substitute teachers to
fill true vacancies.

Date: August 25, 1995

Introduction

This appeal alleges that the West Warwick School Committee improperly employed Brenda Franco and Amy Horne as long-term substitute teachers, rather than as regular teachers, during the 1994-1995 school year.¹

We sustain the appeal for the reasons set forth below.

Background

Article 7(A) of the collective-bargaining agreement between the West Warwick School Committee and the West Warwick Teachers' Alliance is entitled "Vacancies, Postings and New Positions." It states in pertinent part that

All teaching vacancies and all new positions shall be posted for twenty (20) days before they are filled. In the event that a vacancy occurs after the school year has begun, the position shall be filled by a substitute until the end of the school year; the position then shall be posted. [Joint Exhibit 1].

The collective-bargaining agreement does not define the word "vacancy."

Brenda Franco was hired as a long-term substitute teacher effective on or about February 1, 1995. She taught as a Chapter One reading specialist for the remainder of the 1994-1995 school year. Her predecessor had transferred to a special education position at another school in the West Warwick system. Appellant Franco was interviewed by a screening committee, an interview committee, and by Superintendent Dr. William A. Jutras, who hired her.

Amy Horne was hired as a long-term substitute effective

1 The Commissioner assigned this matter to the undersigned hearing officer. It was heard on July 18, 1995, at which time two additional Appellants (Sandra D'Alessandro and Melissa Pare) withdrew from this proceeding. The record closed on August 14, 1995.

November 22, 1994. She taught the 4th grade at the John F. Horgan Elementary School for the remainder of the 1994-1995 school year. The teacher assigned to the 4th grade at the beginning of the school year had resigned her position and moved out of state with her family. Appellant Horne was interviewed by a committee and hired by the superintendent.

Neither of Appellants' predecessors remained on leave status with respect to the positions in issue.

Appellants' hiring was not presented to the School Committee for its consent. Appellants were paid at a long-term substitute's rate. They were not paid according to the salary schedule contained in the teachers' collective-bargaining agreement.

By letters dated February 28, 1995, Appellants were notified of the School Committee's decision not to renew their "employment with the West Warwick School Department as of the end of the 1994-95 school year." [School Committee Exhibits 3 and 5]. The reason given to Appellant Franco for her nonrenewal was "the uncertainty or lack of federal/ state funding," while Appellant Horne's notice stated that "it is anticipated that the teacher whose position you are filling will be returning from leave, a regular teacher may elect to fill the position, and/or the position may be eliminated due to lack of funding and the necessity to eliminate or consolidate positions, programs or services."

On April 3, 1995, Appellants' union representative informed Dr. Jutras that Appellants had been erroneously classified as long-term substitutes, and that they should be treated as regularly-employed teachers. On May 8, 1995 the school department posted a "Notice of

Vacancies" which included Appellants' positions. The positions were not filled with regular teachers in light of the filing of the appeal herein.

Contentions of the Parties

Appellants contend that Article 7(A) of the teachers' collective-bargaining agreement is in conflict with decisions of the Commissioner interpreting the requirements of R.I.G.L. 16-13-2,² and that Appellants were improperly hired as long-term substitutes to fill vacancies which the Commissioner has ruled can only be filled by regular teachers. Appellants emphasize the interviewing process that preceded their selection as substitutes, and the absence of any evidence that their performance as teachers during the 1994-1995 school year was inadequate. Appellants request that they be appointed as regularly-employed teachers retroactive to their hiring as long-term substitutes, and that they be made whole with respect to salary and benefits.

The School Committee contends that the hiring of Appellants as long-term substitutes was in good faith and consistent with its past practice as sanctioned by the collective-bargaining agreement. The Committee argues that the hiring of Appellants was in accordance with a valid process for filling vacancies. It notes that the applicant pool for vacancies which occur during the school year is severely limited and therefore restricts its ability to appoint the best qualified individuals to regular teacher positions. The Committee further argues that an order of retroactive appointment in this matter

2 The statute requires that "[t]eaching service shall be on the basis of an annual contract. . ."

would be contrary to R.I.G.L. 16-2-9(13) which vests school committees with the authority to consent to the superintendent's appointment of all school department personnel.

Discussion

In Autieri vs. Warwick School Committee, June 28, 1989, the Commissioner stated that

There is no need to cite authority for the long-established rule that RIGL 16-13-2 requires the various school districts to fill teaching vacancies with regular teachers employed on the basis of an annual contract. The strong policy in favor of continuing teaching service and avoidance of the creation of a "class of temporary teachers" (footnote omitted) has led to decisions imposing the requirement that even if a vacancy arises after the beginning of the school year, it must be filled by a regular teacher and not a substitute.⁵

⁵ Note, however, that the Commissioner has indicated that if the vacancy occurs "a few days or a few weeks before the end of the school year, the appointment of a teacher as a day-to-day substitute would be proper. . ." footnote 4, pg. 3 of the Commissioner's decision in Daley vs. North Providence School Committee, May 25, 1977. (p. 8).

In the Daley case, which was affirmed by the Board of Regents on December 15, 1977, the Commissioner stated that

. . . we do not question the authority of a school committee to employ a teacher as a substitute to take the place of a teacher who is absent or on leave and who is expected to return to his position. We believe, however, that when a vacancy exists because a teacher has resigned and a teacher is appointed to fill that vacancy for the remainder of the school year (as in the instant situation), (footnote omitted), that teacher is not in fact a day-to-day substitute. It is our opinion, therefore, that the appellant is being improperly employed and compensated as a day-to-day substitute, and that . . . she should be employed on the basis of an annual contract and be paid in accordance

with the appropriate step of the salary schedule in the Collective Bargaining Agreement . . . and be granted all fringe benefits provided in the Agreement. (pp. 3-4).

In Torrealday vs. Providence School Committee, July 30, 1979, the Commissioner found that, when unusual circumstances exist, school committees are not barred by R.I.G.L. 16-13-2 "from hiring a person for a reasonable period on a 'trial' basis before offering him or her an annual contract." (p. 4). The unusual circumstances in the Torrealday case involved the creation of a new teaching position for which certification in three areas was required and the appellant's admitted lack of experience in two of the certification areas. The Commissioner cautioned, however, that

Our opinion in this matter is based on the unusual circumstances in this case and should not be construed to mean that a school committee may ordinarily employ a person as a per diem substitute to fill a definite vacancy. On the contrary, we believe that the statute, Section 16-13-2, requires that a person be appointed as a regular teacher except when unusual circumstances exist or when only a relatively small part of the school year remains to be completed. (p. 5).

The Board of Regents affirmed the Commissioner's decision in the Torrealday case.³ In doing so, the Board stated that "where a process is in place for filling vacancies on a permanent basis, a reasonable time may be allowed for the use of a substitute teacher in a vacancy." (p. 2).

We find in the case at hand that true vacancies were created when Appellants' predecessors transferred and resigned from their teaching positions. No claim was made in this proceeding that there was an expectation for these teachers to return to their positions. Given

the timing of the transfer and resignation, the School Committee was statutorily required to appoint regular teachers to these positions absent any unusual circumstances.

We have previously held that a provision in a collective-bargaining agreement which conflicts with state law is invalid. See Conway et al. vs. Warwick School Committee, January 15, 1988. As a result, Article 7(A) and the School Department's practice thereunder cannot justify the hiring of Appellants as long-term substitutes. We further find on the facts of this case that the School Committee's process for permanently filling vacancies included the use of substitutes for more than a reasonable length of time. The delay in selecting a permanent teacher under the School Committee's process runs directly counter to the statutory policy "that teaching service be on the basis of an annual contract and that substitutes be employed only to replace absent teachers." Autieri vs. Warwick School Committee, June 28, 1989. (pp. 11-12).

With regard to the School Committee's argument regarding the limited size of the applicant pool, we note that the School Committee retained its prerogative under the statute to evaluate these teachers during the school year and, if unsatisfied with their performance in the classroom, terminate any rights to continuing employment Appellants may have by giving them a notice of nonrenewal on or before March 1st as provided for in R.I.G.L. 16-13-2. As previously mentioned, the School Committee did in fact give Appellants nonrenewal notices, neither of which listed as a reason the conclusion of their limited period of employment as long-term

substitutes.

In light of the discussion above, we do not find any unusual circumstances which would justify the hiring of Appellants as long-term substitutes. We therefore hold that the School Committee violated R.I.G.L. 16-13-2 by hiring Appellants as long-term substitutes instead of filling the vacancies in issue with regular teachers.

We believe the appropriate remedy in this matter is to compensate Appellants for their services as long-term substitutes at the same rate they would have been paid as regular teachers consistent with the salary schedule in the teachers' collective-bargaining agreement. Appellants also are entitled during the period of their employment as long-term substitutes to all contractual benefits provided to regular teachers. We further find it appropriate that Appellants be afforded full status as regular teachers, with rights to continuing employment during the 1995-1996 school year, subject to the ultimate⁵ disposition of the notices of nonrenewal received by Appellants.

Conclusion

We find that the hiring of Appellants as long-term substitutes to fill true vacancies during the 1995-1996 school year was improper. We

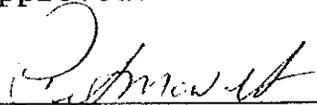
- 4 While Appellant Horne's notice referred to the return from leave of the teacher whose position she was filling, the evidence shows that Appellant Horne's predecessor did not take a leave from the Chapter One reading specialist position.
- 5 We base this portion of our remedy on the absence of any evidence that Appellants' performance was less than satisfactory and the fact that their notices of nonrenewal do not refer to the expiration of a limited-period hiring, but instead offer different reasons for termination which, in our view, suggest the existence of a presumption of continued employment by Appellants. We find that this is a proper exercise of our remedial authority in the circumstances of this case, the exercise of which cannot be prevented by R.I.G.L. 16-2-9(13).

therefore sustain the appeal and order the School Committee to make Appellants whole and grant them full status as regular teachers in accordance with the terms outlined above.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

Date: August 25, 1995