

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

EDWARD L. JAWOR

V.

BRISTOL/WARREN REGIONAL
SCHOOL COMMITTEE

DECISION

Held: Termination of the appellant as principal of Mt. Hope High School was not supported by just cause as required by R.I.G.L. 16-12.1-2.1.

Date: March 21, 1996

Travel of the Case

On May 26, 1995 Edward L. Jawor, through his counsel, filed an appeal with Commissioner Peter McWalters, challenging the decision of the Bristol-Warren Regional School Committee not to renew his contract as principal of Mount Hope High School. The Commissioner designated the undersigned to hear the matter, which was heard on September 28, 1995 and October 20, 1995. Briefs were filed by the parties on November 6, 1995 and on November 7, 1995 transcripts were received and the record closed.

Jurisdiction to hear this appeal lies under R.I.G.L. 16-12.1-6 and 16-39-2.

Issue:

Was the nonrenwal of the appellant's contract as principal of Mount Hope High School supported by just cause?

Findings of Relevant Facts:

- On or about June 21, 1993 Edward L. Jawor was appointed principal of Mount Hope High School by the Bristol/Warren Regional School Committee. Jawor Ex. 1-D; Tr. Vol. I p. 38.
- Dr. Jawor's appointment as principal was made after the top-ranked candidate for the position withdrew on the eve of his appointment by the school committee. Tr. Vol. I pp. 36-37, 98-104.
- Dr. Jawor's appointment to the position of principal of Mount Hope High School was based on the superintendent's decision that continuity and consistency were needed at the high school during the process of merging Bristol and Warren high school students into a facility which was undergoing construction that same year. Tr. Vol. I. pp. 102-105.
- Dr. Jawor's appointment in the 1993-1994 school year was under the terms of a one-year contract, which by its terms¹ renewed for the subsequent year without any further action by the superintendent and/or school committee. Tr. Vol. I.

¹While the record contains a copy of Dr. Jawor's contract for the 1992-93 year in which he served as principal of Bristol High School (Jawor Ex. 4) it does not contain a copy of his contract for 1993-94.

pp. 38-39. Dr. Jawor thus remained in his position as principal during 1994-1995. Tr. Vol. I pp. 104-105

- On January 24, 1994 the members of the Bristol-Warren Regional School Committee voted unanimously to adopt the policies previously comprising the Bristol School Committee policy manual. (Jawor Ex. 5). Both the policy governing evaluation of professional staff (administrators)(Jawor Ex. 6) as well as the job description for Dr. Jawor's position (Jawor Ex. 3) call for annual evaluations of job performance.
- The last written evaluation of Dr. Jawor was performed on March 15, 1991. Stipulation of counsel, Tr. Vol. I p. 3; Oral evaluations of Dr. Jawor's job performance were performed by Superintendent DiBiasio during both 1993-94 and 1994-95. Tr. Vol. I. pp. 59-70.
- The Bristol-Warren School Committee adopted a policy requiring that professional (certified) personnel, other than the superintendent work under one-year contracts. This policy was adopted January 24, 1994. School Committee Ex. A; Tr. Vol. I pp. 90-91.
- Upon Superintendent DiBiasio's appointment as superintendent of the Bristol/Warren Regional School District in December of 1992 he was given a directive to seek excellence in all phases of school district operation, including the appointment of personnel. Tr. Vol. I. pp. 84-85.
- Consistent with this directive, Superintendent DiBiasio notified Dr. Jawor in writing on March 31, 1995 that the position of principal of the high school would be posted and advertised. Jawor Ex. 1-E; Tr. Vol. I. p. 39.
- On April 11, 1995 Dr. Jawor was further notified that the reason the superintendent was recommending that the principalship be posted was to seek the best possible person available for the position. If Dr. Jawor's qualifications exceeded those of all other candidates applying for the position, Dr. DiBiasio indicated he would then recommend Dr. Jawor's reappointment. Jawor Ex. 1-F.
- Superintendent DiBiasio testified that Dr. Jawor's performance as principal of Mount Hope High School was adequate. Tr. Vol. I. p.111.
- The Superintendent also testified that based on his assessment of Dr. Jawor's performance, his belief that better candidates would be available, and the fact that a recent search had produced a far superior candidate (who withdrew prior

to appointment) he had recommended nonrenewal of Dr. Jawor's contract. Tr. Vol. I. p. 111.

- At the April 17, 1995 hearing before the school committee, there was no presentation of specific details supporting the superintendent's assessment of Dr. Jawor's performance² because he was not charged with any misfeasance or malfeasance, but rather "failure to achieve excellence". Tr. Vol. I. pp. 43-44.
- At the conclusion of the hearing, the members of the Bristol-Warren School Committee voted to accept Superintendent DiBiasio's recommendation that it not renew Mr. Jawor's contract. Jawor Ex. 1; a written decision was issued later on May 15, 1995. (Jawor Ex. 2).
- The school committee noted in its written decision of May 15, 1995 that its decision "does not involve termination for performance failure". Jawor Ex. 2.

Position of the Parties

Bristol-Warren Regional School Committee:

The issue as framed in the school committee's brief at page 4 is:

whether the school district's written policy of annual appointment and/or its desire to seek the best possible person for the principalship of Mount Hope High School constitutes just cause to non-renew the petitioner's employment contract at the end of the term.

The school committee references R.I.G.L. 16-12.1-1³ as the "starting point" in resolving this issue and argues that the statute entitled "School Administrators' Rights" gives administrators the right to a true statement of the reasons for their suspension, dismissal, or non-renewal and the opportunity to be heard before the school committee. The committee argues that it has fully complied with the procedural requirements of the law by providing Dr. Jawor with both an accurate

²Such details were part of Dr. DiBiasio's testimony at the hearing before the Commissioner. Tr. Vol. I. pp. 40-42.

³R.I.G.L. 16-12.1-1 is the section of the chapter on school administrators rights which sets forth the legislative purpose of that chapter.

notice of the reasons for nonrenewal of his contract and affording him a full hearing before the committee.

Further, the committee argues that its reasons for nonrenewal, i.e. expiration of the annual contract and its desire to seek a principal who could achieve excellence at the high school are valid under the statute. Citing the recent Board of Regents' decision in the case Helen Kagan and Thomas McGhee v. Bristol/Warren Regional School Committee (October 12, 1995) the committee notes that the desire to find better qualified teachers to implement the goal of achieving excellence in teaching is a valid reason for nonrenewal. A direct parallel is drawn to the school committee's decision not to renew Dr. Jawor's annual contract in that it is submitted that he performed adequately while principal at the high school and his nonrenewal was based on his failure to achieve excellence (Brief pp. 3,6). Since no performance failure is alleged, the school committee argues that it has no burden to prove that there is something wrong with the Petitioner. (Brief p. 6). Counsel argues that the basis for Dr. DiBiasio's belief that better candidates than Dr. Jawor were available for the principalship has been substantiated and better qualified candidates have actually been sought by the process of posting and advertising the position⁴.

In conclusion, the committee argues full compliance with the procedural protections required by Chapter 16-12.1, and that its' reasons for nonrenewal constitute "just cause" under the statute.

Petitioner Edward L. Jawor:

The petitioner draws our attention to numerous issues raised by his nonrenewal, but the thrust of his argument is that his non-renewal was a

⁴Superintendent DiBiasio testified at the hearing that upon declaring the principalship vacant, the position was posted and advertised and he was at that time about to convene a screening committee. Tr. Vol. I pp. 117-118.

"termination" and that it is not supported by legally sufficient just cause as required by R.I.G.L. 16-2.1-2.1 which states:

Termination of administrators.- An administrator shall only be terminated for just cause including but not limited to declining enrollment or consolidation.

The petitioner rejects the suggestion that "pursuit of excellence" constitutes "just cause" as that term is used in the statute. (Brief pp. 1-2, 8).

The petitioner argues that at both the school committee hearing and before the commissioner, counsel for the school committee has conceded that the just cause standard (used in conjunction with the word "termination" in the statute) applies to nonrenewal of an administrator's contract. Application of the just cause standard, it is argued, requires some proof of inadequacy, poor performance or other substantial shortcoming on the part of Dr. Jawor. (Brief p. 10). Since the school committee has also conceded that Dr. Jawor's performance as principal was adequate and that he is not guilty of any misfeasance or malfeasance while in that position, there has been no demonstration of just cause. (Brief p. 10).

Further, counsel for the petitioner argues that any shortcomings in Dr. Jawor's performance while principal of Mount Hope High School⁵ were not brought to Jawor's attention in formal written annual evaluations, were not contained in the notice of nonrenewal sent to Dr. Jawor, and were not presented at the school committee meeting at which the decision to nonrenew Dr. Jawor's contract was made. Thus, any assertion that "lack of excellence" can now be supported by such details in a consideration of "just cause" would be erroneous. (Brief p.11). This argument is based both on Chapter 16-12.1, as well as notions of fundamental fairness required by constitutional due process.

⁵Even if they were alleged to constitute just cause, which they have not since the school committee relies exclusively on the petitioner's "lack of excellence".

Several other issues are raised by the petitioner, including the argument that the procedures at the school committee hearing violated the Open Meetings Act and were tainted by a conflict of interest on the part of counsel to the committee. Arguments in support of these violations are included in the petitioner's brief and are advanced as additional reasons to invalidate the action taken by the Bristol/Warren Regional School Committee with regard to Dr. Jawor's contract.

Decision

The parties to this dispute are in agreement as to the essential facts: that Dr. Edward L. Jawor was employed as principal of Mount Hope High School under the terms of a one-year contract which had automatically renewed for the year 1994-95; that his performance in that position was adequate; that consistent with a policy of seeking excellence in general and of seeking excellence in the appointment of school personnel, the superintendent made a recommendation that Dr. Jawor's contract not be renewed so that other, more qualified, candidates might be sought; and that subsequent to the nonrenewal Dr. DiBiasio did, in fact solicit applications for the position. The parties also agree that the dispute is governed by R.I.G.L. 16-12.1-1 et seq. While the school committee directs our attention to Section 16-12.1-1 ("Legislative Purpose") the substantive provisions of that chapter, and not the legislative purpose section, are controlling as to the issue raised by this appeal.

We might note at the outset that upon its original enactment in 1979 the Administrators Bill of Rights, i.e. Title 16 Chapter 12.1 created a panoply of procedural rights for administrators who were to be dismissed or nonrenewed, and for those who had already been suspended from employment. Chapter 291 of the Public Laws of 1983 significantly amended this statute. The 1983 amendments included deletion of language in Section 16-12.1-1 that "public school administrators either serve at the pleasure of local or regional school committees

or serve under contracts for a specific term." The amendments did not eliminate the language in Section 16-12.1-1 that the Assembly intended neither to interfere with the discretion of school committees to choose those who shall administer local schools nor to grant tenure to school administrators; however the following section was added:

16-12.1-2.1. Termination of Administrator-- An administrator shall only be terminated for just cause including but not limited to declining enrollment or consolidation. (Public Laws 1983 Ch. 291 Section 2).

Implicit in the school committee's argument that it had just cause to nonrenew the petitioner is the proposition that the applicable standard against which its action must be judged is "just cause" as that term is used in 16-12.1-2.1⁶. It is, however, our opinion that application of the standard of just cause invalidates the action taken by the school committee, since neither of the reasons advanced by the school committee constitute what is recognized as legally sufficient "just cause".

The first item of "just cause" advanced by the school committee is the annual appointment policy of the Bristol-Warren Regional School Committee⁷. It is true that the statute does not place administrators in continuing service, nor does it take away a school committee's right to employ administrators under annual contracts, or for that matter to employ them "at will". (As previously discussed, the 1983 amendment deleted references to the latter two employment arrangements). However, it begs the question to say that nonrenewals are encompassed by "termination" as that word is used in 16-12.1-2.1, and then to

⁶The school committee has not argued that nonrenewal is different from termination under 16-12.1-2.1. We make no ruling herein that all dismissals of school administrators must be supported by "just cause". However, as we observed over a decade ago in Barrs v. Westerly School Committee, decision of the Commissioner dated January 31, 1984 "under present law it would seem ... that an administrator may now only be dismissed for cause" (p. 2).

⁷And, implicitly the fact that Dr. Jawor's contract term expired consistent with that policy.

argue that expiration of the one-year term constitutes "just cause". It is really another way of saying that the school committee did not need just cause to support a non-renewal. The evidence in this case creates an inference that the superintendent, and perhaps even the school committee took this position⁸. It is not, however, consistent with the position taken by the committee at this level.

The second item of "just cause" advanced is "the desire of the school committee to seek the best possible person for the principalship of Mount Hope High School". The case cited by the school committee is the Board of Regents' decision in Helen Kagan and Thomas McGhee v. Bristol/Warren Regional School Committee, October 12, 1995. In that case, the Regents affirmed that the desire to find a more qualified teacher, as yet unidentified, was a valid reason for the nonrenewal. This case is clearly distinguishable. Neither Ms. Kagan's nor Mr. McGhee's nonrenewal was governed by a requirement that it be supported by "just cause", as is the case with the nonrenewal of Dr. Jawor.

Our review of education law throughout the country produced not a single case in which the desire to find a more qualified teacher, or administrator⁹ was found to be "just cause".¹⁰ Likewise, there was no precedent that we could find, or

⁸We would note that Superintendent DiBiasio's letter of notice to Dr. Jawor dated April 11, 1995 does not reference just cause, and at the hearing before the school committee on April 17, 1995 when he was questioned concerning "just cause" for termination of Dr. Jawor he indicated that Dr. Jawor was not being terminated. Jawor Ex. 1 pp. 14-18. Although it may be a typographical error, we find no reference in the school committee's written decision of May 15, 1995 that it found "just cause" for the nonrenewal of Dr. Jawor's contract. The committee does state "we conclude that the uncontradicted testimony of Superintendent DiBiasio and the exhibits clearly establish that Principal Jawor had annual employment and that the Superintendent has caused to recommend that Principal Jawor's annual contract not be renewed at the end of the current employment year in that it is not only a right, but an obligation, of the superintendent to seek the best possible person for the principalship." (Emphasis added).

⁹Many states do not require "just cause" for the termination of administrators for education policy reasons.

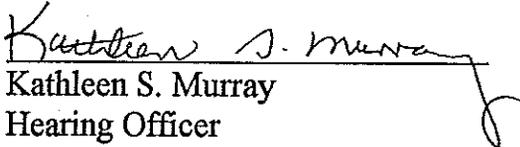
¹⁰Just cause in Rhode Island has been construed in numerous decision of the Commissioner to include misconduct evidencing professional unfitness Gambardella v. Pawtucket School Committee, June 21, 1983; numerous professional inadequacies Hobson v. South Kingstown School Committee, October 2, 1990; Program elimination (Long v. Newport School Committee), February 27, 1978 aff'd Bd. of Regents, August 24, 1978, Aff'd Superior Court decision C.A. No. 78-2725 Rogers, J.) and fiscal exigency (Barry and Healey v. Warren School Committee, January 26, 1981).

that is cited by the school committee, supporting the proposition that an employee's lack of excellence in performing his job constitutes "just cause" for dismissal or non-renewal. This is probably due to the fact that when "just cause" has been based on performance (rather than on the administrative or economic needs of the employer) the level of performance supporting the adverse action has been "poor", "inadequate", or "unsatisfactory." Here the employer admits that the performance of the employee has been adequate, but lacking in excellence. Therefore, we find that the argument of the school committee that just cause includes lack of excellence or mere adequate performance is without precedent and unsupported by any general definition of just cause. Even a general working definition of "just cause" provides no reference to lack of excellence or mere adequacy. A typical general working definition of just cause is:

some substantial shortcoming which renders continuance in employment detrimental to discipline and effectiveness of service; something which the law and sound public opinion recognize as a good reason ... Fadler v. Illinois State Bd. of Education, 506 NE2d 640, 642.

We do not disregard the argument of the school committee that a just cause requirement which fails to include lack of excellence can result in retention of mediocre administrators and impede the ability to seek out better administrators than those already in their employ. This is, however, a policy decision made by the General Assembly when it amended the statute to put in place a just cause requirement for termination of administrators.

For the foregoing reasons, the appeal of Dr. Jawor is sustained. We direct the school committee to reinstate him and confer immediately to determine the amount of any back pay, or other compensation he is owed.


Kathleen S. Murray
Hearing Officer

Approved:


Peter McWalters
Commissioner

March 21, 1996
Date