

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

 *
 ELS SHINE *
 *
 V. *
 *
 EXETER-WEST GREENWICH *
 SCHOOL COMMITTEE *
 *

INTERIM DECISION

Held: Case must be stayed pending
decision of arbitrator.

DATE: September 11, 1997

This is the case of a non-tenured teacher whose contract has not been renewed. This non-renewal was predicated upon certain evaluations of the teacher, which were made by the school administration. The validity of these evaluations is now being considered in two arbitration hearings. The teacher has also appealed his non-renewal to the Commissioner of Education.

The problem in this case is that the arbitrators are to rule whether or not the determinative evaluations are to be admitted into evidence at the appeal hearing now before the Commissioner. Our preference would be to rule that once a case is appealed to the Commissioner of Education all issues arising in the case, including the validity of an evaluation, are properly before the Commissioner for determination. The General Assembly, however, has recently enacted G.L. 16-13-2(b), which states that:

- (b) Nothing contained in this section shall be construed to prohibit or at any time to have prohibited a school committee from agreeing, in a collective bargaining agreement, to the arbitration of disputes arising out of a dismissal or nonrenewal of a nontenure teacher pursuant to subsection (a) of this section.

The Superior Court has denied the school district's request to enjoin the hearings before the arbitrators. Instead the Superior Court decided that both hearings might proceed at their own pace. Exeter-West Greenwich Regional School District vs. Exeter-West Greenwich Regional School District Teachers' Association, et als., C.A. No. KC 96-924.

The problem, however, is that while the commissioner may have started to hear this matter, no final ruling may be made until the arbitrators rule on the validity of the evaluations. The Commissioner of Education cannot rule on a matter except upon the basis of "substantial evidence" (G.L. 42-35-15 (g)) and in this case the evaluations are the

substantial evidence. Thus we cannot proceed in this case until the arbitrators have ruled on the validity of the evaluations.

Conclusion

This matter must be stayed until the arbitrators ruled on the validity of the evaluations.

Forrest L. Avila, Hearing Officer

Approved:

Peter McWalters, Commissioner

DATE: September 11, 1997