

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

ADELINE LYONS *
V. *
WARWICK SCHOOL COMMITTEE *

DECISION

Held: The appellant is entitled to credit for her years of service as a job share substitute for the Warwick school department. She was not entitled to additional compensation during her years of employment as a job share substitute.

DATE: June 3, 1998

Travel of the Case

On March 11, 1997 Adeline Lyons, a Warwick teacher, appealed the issue of her placement on the salary schedule to Commissioner Peter McWalters. On April 10, 1997 the undersigned was designated to hear and decide this dispute. The parties were notified to agree upon a hearing date, and did so. A full hearing was held on May 7, 1997. The school committee was represented by counsel, and Ms. Lyons was represented by a field representative for the Rhode Island Federation of Teachers and Health Professionals. Post hearing briefs were submitted by the parties, a process which concluded on July 25, 1997.

Issues:

When the appellant was hired as a regular teacher in April of 1993 was she given appropriate credit for her years of service, experience and training as required by R.I.G.L. 16-7-29?

Was the appellant's compensation as a long-term substitute in school year 1970-71 in accordance with statutory requirements?

Was the appellant's compensation as a job share substitute commencing in January of 1987 through February of 1993 in accordance with statutory requirements?

Findings of Relevant Facts

- Adeline Lyons began her employment as a secondary English teacher in the Warwick public schools in school year 1965-66. She continued in that capacity until the end of school year 1967-1968. She resigned her position in August of 1968. Lyons Ex. 1; Tr. p.10.
- At the time of her resignation she had advanced to step 3 of the salary schedule in effect at that time. S.C. Ex. C.
- During the period from 1968 to January of 1987 Ms. Lyons was employed as a per diem substitute teacher, except for school year 1970-1971 in which she worked as a

long-term substitute.¹ In school years 1974-75, 1982-83, 1983-84, and 1984-85 she was not employed by the district in any capacity. S.C. Ex. C; Lyons Ex. 1; Tr. pp. 11-12.

- Beginning in January of 1987, Ms. Lyons participated in a pilot job-sharing program in which she worked a two-fifths schedule for a regular teacher, who took a partial leave of absence from her full-time position. Tr. pp. 12, 34, and 50.
- Ms. Lyons worked this part-time schedule every day of the second semester of school year 1986-87. Tr. pp. 13, 35.
- In school year 1987-1988 she continued her employment as a job share substitute, but worked a three-fifths (3/5) schedule each day. Tr. p. 13. S.C. Ex. C.
- Ms. Lyons continued as a job share substitute in school years 1988-89, 89-90, 90-91, 91-92, 92-93, until her appointment as a regular teacher in April of 1993. pp. 13-19; Lyons Ex. 1 and 2; S.C. Ex. C. In each of these years she worked every day school was in session.
- When she was hired as a job share substitute in 1987 Ms. Lyons was paid at a base rate equal to the first step of the salary schedule in effect for regular teachers. She also received medical coverage and other benefits provided under the collective bargaining agreement on a pro-rated basis. Tr. pp. 15-16, 29. S.C. Ex. C.
- For each full year that she worked as a job-share substitute, Ms. Lyons advanced a step on the salary schedule. S.C. Ex. C. Tr. pp. 29-30, 38-39. By the 1992-93 school year, she had attained placement on step 6 of the salary schedule. Tr. p. 30. S.C. Ex. C.²
- On February 5, 1993 the job sharing assignment ended and the teacher with whom Ms. Lyons job-shared returned to work full time; the appellant continued to teach two classes as a per diem substitute until her appointment as a regular, part-time teacher on April 13, 1993. S.C. Ex. C. Tr. p. 18, 20.
- Upon her appointment as a regular teacher in April of 1993, Ms. Lyons was moved from step 6 to step 4 of the salary schedule. Tr. p. 20; S.C. Ex. C.
- In school year 1993-94, and in each year since, Ms. Lyons has been employed as a full time teacher of English at the secondary level. Lyons Ex. 1; S.C. Ex. C; Tr. pp. 20-21. She has advanced from step 4 to step 8 (at time of the hearing) throughout these years. Tr. pp. 20-21. S.C. Ex. C.

¹ From January through June of 1971, for a total of 106 days. Tr. p. 11.

² The appellant's representative argued that she had attained step 6, and she confirmed this in her testimony. Tr. p. 20. We assume that S.C. Ex. C is in error in showing the appellant at step 5 for school year 1992-93.

Position of the Parties

The Appellant

Ms. Lyons takes the position that the salary she received during several of her years of employment in the Warwick school system was not the compensation required by state law. As far back as school year 1970-71, when she worked as a long-term substitute, the adequacy of her salary is called into issue. She was compensated at step 1 of the salary schedule in a long term assignment from January through June, 1971. Once she was placed on the salary schedule, it is argued that her placement should have been in conformity with R.I.G.L. 16-7-29, i.e. her placement should have recognized her years of prior service, experience and training. In Ms. Lyons' case, such credit would have required her placement at step 4, since she had three years of service from 1965 through 1968.

Based on the same principle, when Ms. Lyons was placed on the salary schedule as a job-share substitute, in school years 1986-1993, her placement should have been determined by giving credit to her three full-time years of service in 1965-68, as well as a year of service for her 106 days as a long term substitute.³ In January of 1986-87 when Ms. Lyons was again placed on step one as a job share substitute, she should have been placed on step 5. She submits that she should then have advanced to step 9 over the next several years as a job share substitute.

When Ms. Lyons received an appointment as a regular teacher in April of 1993 she was "uncredited" with the five (5) years of experience she had accumulated under the school committee's own methods of calculating her prior service. In effect, the school

³ The collective bargaining agreement states that a year's experience shall be based on the teaching of at least ninety (90) days during any given school year. See S.C. Ex. E. p. 57; Article XIII.

committee rescinded its previous recognition of her teaching experience as a job share substitute. The appellant maintains that once experience is credited, it cannot thereafter become “uncredited”, and a teacher thereby moved backward on the salary schedule. The school department then recognized her service in years 1965-1968, and placed her on step 4 instead of step 9 of the salary schedule, where her representative argues she should have been placed.

Advancement on the salary schedule throughout the years the appellant worked as a job share substitute was not gratuitous, as is argued by the school committee. Rather, each full year the appellant was employed counts as a year of “service, experience, and training” required to be credited in determining the appellant’s salary, under the case of D’Ambra v. North Providence School Committee, 601 A.2d 1370 (R.I. 1992).

Throughout this entire period it is argued that she was a regularly employed part-time teacher, whose non-permanent status did not preclude her accumulation of “years of service”.

Even if she is considered a “substitute” during her years as a job sharer, the appellant notes that a substitute who works at least 135 days is entitled to credit for a year of service for such year. Berthiaume et al v. School Committee of the City of Woonsocket 121 R.I. 243, 397 A.2d 889 (1979). Neither the statute (16-7-29) nor the Berthiaume case authorizes “pro-rating” a part-time substitute’s service to calculate the full time equivalent. Thus, the school committee cannot reduce the number of days the appellant actually taught during her years as a job share substitute in calculating whether she worked at least 135 days. The appellant’s placement at step 4 upon her appointment to a regular teaching position in 1993 did not take into account any of the full years of her

employment as job share substitute, or her 106 days as a long term substitute in 1970-1971. This is in violation of her statutory rights to service credit under 16-7-29.

The School Committee

Counsel for the school committee maintains that in each of the various capacities in which she served, Ms. Lyons was appropriately paid under state law. In fact, although it was not required to do so under either state law or the collective bargaining agreement, the school department placed Ms. Lyons on the regular teacher's salary schedule when she became a "job share substitute". Again, even though it was not required to do so, the school department advanced Ms. Lyons on that salary schedule for each full year she participated in the job share program. Since a job share substitute is not a regular teacher the decision to place and advance her on the salary schedule was gratuitous. It did not bring with it the obligation to take into account her three years of service in 1965-1968. Thus, as a new job share substitute in 1986-87 she was properly placed on step 1 of the salary schedule.

Because her advancement on that schedule to step 6 was not pursuant to contract or state law, when she was appointed a regular teacher in the spring of 1993, the school committee was free to disregard her service as a job sharer. The committee then credited her three years of service in 1965-1968 as a full-time regular teacher as required under state law.

The committee takes the position that the Supreme Court's decision in Berthiaume v. Woonsocket School Committee, *supra*, would require credit for Ms. Lyons service as a job share substitute only if each fractional day must be counted as a full day for purposes of the 135 threshold for service credit. Counsel argues that Ms. Lyons' 180

days of work on a three-fifth's schedule was the equivalent of only 109 full days in each of these years and should not be counted as a year of service. Therefore, under the committee's reading of Berthiaume it was not required to take into account any of her years as a job share substitute when she was appointed a regular teacher in April of 1993, even though it had previously given credit for these years of service. Thus, her placement at step 4 in April of 1993 was in compliance with statutory requirements.

Counsel for the committee questions the logic of full credit for a year of part-time service. He argues that there is a "somewhat jarring discontinuity of logic" reflected in the court's ruling in D'Ambra v. North Providence School Committee, 601 A.2d 1370 (R.I. 1992). In D'Ambra, our Supreme Court equated part-time and full time years of service for purposes of credit and resulting increased compensation for public school teachers. It is argued that the principle established in D'Ambra should not be extended to temporary employees such as job share substitutes. If temporary part-time service is fully creditable, an important distinction between temporary and permanent employees will be lost. Advancement on the salary schedule will occur even though a teacher's service during the year is insubstantial.

Decision

Simply stated, the appellant's five years of service as a job sharer for the Warwick school department are creditable for purposes of placement on the salary schedule. The school department failed to recognize this service when it appointed Ms. Lyons as a regular teacher in April of 1993.

The analysis of Ms. Lyons somewhat complex case will be presented more clearly by first analyzing her claim to additional years of service credit, and secondly analyzing her claim for back pay because of the alleged failure to recognize such service⁴.

Her years of employment during school year 1987-1988 through 1992-93 meet the statutory standard of “years of service” as interpreted by the Supreme Court in both Berthiaume v. School Committee of the City of Woonsocket, supra and D’Ambra v. North Providence School Committee, supra. The appellant worked as a job sharer for 180 days in each of these years. For purposes of the Berthiaume analysis, we must assume that the appellant’s service during this period is analogous to the per diem substitute service under review by the Rhode Island Supreme Court in that case. We would note, however, that the appellant has distinguished the nature of her employment during these years from that of a per diem substitute. Each of her assignments during this time was for a period of one (1) year and she was not subject to day to day call. The job sharer was taking the place of a regular teacher, who was on a partial leave of absence for a full academic year. Under the rules governing the job share program, the job sharer’s assignment could be terminated by the school department prior to the end of the year, but this occurred on only a couple of occasions. Tr. pp. 42-50 S.C. Ex. D. The job share substitute was paid pursuant to the salary schedule in effect for “regularly employed” teachers, but did not receive any credit for prior service.

Assuming, nonetheless that Ms. Lyon’s work as a job sharer was analogous to “substitute” service, our Supreme Court in Berthiaume determined that once a substitute teacher has taught 135 days he or she is credited with a year of service. Although the

⁴ This decision addresses only those claims for additional compensation raised by the appellant and addressed by the parties at the hearing.

focus of the Berthiaume decision was a different issue -- when a per-diem substitute teacher was “regularly employed” -- the court nonetheless addressed the issue of when a substitute accrues a year of service for purposes of salary schedule credit. The court found that R.I.G.L. 16-16-5 provided the applicable standard, requiring credit for a year of service for a substitute who had worked 135 days in the school year.

The school committee argues that there is no compelling reason to read Berthiaume to include fractional days as full days for purposes of the 135-day threshold. However, we find no persuasive reason to distinguish the service of a substitute teacher who works a three fifths schedule from the substitute who works a full day. Neither the statute nor the court decision makes a distinction between full and partial “days”. Construction of “days” to include each day of substantial part-time employment would be consistent with the interpretation of “years of service” to include years of part-time service. The commissioner was presented with the issue of whether a part-time regularly employed teacher accrued a year of service in the D’Ambra case. He concluded that such employment was fully creditable for purposes of placement on the salary schedule. See D’Ambra v. North Providence School Committee, decision dated January 3, 1990. The Commissioner’s decision was affirmed by the Supreme Court, 601 A.2d 1370 (R.I. 1992). The principle that years of part-time service are fully creditable years of service is consistent with the notion that in calculating “days” of service, 3/5 of a school day is fully creditable.

Finally, we refer as the court did in Berthiaume to R.I.G.L. 16-16-5 (as recently amended by the General Assembly)⁵. This section presently provides:

⁵ We recognize that 16-16-5 is a provision of the teachers retirement act. It was, however, the point of reference for the court in Berthiaume in construing “years of service” as that term applied to substitute

d)any teacher employed in at least a half (1/2) program including a job share program shall remain a contributing member and shall receive credit for that part-time service.

The circumstances of Ms. Lyons' years of employment as a three-fifths (3/5) job share substitute fall within the scope of 16-16-5 (d). Thus, following the court's rationale in Berthiaume, as well as for the reasons previously discussed, she should receive credit for such service.

The final issue of service credit is raised with respect to school year 1970-71 when Ms. Lyons worked a total of one hundred and six (106) days as a long-term substitute. Obviously the number of days does not meet the one hundred and thirty-five (135) days of substitute service as provided in Berthiaume. The appellant relies on a provision of her contract for her entitlement to credit for this service. She argues that Article XIII of the Collective Bargaining Agreement, Section 13-4.1 entitles her to credit. Even if this were the case⁶ such entitlement would be in conflict with the provisions of R.I.G.L. 16-7-29. Given a conflict, the provisions of the statute would take precedence. Warwick Teachers Union v. Warwick School Committee, decision of the Commissioner dated January 15, 1988.

In summary, Ms. Lyons is entitled to additional credit for her years of service as a job share substitute from school year 1987-88 through 1991-92. When she was placed on the salary schedule as a regularly-employed teacher in April of 1993, these years should

teachers for purposes of salary schedule credit. In the 1984 decision of Howard Union of Teachers v. State of Rhode Island 478 A.2d 563 (R.I. 1984), the court, again asked to construe 16-7-29, specifically limited its reference to Section 16-16-1 of the teachers retirement act. While we believe that the discussion in 16-16-5 of creditable service is helpful in this matter, we believe that it is binding only in the context of determining credit for retirement purposes. See footnote 6 page 6. D'Ambra v. North Providence School Committee, decision of the Commissioner dated January 3, 1990.

⁶ And we do not agree that applying Section 13-4.1 to the facts here would establish her entitlement to credit for a year of service in 1970-71.

have been added to the three years of service she had accrued during school years 1965-1968.

Her claim that her step placement throughout her years as a job share substitute should have reflected her years of service for 1965-1968 is denied. She has not proven that she was regularly employed during those years, except for the period of her employment after the 135th day. As we have noted, her status as a job sharer had some of the characteristics of a regular teacher. The school committee recognized the regularity of her employment⁷ and those of other job share substitutes, by putting in place a compensation scheme which paid her more than she would have been paid as per diem substitute.⁸ While the school committee's decision with regard to compensation of job share substitutes certainly creates confusion, it does not create an entitlement of such teachers to be deemed regularly employed teachers in the Warwick school system prior to their 136th day of employment.

Thus Ms. Lyons' claim for additional compensation, based on this argument, for years 1986-1992 is denied.

For the foregoing reasons, the appeal is sustained in part and denied in part. The parties should confer to adjust Ms. Lyons placement on the salary schedule as of the date of her appointment as a regular teacher, i.e. April 13, 1993 and determine the compensation owed to her as a result. If they cannot agree, we will reconvene the hearing for such purpose.

⁷ And the fact that her duties more closely resembled those of a regular teacher.

⁸ i.e. a per diem rate up to day 136 at which time the teacher would be placed on the appropriate step.

Kathleen S. Murray
Hearing Officer

Approved:

Peter McWalters, Commissioner

DATE: June 3, 1998