

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

KATHY E. TIPIRNENI *
v. *
WARWICK SCHOOL COMMITTEE *

DECISION

Held: Section 13-4.1 of the Warwick teachers' contract restricting salary credit to those years in which a teacher teaches at least ninety (90) school days is in conflict with Section 16-7-29 of state education law. The appellant's three years of part-time service are creditable for purposes of her placement on the salary schedule.

DATE: June 19, 1998

Travel of the Case

On March 13, 1997 Kathy E. Tipirneni filed an appeal with Commissioner Peter McWalters challenging her employer's decision with regard to her placement on the salary schedule. The matter was assigned for hearing on April 10, 1997. The parties initially agreed upon a hearing date of October 16, 1997, which was later changed to November 19, 1997. At the hearing the appellant was represented by the field representative for her union, and the school committee was represented by counsel. At the conclusion of the hearing, counsel for the school committee requested opportunity to submit a memorandum on the issues raised by this appeal. His request was not met with objection, and a memorandum was submitted on behalf of the Warwick School Committee on January 23, 1998.

Issue:

Is the appellant entitled to credit for salary schedule purposes for three years in which she participated in the district's job sharing program and worked a 2/5 (40%) schedule as a regularly-employed certified nurse-teacher?

Findings of Relevant Facts

- Kathy E. Tipirneni has been a regularly employed certified nurse teacher in the Warwick school system since the 1986-1987 school year. Tr. p. 4, Tipirneni Ex. 1.
- In school years 1994-95, 1995-96 and 1996-97 she reduced her workload to a part-time, 40% schedule, working two full days of each school week for the entire school year. She did this under the auspices of a job-share program available to Warwick school teachers. Tr. pp. 16-18.
- Under the terms of this program, she also was required to cover any sick days taken by the person with whom she shared her position, i.e. the job share "substitute". Tr. p. 17.

- In school years 1994-95, 1995-96 and 1996-97, she worked a total of 72.4 days in each year. Tipirneni Ex. 1, Tr. p. 18.
- In school year 1995-96 the appellant was given credit for a year of service in 1994-95; similarly, in 1996-1997 she was given credit for a year of service in 1995-1996, and advanced to step 7 of the salary schedule. Tr. pp. 17-19; Tipirneni Ex. I.
- At some point in the 1996-97 school year, the Warwick School Department determined that Ms. Tipirneni's placement on Step 7 of the salary schedule was "in error", and adjusted her placement to step 5 of the salary schedule. Tr. pp. 4, 17-19; Tipirneni Ex. I.
- The school department had requested repayment of that portion of her salary that was paid in error in 1995-96 and 1996-97. The appellant had repaid some, but not all, of this money prior to filing her appeal. Tr. pp. 4,6,19; Tipirneni Ex. I.
- The appellant's work schedule remained part-time as a job sharer in 1997-98, but increased to a 50% schedule in this school year. Tr. p. 18.
- The contract between the Warwick School Committee and the Warwick Teachers' Union has contained Article 13-4.1 since at least 1991. Stipulation Tr. pp. 24-25.
- Article 13-4.1 of the contract provides that a year's experience shall be based on the teaching of at least ninety (90) school days during any given school year. S.C. Ex. A.

Position of the Parties:

The Appellant

Through her union representative, Ms. Tipirneni argues that under state law, R.I.G.L. 16-7-29, her three years of employment in 1994-95, 1995-96, and 1996-97 should be counted as years of service for salary schedule credit. Her representative notes that 16-7-29 has been applied to part-time teachers who work for an entire school year. Such part-time employment, as regularly-employed teachers has been found to be fully creditable under R.I.G.L. 16-7-29. D'Ambra v. North Providence School Committee, 601 A.2d 1370 (R.I. 1992). Although he acknowledges a limitation on service credit contained in Article 13-4.1 of the contract, the appellant's representative points out that the ninety (90)-day threshold for service credit contained in that provision is at odds with

state law. He argues that state law takes precedence over a conflicting provision of the collective bargaining agreement. Therefore for the three years in question, when Ms. Tipirneni worked for 72.4 school days each year, she is entitled to an additional three years of service credit. As a remedy, he requests that her placement on the salary schedule be adjusted and that the appellant be paid back salary, with interest accrued at the legal rate.

Warwick School Committee

Counsel for the Committee takes the position that in order to receive credit for a year of service, Warwick teachers must teach a minimum of ninety (90) school days during a school year. The parties have negotiated an agreement which specifically provides that at least 90 school days must be taught as the basis for “a year’s experience”. It is argued that the state supreme court’s decision in D’Ambra is not binding in districts which have specified by contract the extent to which part-time service is creditable. In D’Ambra, the parties had not negotiated a contractual provision which addressed the issue. Warwick teachers, on the other hand, have negotiated such a provision with the school committee. Counsel submits that the parties’ agreement is binding.

The Committee does not view the provision in conflict with state law. This provision affects only the manner in which length of service, experience and training will be recognized. While D’Ambra does stand for the proposition that part-time service for a full year by a regular teacher is creditable under 16-7-29, it does not prevent the parties to a collective bargaining agreement from agreeing to a threshold number of ninety (90) days for teaching to be recognized. Such a provision reflects the fact that there is a substantial distinction between the experience obtained by a teacher who carries a one

fifth teaching load for the year and one who works full time, or even half-time, during a school year. Counsel urges the Commissioner to reconsider the D'Ambra decision. The Committee submits that the Commissioner should interpret R.I.G.L. 16-7-29 to permit the parties to agree to a minimum teaching load rather than to compel recognition of any year in which a fraction of a normal teaching load is carried.

Decision

Ms. Tipirneni's full years of service as a part-time (40%) teacher in 1994-1995 1995-1996 and 1996-97 constitute years of "service, experience, and training" as that term is used in R.I.G.L. 16-7-29. Although the contract between the parties probably would be construed so as not to recognize these years of service, 16-7-29 does require credit for these years. This results from the Rhode Island Supreme Court's ruling in D'Ambra v. North Providence, supra. The school committee would have us "reconsider" the principle established in D'Ambra, that regularly-employed public school teachers who work part time during the school year accumulate a year of service under the statute. The Commissioner does not exercise the prerogative to reconsider rulings of the Rhode Island Supreme Court. Such decisions constitute binding precedent which we are bound to follow in making decisions on school law.

Counsel for the school committee points out a certain illogic in crediting the service of a one-fifth (1/5) teacher in the same way for salary advancement as that of a five-fifths (5/5) teacher. We do recognize that parallel advancement in both situations presents a policy issue. Arguments can be made for and against treating full time teachers and those who teach a fraction of a school day (or days of the school week) the same for salary advancement purposes. Given the Supreme Court's interpretation of 16-

7-29 and ruling in D'Ambra, any rethinking of this policy issue is properly deferred to the General Assembly.¹

We find that Ms. Tipirneni's service during the three years in question is creditable under 16-7-29. It is clear that if Article 13-4.1 of the contract applies to part-time teachers, this provision would compel a different result. Her 72.4 days of service in each of these years do not meet the ninety (90) day requirement for a "year's experience" as that term is used in Article XIII of the contract in effect between the parties. This same provision formed part of the agreement during all three years in question. We find that Article 13-4.1 as it is argued to apply here is in conflict with R.I.G.L. 16-7-29 and that state law is controlling.

The principle that a provision of a collective bargaining agreement must yield to a contrary provision of state statute was established in the case of Warwick Teachers Union v. Warwick School Committee, decision of the Commissioner dated January 15, 1988, aff'd by the Board of Regents on September 8, 1988. The focus of the dispute in that case, however, was the contract's limitation of creditable service to teaching experience in Warwick public schools. The contractual restriction to creditable service was found to be superceded by the statutory provision according credit for all in-state, public school teaching.

The facts in this case are almost identical to those in Bigos v. Scituate School Committee, decision of the Commissioner dated March 19, 1993. The Commissioner in Bigos was presented with a contractual/statutory conflict on the issue of credit for part-

¹ We would note that the Supreme Court's decision in D'Ambra does not address the situation in which the part-time teacher's service throughout the entire year is such a small percentage of time that it is of a de minimis nature. We leave open the question of whether service of a de minimis nature, albeit that of a

time teaching service. In Bigos, the parties had negotiated a provision whereby part-time (defined as less than 135 days) teachers would advance one step on the salary schedule for every two years of part-time service. In Bigos, the Commissioner affirmed that the parties agreement (which was even more precisely directly to the issue of credit for part-time teaching than is the contractual language in this case) was superceded by state law.

We find on the basis of this record that Article 13-4.1 is invalid because it conflicts with R.I.G.L. 16-7-29. Ms. Tipirneni's advancement on the salary schedule should have been controlled by state law. The appeal is, therefore, sustained. The parties should confer to readjust her placement on the salary schedule and determine the amount of back wages due her and any other steps which may be necessary to provide her with an adequate remedy. If the parties cannot resolve these issues, we will reconvene the hearing for this purpose.

Kathleen S. Murray, Hearing Officer

Approved:

Peter McWalters, Commissioner

DATE: June 19, 1998

regularly employed teacher and for an entire school year, should be creditable. We do not find Ms. Tipirneni's service on a forty percent level to be de minimis.