

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

ANN BOULET

V.

LINCOLN SCHOOL COMMITTEE

DECISION

Held: Claim that ESL tutor was entitled to be compensated pursuant to salary schedule is denied because of laches and lack of reasonably certain proof.

Date: October 3, 2000

Introduction

This appeal concerns the compensation received by Appellant during the 1983-84 and 1984-85 school years for services performed for the Lincoln School Department.¹

For the reasons set forth below, we deny the appeal.

Background

Appellant testified that she began her Rhode Island public school employment in Pawtucket in January 1971. Hired on step two of the salary scale, Appellant taught in Pawtucket for the second semester of the 1970-1971 school year and the entire three subsequent school years. She also taught in the 1974-75 school year before taking maternity leave in October 1974. She was a step-five teacher at the time. Appellant did not return from leave and she resigned from the Pawtucket system in August 1975.

In February 1984, Appellant was hired by the Lincoln School Department as an English-as-second-language (ESL) tutor. Her job, essentially, was to establish an ESL program for the district. Appellant tested students, delivered ESL services to students on a one-to-one basis, and prepared reports. Appellant reported her work hours at the end of each week.² According to Appellant, “[u]sually they averaged about 15 hours a week.” [Transcript, p. 18].³ Appellant further testified that she was paid an hourly rate with no fringe benefits. As for the rate, she testified “I believe it was around \$15 an hour.” [Id.]. ESL certification was required for the job.

The tutoring arrangement continued during the 1984-85 school year. In addition, Appellant served as a substitute teacher one day a week during the second semester of that year. Appellant was not placed on the salary schedule during her employment in Lincoln nor did she receive the contractual stipend for her coursework beyond a bachelor’s degree.

Appellant did not provide any records or documentation regarding her hours or compensation with the Lincoln School Department. She testified that she did not retain any personnel records and that her tax returns for those years have been destroyed. A payroll

¹ The appeal was accompanied by an appeal against the North Providence School Committee regarding Appellant’s current compensation. The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeals. A hearing on both appeals was conducted on September 7, 1999. The parties subsequently submitted legal memoranda. A decision in the companion case is also being issued on this date.

² Hours could vary from week to week due to student absences and school events that affected the daily schedule.

³ Appellant described this as “a fair estimate.” [Tr., p. 32].

clerk for the School Department testified that payroll records for the school years in question were destroyed in 1995.

Appellant testified that she first became aware of issues regarding her employment in Lincoln in April 1999 when she inquired into the possibility of purchasing this time for retirement purposes. Appellant had returned to public school teaching in September 1998 with the North Providence School Department. She completed a membership application for the retirement system on August 27, 1998, in which she reported her past membership in the system as being her Pawtucket employment.

Positions of the Parties

Appellant contends that, under D'Ambra vs. North Providence School Committee, 601 A.2d 1370 (1992), she was “regularly employed” for purposes of R.I.G.L. 16-7-29 and therefore entitled to proper placement on the salary schedule and contractual benefits during the period of time she provided ESL services to the Lincoln School Department. Appellant argues that the School Committee’s laches defense is an affirmative one which has not been previously raised in this matter. Appellant further maintains that she did not become aware of her claim until April 1999, that the Committee’s search for records was not exhaustive, and that the Committee did not make any effort to obtain testimony from school department personnel that worked with Appellant.

The School Committee contends that Appellant’s claim should be barred by laches. The Committee argues that the long delay in bringing the appeal, and the destruction of records relating to Appellant’s hours and compensation, has hampered its ability to respond to Appellant’s claim. Citing the absence of documentation, the Committee argues that Appellant has failed to establish her claim with the necessary level of precision. Finally, the Committee maintains that under no circumstances is Appellant entitled to a step increase for service performed for one semester, i.e., the 1983-84 school year.

Discussion

As related by Appellant, the conditions of her employment appear to be similar to that of the ESL tutor at issue in D'Ambra. In that case we found the appellant to be a regular part-time instructor in the town’s school system. We ordered that her salary be adjusted in accordance with the teacher salary schedule.

In D'Ambra, however, a record existed of the appellant's precise rate of pay and total number of hours worked during the period in question. As a result, there was clear and detailed proof of the regularity of the appellant's employment and the parties were able to determine with certainty the amount of the salary adjustment owed to her. This is not the case here. The reason therefor is related to the School Committee's laches defense -- the passage of substantial time.

During the time that has elapsed since Appellant's employment in Lincoln, Appellant and the School Committee have destroyed any records that would document Appellant's rate of pay and the number of hours she worked there. We only have Appellant's approximations of these items. We do not have specific and definite proof of Appellant's employment pattern and the compensation adjustment she claims is due her. By the same token, the School Committee has been deprived of recorded information that could assist in the defense of this matter.

Given the passage of time since Appellant's employment and the destruction of records that has occurred, we are constrained to deny the appeal on the basis of laches.⁴ In the alternative, we find that Appellant has failed to establish with reasonable certainty the number of hours worked and rate of pay received in Lincoln so as to support her appeal with the necessary specificity.

Conclusion

The appeal is denied.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: October 3, 2000

⁴ Because hearings before the Commissioner are de novo proceedings, we do not feel that Appellant has been unfairly prejudiced by the School Committee's assertion of a laches defense at this level.