

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

Kathy E. Tipirneni

v.

Warwick School Committee

DECISION ON REMAND

Held: On reconsideration in light of the specific question posed by the Board of Regents, the original decision is affirmed. The appellant's three years of part-time service are creditable for purposes of her placement on the salary schedule.

DATE: October 3, 2000

Travel of the Case:

On June 19, 1998 the Commissioner of Education ruled that Ms. Kathy Tipirneni, a certified nurse teacher in the Warwick School Department, had accrued three years of service credit during school years 1994-1997 when she was employed in a part-time capacity in Warwick's "job share" program. The June 19, 1998 decision of the Commissioner was appealed to the Board of Regents. On March 23, 2000 the Board of Regents issued its decision remanding this case to the Commissioner for reconsideration and response to a specific question:

Bearing in mind the principle of statutory construction that the Legislature could not have intended an absurd result, could not Section 16-16-5 (d) be viewed as a legislative intent to limit credit, for salary scale as well as retirement purposes, to those who teach at least a 50% job-share?

Following remand, the parties indicated their intent to file memoranda and requested sufficient time in which to do so. By agreement of the parties, memoranda were filed simultaneously by the School Committee and the Appellant on May 25, 2000. Counsel for Ms. Tipirneni thereafter requested that as part of the remand process the hearing officer review the tape of the hearing held on December 14, 1999 before the Appeals Subcommittee of the Board of Regents. Counsel for the Warwick School Committee indicated that she had no objection to such review. However, it was determined that the tape of the Subcommittee meeting was not available for review, and the parties were notified of this fact on July 25, 2000.

The hearing officer undertook review of the decision, the memoranda submitted on behalf of each of the parties in this matter and the question posed to the Commissioner by the Board of Regents. After thorough reconsideration of this matter, we understand the legal issue presented on remand to be as follows:

Is R.I.G.L. 16-16-5 (d) applicable to the accrual of years of service credit for purposes of determining appropriate placement on the salary schedule required for all certified personnel regularly employed in the public schools pursuant to R.I.G.L. 16-7-29 ?

DECISION

It is our decision that Section 16-16-5 (d) of the General Laws is not applicable to a determination of service credit for purposes of salary schedule placement of certified personnel who are employed in a part time capacity in the public schools of our state¹. We find no intent on the part of the General Assembly to limit accrual of service credit for salary purposes to those employed in at least a 50% school program. The 1994 enactment of Section 16-16-5 (d) had a specific pension-related purpose. It was a measure embedded in a bill which contained broad-based reforms of the state pension system. Our analysis of Section 16-16-5 (d) is that it had two purposes: first, to retain in the employees' retirement system of the state of Rhode Island² as "contributing members" those teachers described, i.e. teachers "employed in at least a half (1/2) program including a job share program". This group of teachers would otherwise have been excluded by those legislative measures under consideration in 1994. The second purpose of Section 16-16-5 (d) was to accord service credit, for purposes of such pension-related issues as vesting and calculating pension benefits "for that part time service". This legislative intent becomes clear when one reviews this provision in the context of the other provisions contained in Chapter 142 of the Public Laws of 1994.

As part of the General Assembly's state pension-reform efforts in 1994³ it enacted Chapter 142 which, inter alia, restricted participation in the state retirement system, limited accrual and purchase of pension credit and prevented "retired" employees from continuing in state or municipal employment. Two provisions of Chapter 142 of the Public Laws of 1994 are highly relevant in determining legislative intent in the enactment of Section 16-16-5 (d). Section 3 of Chapter 142 amended R.I.G.L. 36-8-1 (2), which defines "employee" for purposes of the employees' retirement system to specifically exclude from the definition:

¹ The Appellant's part-time employment was due to her voluntary participation in a job sharing program offered to certified personnel employed by the Warwick school department. Although the Regents' question is directed to those who are part-time "job sharers," the answer to this question will apply to all part-time certified personnel employed in the public schools, whether they participate in a job-sharing program or not.

² Created by Chapter 8 of Title 36

³ These efforts followed a period when abuses and manipulation of the state pension system had been the subject of substantial public outrage and media attention.

Any individual who devotes less than twenty (20) business hours per week to the service of the state, and who receives less than the equivalent of minimum wage compensation on an hourly basis for his or her services, except as provided in section 36-9-24.

Section 5 of Chapter 142 similarly amended R.I.G.L. 45-21-2 (5) which defines “employee” for purposes of the municipal employees’ retirement system to exclude those employed for fewer than twenty (20) business hours per week.⁴ The General Assembly thereby limited participation in both of our public retirement systems, state and municipal, to employees who worked at least twenty (20) hours per week. Just one exception to the twenty-hour work-week requirement was created -- for part-time teachers employed in the public schools. This exception is set forth in Section 7 of Chapter 142 – which added Section 16-16-5 (d) to the Teachers’ Retirement Law. The sequence of these enactments confirms the clear intent of our General Assembly to tighten the requirements for participation in the retirement system, but to retain as members of the system certain teachers employed less than twenty hours per week, i.e. teachers employed in at least a half (1/2) program.

Prior to enactment of Chapter 142, all teachers in the public schools in Rhode Island were statutorily eligible for membership in the state employees’ retirement system pursuant to R.I.G.L. 16-16-2. In addition, Section 16-16-23 provided (and still provides) that:

Except as in this chapter specifically otherwise provided, all provisions of chapters 8 to 10 of title 36 shall extend and apply to the persons made members of the retirement system by the provisions of this chapter.

Thus, without Section 16-16-5 (d) the amendment being proposed to Section 36-8-1 (2) (to limit participation in the retirement system to those with a minimum of a twenty-hour work week) would have excluded a segment of the regular teaching force from membership in the state retirement system.

The 1994 pension reforms, without the inclusion of Section 16-16-5 (d), could have affected the ability of school districts to hire and retain qualified part-time teachers.

⁴ Although created as a separate retirement system and corporation, the municipal employees’ retirement system of the state of Rhode Island is entrusted to the management of the state retirement board.

Many part-time teachers, guidance counselors, and other school professionals are employed in the public schools throughout the state, particularly at the secondary level. Budgetary efficiency does not permit a school district to hire a full-time teacher if the instructional demands can be met with a part-time certified professional. Some districts have incorporated into their collective bargaining agreements provisions for job-sharing programs. These programs permit permanent, full-time teachers to reduce their work week by sharing their position with another teacher. Such job sharing programs have resulted in additional part-time employees in the school districts. Coupled with the fact that the typical contractually-required work week is geared to an approximate thirty-hour school week, it is likely that a considerable number of part-time teachers would have been excluded from participation in the state pension system if the General Assembly did not enact its amendment to Section 16-16-5. The inclusion of those teachers who work less than twenty hours per week, but in at least a half (1/2) time program, responded to these circumstances and addressed the employment policy implications for public schools. The provision for less than the twenty-hour work week minimum was incorporated into the appropriate chapter of the General Laws, Chapter 16-16, entitled "Teachers Retirement". Thus R.I.G.L. 16-16-5 was amended to add:

(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.

Our construction of this provision, therefore, is that it retains as "contributing members" in the retirement system part-time teachers, including those participating in job sharing programs, as long as they are employed in at least "a half (1/2) program" and accords them retirement credit for such part time service. In response to the concern expressed by the Board of Regents with respect to the principle of statutory construction that the legislature could not have intended an absurd result, we perceive no absurd result by reason of the foregoing interpretation of Section 16-16-5 (d). A reasonable compromise on part-time teachers' participation in the retirement system was put in place.

As additional evidence of legislative intent, we refer to the historical context in which the General Assembly acted when adopting 16-16-5 (d). The 1994 enactment of Section 16-16-5 (d) followed the 1992 decision of our Rhode Island Supreme Court in *D'Ambra v. North Providence School Committee*, 601 A2d 1370 (R.I. 1992). *D'Ambra* definitively established that part-time teachers, even those employed at less than a fifty percent (50%) level, receive salary credit for their years of part-time service. If our General Assembly had intended to alter the effect of this ruling, it could certainly have done so by direct amendment of the controlling statutory provision cited in *D'Ambra*, i.e., R.I.G.L. 16-7-29. It is this statute which requires a teacher's compensation according to a salary schedule which recognizes years of service. Our General Assembly did not see fit to amend this statute. We view this as evidence of a consensus on the principle of salary credit for part-time teaching service, even that which is less than "a half (1/2) program." The consistent interpretation of Section 16-7-29 by the Commissioner, the Board of Regents, and our state Supreme Court has been that "years of service" include all significant part-time service. The result is that part-time teachers have their service recognized and advance each year on the salary schedule, even if they work in less than "a half (1/2) program." Maintenance of a distinction between credit for salary purposes and retirement credit is a valid and reasonable exercise of legislative discretion. We do not view the absence of a "half (1/2) program" minimum for salary advancement purposes as an absurd result, but a result which guarantees equitable salary advancement opportunities for part-time teaching personnel.

Counsel for Ms. Tipirneni argues that the school committee waived its right to argue the applicability of Section 16-16-5 (d) because it did not make this argument in the initial hearing of this matter. Implicit in this contention is the argument that the Regents erred in considering the applicability of Section 16-16-5 (d) to the issues raised, and in remanding the case to the Commissioner for reconsideration of the applicability of this provision. Keeping in mind the respective authority of the Commissioner and the Board of Regents with respect to the appeals process, we are of the opinion that we are without authority to respond to this argument.

The decision of June 19, 1998 is affirmed after reconsideration.

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

DATE: October 3, 2000