

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Olga Pardo

v.

Johnston School Committee

.....

DECISION

Held: The Commissioner lacks jurisdiction over the dispute arising from the Superintendent's placement of a letter of reprimand in the appellant's personnel file after the Johnston School Committee rejected the Superintendent's recommendation to terminate her for unprofessional conduct.

DATE: November 20, 2003

Travel of the Case

On May 20, 2003 the appellant, through counsel, filed a letter of appeal with Commissioner McWalters challenging two separate actions taken by her employer, the Johnston School Department. The first was her appeal from the February 25, 2003 decision of the Johnston School Committee that her teaching contract would not be renewed for the 2003-2004 school year. At the time of filing with the Commissioner, counsel for the appellant had not been successful in securing a full hearing before the School Committee on the non-renewal issue. Therefore, she challenged the nonrenewal on both substantive and procedural grounds before the Commissioner at that time. The second ground for her complaint was the April 25, 2003 decision of the Superintendent to place a letter of reprimand in her file concerning an incident of alleged unprofessional and insubordinate conduct. The Superintendent's action followed upon the April 23, 2003 vote of the School Committee that it would not accept the superintendent's recommendation to terminate Ms. Pardo.

The undersigned was designated to hear and decide this controversy, and on June 23, 2003 a formal hearing was convened and evidence taken. At the time of the hearing, the appellant had secured a hearing before the School Committee on the nonrenewal issue, and since the hearings were ongoing, the parties requested that this issue be held in abeyance and did not address it. The parties agreed that as to the dispute regarding the letter of reprimand, the threshold issue of jurisdiction would be addressed prior to submitting any proof on the merits of the case. Upon the receipt of written memoranda on this issue, the record closed on July 28, 2003.

ISSUE

Does the Commissioner have jurisdiction to decide if a letter of reprimand placed in the appellant's personnel file by the Superintendent is inappropriate or in violation of her rights?

Findings of Relevant Facts:

- Olga Pardo was employed during school year 2002-2003 as a non-tenured teacher at Johnston High School. Joint Ex. B.
- On January 3, 2003¹ Ms. Pardo was placed on administrative leave with pay pending the investigation of allegations of inappropriate and insubordinate conduct related to her performance as a teacher. Joint Ex. A.
- On February 4, 2003 Ms. Pardo was notified that the Superintendent, based on the findings of her investigation, would be recommending that she be terminated from her position as a teacher. In addition Ms. Pardo was informed that the Superintendent would also recommend that, if the School Committee did not accept the

¹ the parties stipulated that the Superintendent's letter was incorrectly dated January 3, 2002 and should be corrected to January 3, 2003

recommendation to terminate her immediately, it not renew her contract for the 2003-2004 school year. Joint Ex. B.

- Ms. Pardo was notified on February 26, 2003 that the School Committee had voted to accept the Superintendent's recommendation that her contract not be renewed at the conclusion of the 2002-2003 school year. Joint Ex. D.
- Thereafter on April 23, 2003 she was notified of the School Committee's decision that although it had found that Ms. Pardo had acted in an unprofessional manner, it had decided not to accept the recommendation for her termination prior to the expiration of her contract for the 2002-2003 school year. The notice of this decision reaffirmed the committee's prior action not to renew her contract for the subsequent school year. Joint Ex. C.
- On April 25, 2003 the Superintendent wrote to Ms. Pardo advising her that she would be reinstated to her position effective April 30, 2003 and reiterated that although the School Committee had rejected the recommendation to terminate her, the members of the Committee believed that her behavior was inappropriate. Joint Ex. E.
- The Superintendent's April 25, 2003 letter went on to set forth her own opinion as to the nature and extent of Ms. Pardo's misconduct, including her own opinion that the appellant had, in addition to acting unprofessionally, been insubordinate. The Superintendent also set forth the facts on which she relied in drawing this conclusion. The Superintendent indicated that the April 25, 2003 letter would constitute a letter of reprimand and a copy would be placed in Ms. Pardo's personnel file. Joint Ex.E
- The issue of whether there was a valid non-renewal of Ms. Pardo's contract is currently in the hearing process before the Johnston School Committee. Tr. pp.14-15.
- A grievance with respect to whether the letter of reprimand violated the provisions of the collective bargaining agreement was initially filed, and then withdrawn. Tr.p.8, 16.

Positions of the Parties

The Appellant

Simply stated, the Appellant contends that the Superintendent was without authority to discipline Ms. Pardo as a result of any incident which occurred on December 11, 2002 because the members of the Johnston School Committee had already considered and acted upon her recommendation for appropriate discipline and rejected it. Implicit in the School Committee's determination was that no discipline should be imposed, but rather that the situation more appropriately called for the nonrenewal of the appellant's contract². In essence, counsel for the appellant argues, the Superintendent is attempting to overrule the decision of the School Committee that this case is one of unprofessional conduct warranting nonrenewal, rather than misconduct which warrants a written reprimand or immediate termination.

² a result of which would be her failure to acquire the status of a tenured teacher in the Johnston school system.

Counsel for the Appellant argues that once the School Committee was presented with the issue of what discipline would be appropriate, and took action on the Superintendent's recommendation, the matter was closed or "res judicata". Based on this concept, counsel argues that:

Be it a two bites at the apple situation, an election of remedies situation, or a situation analagous to the concept of res judicata, the doings of the Superintendent in the instant case are improper and illegal.

As an appropriate remedy, counsel for the Appellant argues that the letter must be removed from the personnel file and all reference to it be deleted from Ms. Pardo's records.

Johnston School Committee

In its memorandum³ the School Committee focuses on the argument that the Commissioner lacks jurisdiction over the claim that the placement of a letter of reprimand in Olga Pardo's personnel file violated her rights. Counsel cites a long line of precedent, at both an administrative level and beyond, affirming the principle that the Commissioner may decide only those disputes which "arise under any law relating to schools or education". This is the language used in the statutes conferring general appellate authority on the Commissioner, i.e. 16-39-1 and 16-39-2. Absent the implication of a specific educational statute, an issue or dispute is not appropriately submitted to the Commissioner for resolution. Since the Appellant is unable to cite to an educational statute as the basis of her claim, and in fact there is no provision of education law which even discusses this subject matter, it must be dismissed.

Counsel for the School Committee notes that teacher reprimands are frequently a topic discussed in employment contracts, and that disagreements regarding teacher discipline many times are included in the types of disputes which are covered by the grievance procedure. Claims premised on a provision of a collective bargaining agreement, or disputes controlled by the provisions of such agreements, are beyond the purview of the Commissioner. Since the mid-eighties, the Commissioner has consistently declined to entertain disputes which arise solely under the provisions of a collective bargaining agreement, or individual employment contract. Counsel cites a line of cases from Hoag v. Providence School Board, decision of the Commissioner dated June 27, 1988 up through Smith v. Tiverton School Committee, decision of the Commissioner dated June 26, 2000. which stand for this proposition. Since the dispute on this issue is covered under the grievance provisions of the agreement in effect between the School Committee and the Johnston Federation of Teachers, it cannot be presented in this forum and should be dismissed.

³ the memo addresses both the issue of the appellant's nonrenewal and the issuance of the letter of reprimand; since the parties have agreed to hold the nonrenewal issue in abeyance, the arguments relating to the impropriety of the Appellant's nonrenewal will not be summarized here.

Even if the Commissioner had potential jurisdiction over this dispute, any alleged impropriety in the Superintendent's placement of a letter of reprimand should first be presented to the School Committee. It is premature to submit this issue to the Commissioner when the School Committee has not yet considered whether the written reprimand is precluded by the fact of its April 23, 2003 decision or is inconsistent with the substance of its decision. The School Committee is in the process of hearing the issue of the legality of Ms. Pardo's nonrenewal and should consider the reprimand claim at the same time.⁴ Thus, the school committee relies on two grounds which support the dismissal of this dispute by the Commissioner.

DECISION

In its present context, Ms. Pardo's objection to the placement of a written reprimand in her personnel file is a dispute which does not "arise under" a law relating to schools or education. Since the reprimand wasn't generated until after the Johnston School Committee met to consider the question of appropriate discipline, there is not even a "decision" or "doing" of the School Committee which prompts Ms. Pardo's appeal, but merely action taken by the superintendent. If the Superintendent's issuance of a letter of reprimand to Olga Pardo violates her rights, these rights stem from the collective bargaining agreement and her complaint constitutes a grievance under Article II Section I of that contract. The contract's broad definition of a grievance includes any claim of unfair or inequitable treatment. This brings within the scope of the definition of grievance action by the school administration which may not violate explicit language of the contract, but which is nevertheless alleged to be improper or unfair.

So it is with Ms. Pardo's contention that once the School Committee had heard, and rejected, the Superintendent's recommendation that she be terminated, a letter of reprimand was precluded under a theory analogous to "res judicata". Her claim that the School Committee's April 23, 2003 decision constituted a rejection of *all* discipline, not just her proposed termination likewise presents no issue of interpretation or application of an educational statute. This argument raises the question of what the School Committee's intent was and requires a determination of whether the written reprimand is inconsistent with the committee's decision. This is an issue which should be clarified by the Johnston School Committee.⁵ Once this is done, if the letter of reprimand remains in her personnel file, its retention would probably constitute the subject matter of a grievance under the collective bargaining agreement.

We cannot state definitively that the Commissioner would *never* have jurisdiction over the issue. We can envision an argument that if this issue were coupled with the issue of whether Ms. Pardo's nonrenewal was justified, it might be that a theory of

⁴ The memorandum of the School Committee mentions that Ms. Pardo has already requested that the reprimand issue be heard by the School Committee at the same time it provides her a full hearing on her non-renewal.

⁵ From a close reading of its letter of April 23, 2003 (Joint Ex.C), it would appear that the School Committee concluded that the misconduct of Ms. Pardo was less extensive than that described by the Superintendent in her letter of February 4, 2003, Joint Ex.B.

“pendent jurisdiction” required the Commissioner to hear both matters. Clearly, the issue of her nonrenewal would properly be before the Commissioner. If the nonrenewal and issuance of the letter of reprimand are based, in whole or in part, on the same set of facts, it may be that there is some theory of “pendent jurisdiction” (or simply adjudicative efficiency), in permitting consolidation of these matters in one forum. Standing on its own, however, the issue of the propriety of the letter of reprimand is clearly a contractual issue over which the Commissioner lacks jurisdiction. If, however, these disputes should subsequently be brought to the Commissioner together after thorough consideration by the Johnston School Committee, we leave open the question of the Commissioner’s jurisdiction over any claim relating to the letter of reprimand. This should be determined by the facts and arguments of the parties at that time.

The Petitioner’s appeal is denied and dismissed.

For the Commissioner

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

November 20, 2003
Date