

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

.....

**James Frost**

**v.**

**Lincoln School Committee**

.....

**DECISION**

Held: The petitioner in this case is claiming back pay. He alleges that he was incorrectly placed on the teacher salary schedule required by R.I.G.L.16-7-29. The appeal is granted and Petitioner Frost is found to be entitled to the sum of \$24,233.00.

DATE: May 7, 2004

## **I. Jurisdiction and Travel of the Case**

The petitioner in this case is James Frost—a teacher in the Lincoln public school system—who is claiming back pay. He alleges that he was incorrectly placed on the teacher salary schedule required by R.I.G.L.16-7-29:

### **R.I.G.L. 16-7-29. Minimum salary schedule established by community.—**

(a) Every community shall establish and put into full effect by appropriate action of its school committee a salary schedule recognizing years of service, experience, and training for all certified personnel regularly employed in the public schools and having no more than twelve (12) annual steps. The term "school year" as applied to the salary schedule means the ten (10) calendar months beginning in September and ending the following June.

The respondent in this case is the Lincoln school committee, which has denied the petitioners back pay claim. This matter is now on appeal to the Commissioner of Education. Jurisdiction is present under R.I.G.L. 16-39-1 and R.I.G.L. 16-39-2

## **II. Positions of the Parties**

### **The Petitioner**

The petitioner, Mr. Frost, contends that in the 1992-1993 school year and in the 1993-1994 school year he accrued sufficient teaching service to be entitled to a two step advancement on the salary scale required by R.I.G.L.16-7-29. He concedes that he did not claim this service credit when the Lincoln school committee hired him in July of 1995. He attributes this omission both to a misunderstanding on his part concerning what service was he was entitled to claim, along with misinformation he alleges that he received from an employee of the Lincoln school committee. He now contends that he is (1) entitled to two step advancement on the salary schedule and (2) retrospective compensation based upon his hiring as a first step teacher, instead of a third step teacher.

### **The Respondent Lincoln School Committee**

The school committee agrees that Mr. Frost accrued one year of teaching credit in the 1992-1993 school year and it is prepared to advance him one step on the salary schedule as of the school year (2001-2002) in which he claimed this credit with the Lincoln school committee. The committee, however, is not prepared to pay Mr. Frost retroactively for this service credit because Mr. Frost did not claim this credit when he was hired. The committee contends that because of Mr. Frost's delay in claiming the credit the legal doctrine of laches protects the committee from having to make such retroactive payments.

The school committee also concedes that that on August 1, 2002 its agent informed Mr. Frost that he was also being credited with an additional year of accrued service for the 1993-1994 school year. It therefore advanced Mr. Frost from the 7th to the 9th step.<sup>1</sup> The committee now argues, however, that the award of this additional year of credit was a mistake. The committee therefore claims that Mr. Frost should return any moneys paid to him as a result of this mistake.

### **III. Issues Presented**

- A. How many years of service credit is Mr. Frost entitled to?
- B. Is Mr. Frost entitled to retroactive compensation for any of this service credit?
- C. If James Frost is not entitled to one of the years of service credit that the Lincoln school system has awarded him, is he required to refund to the Lincoln school committee the additional sums that have been paid to him?

### **IV. Findings of Fact**

1. The facts of this case are not in material dispute. On June 4, 1995, Mr. James Frost (the Petitioner) wrote a letter of application to Kathleen Lombardo of the Lincoln School Department regarding an open position for a Physical Education Teacher. Along with his letter of application, the Appellant enclosed copies of his resume, teaching certificate, transcript and letters of reference (UX7).
2. In the letter, and on his resume, Mr. Frost indicated that he had prior teaching service in several school districts. He had worked as a substitute teacher in four different school years for the North Smithfield School Department. In addition, he also served as a substitute in Johnston and at the Northern Rhode Island Collaborative. Finally, he reported that he had been appointed to and had served in a *2/5's teaching position* for Physical Education and Health during the 1993-1994 school year in North Smithfield (UX6 and 9).
3. On or about July 7, 1995, the Appellant received a letter from the Lincoln Superintendent of Schools, Collette B. Traylor. The letter informed Mr. Frost that the Lincoln School Committee had appointed him to the position of Physical Education teacher at the Senior High School at the salary of base, Step 1 (SCXB).
4. Prior to the actual start of the 1995 school year, Mr. Frost, along with other newly appointed teachers, attended an "orientation" meeting conducted by the Personnel Director, Kathleen Lombardo. At the meeting, information was provided to the teachers and various forms were filled out including the Certified Personnel Basic Data Form (hereinafter the CPBD Form) on which the Appellant indicated that he was in his 5th year of teaching (UX8 and SCXE).

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<sup>1</sup> SC9.

5. Additionally, Mr. Frost testified that he and other teachers at the ‘orientation’ meeting on August 29th raised questions about their prior experience, and their placement on the salary scale. *Specifically, the Appellant inquired about potential credit for his 2/5’s teaching experience in North Smithfield and his substitute teaching in 1992-1993. He was informed by Ms. Lombardo that neither of these experiences counted for credit on the salary scale (Tr. pps. 31-32).*
6. Mr. Frost began the 1995-1996 school year at Lincoln High School on the first step of the base salary scale. He continued to serve as a Physical Education and Health Teacher from 1995-1996 to 2000-2001. No further inquiries were made regarding his initial step placement or subsequent annual pay adjustments.
7. On August 30, 2001, a memorandum was circulated to all Professional Staff. The memo was signed jointly by Lori Miller, the School Business Manager, and Roger Boudreau, the President of the Lincoln Teachers Association. The memo indicated that any teachers who believed their salary was in error should submit a request in writing to the Business Manager “for a review of your salary calculation” (UX2).
8. Subsequently, and as a direct result of the August 30, 2001 memorandum, Mr. Frost spoke with his union delegate and the union president regarding his prior teaching experience as documented at the time of his initial employment. Later, he sent a letter to Ms. Miller asking her to review (a) his 1992-1993 substitute experience of 144 days and (b) his 1993-1994 2/5’s teaching schedule in North Smithfield (Tr. p.47 and SCXD).
9. On August 1, 2002, Lori Miller sent a letter with an enclosed check for \$3812.84 to Mr. Frost. Ms. Miller stated that “(t)his check is payment for the difference between Masters level, step 7 and Masters level, step 9, for the 2001-2002 school year.” She further informed the Appellant that he was entitled to the two-step adjustment based on the additional information that he had provided. He was, however, not entitled to any retroactive adjustment “because the supplementary information was not available at the time you were hired” (UX3).
10. Although no grievance was filed, on September 10, 2002, the Superintendent, Dr. Frank Pallotta, sent Roger Boudreau a copy of UX3. Thereafter, discussions were held on possible ways of settling the matter, but none were successful.
11. Finally, on December 19, 2002, Edward A. Casey, on behalf of Mr. Frost, sent a letter to the Commissioner of Education alleging that he (Mr. Frost) had been aggrieved by a decision of the Lincoln School Committee denying him appropriate placement on the salary schedule by failing to recognize his years of prior teaching service in violation of Section 16-7-29 of the General Laws (UXi).

## V. Discussion

### Laches

We conclude that *Berthiaume v. The Providence School Committee*<sup>2</sup> is substantially dispositive of laches issue in this case. In *Berthiaume* a number of substitute teachers had entered into written agreements with the Providence school committee to be paid a *per diem* rate instead of being paid under the statutory salary schedule required by R.I.G.L. 16-7-29. When the teachers claimed payment in accordance with R.I.G.L.16-7-29 instead of in accordance with their written agreements the Providence school committee declined payment. On appeal the Providence school committee argued that the petitioning teachers "should be barred from relief because of laches or their waiver of any right to be paid pursuant to the salary schedule by agreeing to employment at the per diem rate." These arguments, which were rejected by the Rhode Island Supreme Court in *Berthiaume*, are essentially the same as the arguments made by the Lincoln school committee in the present case. In *Berthiaume* the Supreme Court wrote:

We have stated on repeated occasions that the equitable defense of laches comprehends not merely delay but delay that works a prejudicial disadvantage to another. [Citations omitted] The mere passage of time is insufficient to invoke the defense of *laches*; what is crucial are the changes brought about by the passage of time. [Citation omitted] It is undeniable that if petitioners prevail, the school committee will be forced to make unexpected expenditures. There is no indication, however, that these expenditures would have been lessened had petitioners more promptly sought the requested additional compensation.

It is generally recognized that when a statute creates a private right for the public good, the donee of that private right lacks the power either to waive the right or nullify it by private contract. [Citation omitted] Section 16-7-16 indicates that §16-7-29 was enacted in order to "provide a quality education for all Rhode Island youth\*\*\*,"clearly a public purpose. Therefore, petitioners' acceptance of the per diem rate could not effectively operated as a waiver of their right to the compensation statutorily established....

There has been no showing that the petitioner's delay in claiming service credit under R.I.G.L. 16-7-29 has prejudiced the school committee in any way. Given this fact there is simply no reason to bar petitioner's claim.<sup>3</sup> We therefore find that Mr. Frost is entitled to retrospective compensation under R.I.G.L. 16-7-29.

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<sup>2</sup> 121 R.I. 243, 397 A.2d 889 (1979)

<sup>3</sup> In saying this we do not deny the persuasive quality of *George Teixeira vs. Providence School Committee* , Commissioner of Education, March 24, 1977 in which the commissioner found the doctrine of laches to applicable in a belated salary step claim case simply on the basis of the passage of time, and the nature of governmental budget cycles. The problem here is, of course, that the Supreme Court, in *Berthiaume vs. Providence School Committee*, 121 R.I. 243, 397 A.2d 889 (1979) found the doctrine of laches to be inapplicable to cases of this nature.

As noted the school committee concedes that Mr. Frost is entitled to 1 year of service credit for work performed in the 1992-1993 school year. Since we have found that laches is not applicable to this claim we must find that Mr. Frost is entitled to both retrospective and prospective compensation for this service credit. While the school committee, through its agent, initially also allowed Mr. Frost to claim service credit for the 1993-1994 school year the committee now contends that Mr. Frost is not entitled to credit for the 1993-1994 school year. We will examine this issue next.

### **The Validity of the 1993-1994 Service Credit**

Mr. Frost's service credit for the 1993-1994 school year is described in a letter from the North Springfield superintendent of schools.<sup>4</sup> In material part this letter states:

This is to certify that James M. Frost, Jr...has been employed by the North Smithfield School Department both as a substitute teacher and a 2/5ths teacher of Health/Physical Education, Secondary Level, as follows:

1993/1994.....	39	Days as a 3/5ths Substitute/ 2/5ths Teacher
	14	3/5 <sup>th</sup> days as a full time Substitute
	120	days as a 2/5ths Teacher <u>or</u> <u>48 full time equivalency days.</u>
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	173 3/5	Total Days

The school committee suggests that there is a measure of ambiguity in this letter, despite the fact that its own agent initially accepted it as ample demonstration of a one year of regular service credit.<sup>5</sup> The Lincoln school committee now suggests that we should parse out from this letter a distinction between Mr. Frost's service credit as a part time teacher and his service credit as a substitute teacher.

If this distinction is made the committee urges us to find that Mr. Frost has too little service as a substitute teacher to qualify for a year's credit as a substitute teacher. The committee also urges us to find Mr. Frost has too little service as a part time teacher to qualify for a year's credit as a part time teacher. The problem of course, is that if we add Mr. Frost's service as a substitute teacher to his service as a part time teacher it becomes evident that Mr. Frost was regularly employed in what amounted to 3/5 teaching position for over 173 school days in the North Smithfield. Mr. Frost's service as a "utility infielder" for these 173 "games" is no less "regular" than the service provided by a player who played one position in 173 "games." The distinction proposed by the school committee is simply a distinction without a difference.

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<sup>4</sup> Exhibit D. Letter of Superintendent John A. Moretti of North Smithfield, May 24, 1994

<sup>5</sup> We see no ambiguity. Mr. Frost worked 39 full days as a combined 3/5<sup>th</sup> substitute and 2/5<sup>th</sup> teacher. He worked 14 3/5<sup>th</sup> days as a full time substitute (This corresponds with 3/5<sup>th</sup> substitute position first mentioned.) He also worked 120 days as 2/5<sup>th</sup> teacher. This total to 173 days as specified by the superintendent of North Smithfield.

In *D'Ambra vs. North Providence* the commissioner ruled that part time service counts towards regular service under R.I.G.L.16-7-29:

The statute [R.I.G.L.16-7-29] does not limit creditable periods of service to years of full-time employment, nor can we find any statutory basis to impose a requirement that for a year of service to be creditable, a regular employee must work full-time.

On appeal the Rhode Island Supreme Court affirmed this ruling and stated:

[W]e believe that persons working fewer than forty-hours per week may still be considered regularly employed. Indeed, the actual time working may be less, but the nature of the employment need not be any less regular. Applying a plain and ordinary meaning to the phrase "regularly employed," in the absence of any contrary legislative intent, we are of the opinion that the conditions of respondent's employment fully satisfied the statutory requirements of chapter 16 with respect to regular employment.

If we give the term "regularly employed" its "plain and ordinary meaning" it is impossible to describe 3/5ths employment for a 173 of the 180 days in a school year as anything less than "regular employment."<sup>6</sup> Mr. Frost is therefore entitled to a year of service credit for the 1993-1994 school year.

## **VI. Conclusion**

Mr. Frost earned a total of 2 years of service credit under R.I.G.L. 16-7-29 during the 1992-1993 school year and the 1993-1994 school year. The doctrine of laches is inapplicable to this case.<sup>7</sup> The appeal is therefore granted, and petitioner Frost is found to be entitled to the sum of \$24,233.00.

APPROVED:

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Forrest L. Avila, Hearing Officer

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Peter McWalters, Commissioner

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May 7, 2004

\_\_\_\_\_  
Date

<sup>6</sup> See: *Tipirneni v. Warwick School Committee, Commissioner of Education*, June 19, 1998.

<sup>7</sup> *D'Ambra v. North Providence Sch. Comm.*, 601 A.2d 1370 (R.I. 1992)