

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

.....

**Stephen F. Chrabaszc**

v.

**Johnston School Committee**

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**COMMISSIONER'S DECISION**

Held: The decision of the Johnston School Committee not to renew Mr. Chrabaszc's contract as Assistant Principal at Johnston High School was made for a valid reason, and met the minimum legal standards required for the nonrenewal of an administrator's contract. The decision does not represent a factual determination of a lack of qualifications on the part of the nonrenewed administrator; the legal standard for nonrenewal of an administrator calls only for a good faith belief on the part of the appointing authority that a more qualified administrator can be hired, not that the administrator being nonrenewed has been determined to be inadequate or unqualified. The decision to nonrenew is sustained.

Date: January 28, 2005

## **Travel of the Case**

On November 3, 2000 counsel for the appellant filed a written notice of appeal with Commissioner Peter McWalters and sought review of the Johnston School Committee's October 24, 2000 decision not to renew his contract as Assistant Principal at Johnston High School. The appeal was filed under the provisions of R.I.G.L.16-12.1-6 which provides administrators aggrieved by final decision of a school committee with a right to de novo hearing before the Commissioner under Chapter 39 of Title 16. A Department of Education Hearing Officer was assigned to hear the matter and prepare a proposed decision for review and approval by the Commissioner.

An extended hearing process ensued, with the involvement of the Superior Court, to resolve issues of the propriety of subpoenas issued after an order permitting additional evidence was entered by the hearing officer on June 14, 2001. Subsequent to this process, hearings finally concluded on March 19, 2002 and the submission of additional briefs to close the record occurred on April 8, 2002. A subsequent request by the appellant to reopen the record was denied on February 14, 2003.

## **ISSUE**

Was the decision of the Johnston School Department not to renew the Appellant's contract as Assistant Principal of Johnston High School made for a valid reason, and did the decision meet legal standards for the nonrenewal of the contract of an education administrator.

## **Findings of Relevant Facts**

- Stephen F. Chrabaszcz was employed as an Assistant Principal of Johnston High School during school year 1999-2000. He worked under a ten-month contract extending from August 30, 1999 to June 30, 2000. Appellant's Ex. A.; Tr.Vol.IV, p.129.
- The primary duties of the position were to discipline those students whose behavior did not conform to school rules. Tr.Vol.IV, p.129; Respondent's Ex.1.
- At the time he accepted the position, the school population was approximately nine hundred and fifty (950) students and Mr. Chrabaszcz was told that another assistant principal would be hired and that person would assist him in handling discipline at the school. Tr. Vol.IV, p.130.
- During the 1999-2000 school year Mr. Chrabaszcz had almost exclusive responsibility for the administration of discipline, until April 3, 2000 at which time the new principal, Patricia Pitocchi decided that these duties should be divided between the Appellant and another assistant principal, John Antonello. Resp. Ex.5; Tr.Vol.I,p.104-105; Vol.II,p.49; Vol.III,p.85;

the assignment of two assistant principals to oversee discipline continued throughout the subsequent school year. Tr.Vol.II, p174-175;Vol.III, p.157.

- In school year 1999-2000 the number of disciplinary referrals was high and the number that was processed was high (Tr.Vol.II,p.137); the total number of disciplinary referrals was not established, but there were 1,438 student suspensions that year (Tr.Vol.II,p.174); According to Mr. Chrabaszcz, he received over 1,000 disciplinary referrals in the first semester alone<sup>1</sup> (Tr.Vol.IV,p.142); According to Principal Patricia Pitocchi, Mr. Chrabaszcz handled an “inordinate amount” of disciplinary referrals during 1999-2000. Tr.Vol.II, p.228.
- Throughout school year 1999-2000 Mr. Chrabaszcz worked between twelve (12) and fourteen (14) hours each day in performing his job responsibilities. Tr.Vol.II,p.77; Vol.IV,p.135.
- During the time he served as Assistant Principal, Mr. Chrabaszcz found that he could not keep up with the number of disciplinary referrals he received, a situation which caused him to prioritize his responses in such a way that the more serious infractions of school rules, such as fighting and swearing at teachers were handled, but other infractions such as tardiness and class cuts were not addressed in a timely way. Tr.Vol.IV, pp.140, 142-147; A backlog of disciplinary referrals developed and continued throughout the year up until the point of March 28, 2000 at which time Principal Pitocchi directed that old and unresolved disciplinary matters would be “filed” and only more recent infractions by students acted upon, and that going forward, two assistant principals would share equally the responsibility for school discipline. Resp.Ex.5; Tr.Vol.II,pp.80,90; 137-138.
- Throughout the year, there were faculty complaints regarding the lack of timely processing of disciplinary referrals. Tr.Vol.II,pp.81, 136-137; Vol.III, p.117; Vol. IV,pp.16, 45-46; the disciplinary situation contributed to the low morale of teachers during the 1999-2000 school year. Tr. Vol.II, pp.96, 136-137;Vol.IV,pp.33,37,46. Faculty concerns regarding the disciplinary situation were conveyed to Superintendent Jolin by the president and vice-president of the Johnston Teachers’ Union. Tr.Vol.I,pp.78-79; Vol.III, p.139;Vol. IV,p.58.
- Principal Cheryl Tutalo supervised Mr. Chrabaszcz from the beginning of the school year until she left to take another position in December of 1999. Her observation of Mr. Chrabaszcz was that he was not an effective disciplinarian because disciplinary referrals that teachers were writing were not being responded to in a timely fashion, a problem that affected both faculty morale and caused an increase in student misbehavior. Tr.Vol.III,pp.82-83. She suggested to Mr. Chrabaszcz that he manage his time differently i.e. cut down on time spent conferring with parents, utilize office staff to notify parents that their children were being suspended from school and have staff screen “cut slips” to determine if a student’s absence from class was legitimate.<sup>2</sup>Tr.Vol.III,pp.89-91; App.Ex.D.

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<sup>1</sup> Although the argument was made at the hearing that Mr. Chrabaszcz handled over 2,000 disciplinary referrals that year, the total number is not in evidence.

<sup>2</sup> the latter procedure would have screened out some of the daily disciplinary referrals.

- Principal Tutalo documented her concerns about several matters in a December 30, 1999 memorandum to then-Superintendent Alex Warren, who also left the Johnston school department at the end of 1999. “Student Discipline” was one of fourteen topics of discussion in her memo and in this section she noted that disciplinary referrals were not being processed in a timely way and described the suggestions she had made to Mr. Chrabaszcz. App.Ex.D;
- Ms. Tutalo did not evaluate Mr. Chrabaszcz nor did she make any recommendation with respect to the renewal of his contract as Assistant Principal. Tr.Vol.III, pp.82-83.
- James DiPrete served as interim Principal at Johnston High School from January 3, 2000 until March 15, 2000 and supervised Mr. Chrabaszcz during that time. He characterized Mr. Chrabaszcz as a “hard working individual” but noted that he tended to be “excitable” in situations that called for calm. On several occasions<sup>3</sup> he heard Mr. Chrabaszcz raising his voice and at other times<sup>4</sup> he loudly stated that the school was “out of control” in front of other staff, students and parents. Tr.Vol.II, pp.21-22, 25, 82-85.
- Mr. DiPrete documented his concerns and suggestions about several matters, including Mr. Chrabaszcz’s “behavior and attitude” in an April 3, 2000 memorandum to incoming Principal Patricia Pitocchi. Resp.Ex.6; He also discussed his informal assessment of Mr. Chrabaszcz with Superintendent Jolin and the fact that he was not a “calming influence” in the building. Tr.Vol.II, pp.38-40.
- Mr. DiPrete did not consider his April 3<sup>rd</sup> memo to be an evaluation of Mr. Chrabaszcz’s performance. Tr.Vol.II,p.87;
- The April 3<sup>rd</sup> memo did not raise any issue of timely response to disciplinary referrals because Mr. DiPrete didn’t see that as a major issue Tr.Vol.II,p.88-89, although he was aware that Mr. Chrabaszcz had difficulty keeping up with the referrals because there were so many of them (Tr.Vol.II, p.90) and was aware of faculty complaints regarding this situation.Tr.Vol.II,p.81.
- Mr. DiPrete met with Mr. Chrabaszcz once to discuss his performance. On February 10, 2000 he visited Mr. Chrabaszcz’s office and told him of the need for him to be a calming influence in the school and be more positive. Resp.Ex.6;Tr.Vol.II,pp.27-28. Mr. DiPrete also observed that Mr. Chrabaszcz appeared stressed. Tr.Vol.IV,p.153; At that time Mr. Chrabaszcz indicated that he was overwhelmed because of the number of disciplinary referrals.Tr.Vol.IV,pp.146,152-153.
- Patricia Pitocchi formally began as principal of Johnston High School on March 20, 2000. On March 27 she sent a memo to Superintendent Jolin, which noted that she had observed Mr. Chrabaszcz sufficiently to generate some concerns, mainly with respect to his style. Resp.Ex.4;

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<sup>3</sup> about ten times

<sup>4</sup> about six to eight times

- Ms.Pitocchi's March 27, 2000 memo set forth her observations<sup>5</sup> that Mr. Chrabaszc had a propensity to be rather histrionic in both gesture and speech, which she found to be counterproductive in that it exacerbated situations of concern and distressed faculty. She also took issue with the fact that Mr. Chrabaszc at times spoke openly about disciplinary matters with students, rather than handling such matters confidentially. Resp.Ex.4.Tr.Vol.II,pp.99-102.
- Ms. Pitocchi also observed that there were piles of disciplinary referrals that had not been acted on at that time. Tr.Vol.II, p.137 and 172.
- On March 28, 2000 Ms. Pitocchi sent a written directive that, effective April 3, 2000 two assistant principals, Mr. Chrabaszc and Mr. Antonello, would equally share in handling disciplinary matters. She emphasized at that time that all disciplinary matters should be discussed calmly and within the administrators' offices. Resp.Ex.5.
- Ms. Pitocchi met with Mr. Chrabaszc regarding her concerns as to his disciplinary style "on the run" as she did not have opportunity to meet with him formally. Tr.Vol.II, p.100.
- Although she did not conduct a formal evaluation of Mr. Chrabaszc, Ms. Pitocchi informally assessed his performance as unsatisfactory, and conveyed her assessment verbally to Superintendent Jolin, along with her verbal recommendation that Mr. Chrabaszc's contract not be renewed. Tr.Vol.II, pp. 146, 149-150,157.
- None of the memos of concern generated by Ms. Tutalo, Mr. DiPrete, or Ms. Pitocchi were shared or discussed with Mr. Chrabaszc. Tr. Vol. IV, pp. 162-166.
- On April 12, 2000 Superintendent Jolin placed Mr. Chrabaszc on administrative leave with pay so that he could investigate three complaints he had received regarding Mr. Chrabaszc's professional conduct. Resp.Ex.8. Tr.Vol.I,pp.70-71; Subsequently Mr. Jolin determined that he would be referring these complaints to an outside investigator for follow up and that during this process, Mr. Chrabaszc would continue on a leave with pay. Resp.Ex.8.
- On June 6, 2000 while on leave status and with the investigation still pending, Mr. Chrabaszc was notified by Superintendent Jolin that he would be recommending that his contract not be renewed. Mr. Chrabaszc was informed that this recommendation would be made to the Johnston School Committee at its June 13, 2000 meeting. The reason identified for Dr. Jolin's recommendation in the June 6, 2000 letter was that after a review of (Mr. Chrabaszc's) performance, Dr. Jolin had concluded that there were better administrators available to perform his duties. Resp.Ex. 9.Tr.Vol.I,pp.73-74.
- Dr. Jolin based this conclusion on the pattern of complaints he had received concerning Mr. Chrabaszc. He relied substantially on Ms. Pitocchi's observations and those of Mr. DiPrete. Tr.Vol.I,p.74;Vol.VII, pp.5-11. He also relied on his experience that good administrators would be available and that he could obtain a better assistant principal if he tapped various sources. Tr.Vol.I.p.79.

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<sup>5</sup> observations to which she also testified at the hearing

- Dr. Jolin had also himself observed Mr. Chrabaszcw occasionally in the halls of the school, but his primary observation of him occurred when there was a “dog sniffing” operation at the high school involving the Johnston police. He observed Mr. Chrabaszcw behaving in an “excitable” manner and concluded that he was insubordinate, acting in contravention of Ms. Pitocchi’s directive that he remain at the rear exit of the school building during the police investigation. Tr.Vol.I,pp.76-78;Tr.Vol.VII,p.6.
- On this occasion, Mr. Chrabaszcw went to the parking lot from where he had been stationed at the rear of the building to try to identify the owner of the car in which drugs had been detected at the specific request of the police conducting the operation. Tr.Vol.I,p. 168;Vol.IV,p.169.
- Dr. Jolin did not perform a formal evaluation of Mr. Chrabaszcw’s performance. Tr.Vol.IV, p.160; prior to recommending to the School Committee that Mr. Chrabaszcw’s contract not be renewed, Dr. Jolin had not met with Mr. Chrabaszcw to discuss any concerns regarding his performance as an assistant principal. Tr.Vol.VII, pp.66-67.
- Mr. Chrabaszcw’s contract contains provisions that require the Superintendent to evaluate his performance annually and requires that any material derogatory to his conduct, service, character or personality not be placed in his personnel file unless he has had opportunity to review it and respond. Appellant’s Ex.A.

## **Positions of the Parties**

### **The Appellant**

Counsel for Stephen Chrabaszcw seeks to hold the Johnston School Committee to a requirement that it demonstrate “good and just cause” existed for its nonrenewal of his contract as an Assistant Principal at Johnston High School. First, the appellant submits that the Commissioner has previously ruled that just cause must support the decision not to renew an administrator’s contract under R.I.G.L. 16-12.1-1 et seq. It is submitted that this interpretation of school law was made by the Commissioner in the decision of Edward L. Jawor. v. Bristol-Warren Regional School Committee, March 21, 1996. This decision, although subsequently overruled by the Board of Regents, was improperly overruled, it is argued, and therefore should not be binding in subsequent disputes. Thus in revisiting this issue, the Commissioner is urged to apply the same standard for nonrenewal as that which he endorsed in the Jawor decision.

The Appellant argues that R.I.G.L. 16-12.1-1 et seq. and in particular Section 2.1 of this chapter should be interpreted to include nonrenewal within the meaning of “termination” and thus require that the School Committee establish that it has just cause for Mr. Chrabaszcw’s nonrenewal. If the Commissioner rejects this interpretation, the Appellant argues that he was in fact constructively terminated. On April 12, 2000, prior to the normal expiration of his contract on June 30, 2000, Mr. Chrabaszcw was placed on administrative leave with pay. The reason was, ostensibly he argues, so that the Administration could investigate certain complaints that had

been made against him. When these complaints continued unresolved and the Superintendent determined that he would be recommending his nonrenewal, the Appellant continued on the status of administrative leave. Mr. Chrabaszc was kept out of the building and prevented from performing his job duties for the remainder of the year. This action is tantamount to his termination. Counsel for the Appellant argues that at some point soon after his appointment as superintendent Dr. Michael Jolin had arbitrarily decided that he wanted the Appellant terminated, but rather than take this action and then be required to demonstrate just cause, Dr. Jolin instead used the mechanisms of administrative leave and nonrenewal to effectively remove him from his position on April 12, 2000.

If the standard of just cause is applied to the decision of the School Committee, the Appellant argues, clearly there has been no demonstration of just cause in terms of a substantial deficiency in the appellant's performance. Implicit in this argument is that the reason of "seeking a more qualified person for the position", as relied on by the School Committee here, was not supported by deficiencies in performance that rise to the level of just cause.

The Appellant further argues that if the School Committee was not required to prove that it had just cause for the nonrenewal of Mr. Chrabaszc, and the burden rests on the Appellant to show that the decision was arbitrary, irrational, or unfair, this burden has been met. Counsel asserts that the evidence supports such conclusion because a review of this record indicates that Mr. Chrabaszc was in fact an excellent assistant principal. The appellant's brief summarizes the evidence, which would undermine any allegation that Mr. Chrabaszc fell short in any of his professional responsibilities. The evidence in this record is argued to demonstrate his unparalleled work ethic and effectiveness as a disciplinarian, despite the volume of work he was expected to handle and the constant administrative turnover that year.

In addition to the unreasonableness of the decision from a substantive standpoint, the Appellant states that procedural irregularities pervade the entire process, rendering the School Committee's action arbitrary and capricious. The procedures required by contract in making employment decisions with regard to Mr. Chrabaszc were not followed. Since the contract is undeniably "school-related" the Commissioner is asked to exercise jurisdiction over these clearly established contractual violations and is urged to provide a remedy for the School Committee's flagrant disregard of the contract's provisions.

In addition to the legal significance of the contractual violations in and of themselves, the Appellant states that the failure to evaluate the Appellant and place any materials reflecting negatively on his performance in his personnel file constitutes evidence of arbitrary, irrational and unfair decision-making by the School Committee. Compliance with the provisions of Mr. Chrabaszc's contract would have changed the entire decision-making process and surely would have affected any conclusion with respect to his effectiveness as an assistant principal, counsel submits. If the contract had been adhered to and complaints regarding his performance or disciplinary style had been placed in his file and copies provided to him, he would have received notice that his employer had concerns and been given opportunity to address them. He could have made changes in how he functioned. If, as the contract requires, he had been evaluated Mr. Chrabaszc could have responded appropriately to information contained in the evaluation before any final conclusions were reached regarding his reemployment for the subsequent year.

Counsel argues that for Mr. Chrabaszcz, the contract's provisions with respect to evaluation and documentation of inadequate performance became "due process" to which he was entitled. Information and documentation generated without compliance with his contract was an invalid basis for any decision on his continued employment. More importantly, the failure to observe the contract's terms resulted in one-sided and inaccurate information on which to base a decision regarding Mr. Chrabaszcz's renewal. The ultimate decision was, therefore, unreasonable and unfair.

In each of the areas in which it is alleged that the Appellant's performance was deficient, or a complaint was made, Counsel argues that misimpressions remained uncorrected and remedial steps were not taken – to the detriment of Mr. Chrabaszcz. Had he been evaluated and if the concerns that were raised by his supervisors had been raised *with him*, not only would these have been addressed when possible, but the ultimate decision would have been reasonable and fair. As it was, the factual premise for the nonrenewal decision consisted of unsubstantiated complaints and informal assessments. The assessments were made by administrators who worked with him only briefly and had little, if any, opportunity to observe his effectiveness as an assistant principal. In this context, the School Committee's decision that there were better administrators available to fill the Appellant's position is arbitrary, unreasonable, unfair, the Appellant argues.<sup>6</sup>

In terms of a remedy for the violations of law (and contract) to which Mr. Chrabaszcz has been subjected, he takes the position that the decision of the Johnston School Committee must be reversed and that he be awarded back pay and attorneys' fees which he has incurred pursuant to the Equal Access to Justice Act. The practical remedy that he seeks is to have the cloud on his reputation, which has resulted from the action of the School Committee, removed.

### Johnston School Committee

It is the position of the Johnston School Committee that its nonrenewal of Mr. Chrabaszcz was valid both substantively and procedurally. Citing Jawor v. Bristol/Warren Regional School Committee<sup>7</sup>, and Kagan v. Bristol/Warren Regional School Committee<sup>8</sup>, the School Committee argues that in non-renewing administrators or nontenured teachers the burden of proof is on the person challenging the decision to show that the proffered reason is invalid or that it is devoid of any factual basis. The Jawor decision of the Board of Regents confirmed that just cause is not a prerequisite to the non-renewal of a school administrator and the desire to look

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<sup>6</sup> The Appellant presents extensive arguments with respect to the School Department's decision to place him on paid administrative leave, asserting that this decision also was irrational, unreasonable, and prohibited by his contract. The appellant's letter of appeal takes issue only with the School Committee's decision not to renew Mr.

Chrabaszcz's contract. While there was evidence presented with respect to the prior decision in mid-April to place Mr. Chrabaszcz on a paid administrative leave, this evidence was admitted as it pertained to the legality of the Appellant's nonrenewal. It would be unfair to allow the Appellant to raise, and for the Commissioner to rule on the propriety of, the administrative leave when raised for the first time in the closing memorandum. For this reason we do not include here a summary of the extensive arguments made with respect to the legality of this action and decline to rule on it.

<sup>7</sup> decision of the Board of Regents dated December 2, 1996

<sup>8</sup> decision of Judge Needham, 1997 WL 1526517 (R.I.Super.)

for more qualified persons who might be available for the position is a legally sufficient reason in such instances. The ruling of the Superior Court on appeal in the Kagan case further explored the burdens in nonrenewal cases, and ruled that a determination that “more qualified teachers” are available is presumed to have factual support until and unless the appellants produce sufficient evidence to contradict this statement of reason.

Both of these cases are also cited to support the procedures and documentation utilized by the School Committee in its decision in Mr. Chrabaszc’s case. In Jawor the School Committee acted without a current written evaluation of Dr. Jawor’s performance as principal and in the Kagan case the decision to nonrenew the two teachers involved was made without reference to their personnel files or any evaluations that may have been made of their performance. In each of these cases, the procedures utilized in making the decision to nonrenew were found to be valid.<sup>9</sup> Based on these cases, the Committee argues that the absence of an evaluation of Mr. Chrabaszc posed no impediment to a valid decision on his reemployment in Johnston. In Mr. Chrabaszc’s case Superintendent Jolin is argued to have had a good faith belief that better administrators than Mr. Chrabaszc were available for the position of Assistant Principal of Johnston High School. His reason is factually supported, legally sufficient, and has not been rebutted by the Appellant. Therefore the decision of the School Committee should be sustained by the Commissioner.

In response to the argument that Mr. Chrabaszc’s contract required that decisions regarding his future employment in Johnston be based on formal evaluation and take into account only those performance deficiencies documented in his personnel file, the school department argues that there was no guarantee that the Superintendent would follow the contract. It is submitted that these provisions would have required Superintendent Jolin to engage in a lengthy evaluation and “second chance” process before determining what his recommendation on Mr. Chrabaszc’s contract renewal would be. Counsel argues that this was not necessary or required and, in any event, the Appellant received informal evaluations from each of the principals he worked under. Their constructive comments and suggestions were, for the most part, unheeded. There is evidence that each of the principals with whom the appellant worked brought to his attention his failure to act on disciplinary referrals promptly, his failure to maintain a calm atmosphere and occasions on which he disciplined students without regard to their privacy rights. To the extent any contractual violations may have been established, the Commissioner clearly has no jurisdiction over contractual claims. Furthermore, there has been no showing that any technical violations of his contract resulted in an unfair or unreasonable process or that it rendered the School Committee’s decision arbitrary, capricious, or unfair.

The decision that “better administrators were available” is supported in this record and counsel directs our attention to the testimony and documentation which establishes areas of

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<sup>9</sup> In both cases at the Board of Regents level and in the Kagan case, by the Superior Court as well. The Commissioner’s decision in Jawor overruled the decision of the School Committee primarily because both parties stipulated that just cause was required for the nonrenewal. The School Committee’s argument was that lack of excellence constituted just cause. In Kagan, the Commissioner’s decision was that it was arbitrary for the Superintendent to conclude that there were better teachers available when he had no information whatsoever on the record of performance of Ms. Kagan and Mr. McGhee, but the Board of Regents and Superior Court determined that there was no requirement for a superintendent to examine the non-tenured teachers’ performance record in concluding that better teachers are available for their positions.

deficiency in Mr. Chrabaszcz's performance. Dr. Jolin provided extensive testimony regarding his own observations and the complaints that he had received regarding Mr. Chrabaszcz. Concerns and observations of supervisors regarding the Appellant had been documented and forwarded to him. Dr. Jolin had been made aware of declining morale among teaching staff in part based on the disciplinary situation in the school. His assessment of the Appellant's performance was reinforced by the concurring opinions of all three principals with whom Mr. Chrabaszcz worked and who also testified regarding their observations and assessment of Mr. Chrabaszcz. The conclusion that he could find someone better for the position was, the School Committee contends, reasonable in light of all of these factors as well as Dr. Jolin's knowledge of the caliber of administrators in the job market. For these reasons the School Committee's decision must be sustained.

### **CONCLUSIONS OF LAW**

1. There is no "just cause" requirement for the decision to nonrenew an educational administrator. R.I.G.L. 16-12.1-1 et seq.; Jawor v. Bristol-Warren Regional School Committee, Board of Regents, December 2, 1996.
2. The Jawor decision is binding precedent in this matter. That decision precludes administrators who are not being renewed at the end of their contract from requiring anything more of their employer than the employer's demonstration that the employer has a good faith belief that a more qualified administrator can be recruited by the employer.
3. "Just cause" need only be demonstrated if an administrator's contract is terminated during its term. If the school committee retains an administrator in employment for the entire term of his/her contract, even if on paid leave, and then fails to renew the administrator's contract, this amounts to a contract nonrenewal not a termination during the term of the contract requiring that just cause be established by the employer.
4. The Kagan v. Bristol Warren Regional School Committee, 1997 WL 1526517 (R.I. Super.) decision also applies to contract nonrenewals of non-tenured educators. The ruling in this case, like that in Jawor, permits school committees to nonrenew an educator not protected by tenure at the conclusion of his/her contract without regard to specific evaluations or presentation of identified deficits of the nonrenewed employee, if in the good faith professional judgment of the employee's supervisors a better qualified educator can be obtained for the position.
5. The burden is on the educator challenging the non-renewal to demonstrate that the professional judgment of the appointing authority that a better qualified educator can be recruited for the position is without a basis in fact.
6. The articulated reason in support of non renewal of an educator not protected by tenure that there exists a belief that a better qualified educator can be identified for the position is presumed valid unless rebutted by specific evidence presented by the non renewed educator.

## DECISION

This record establishes that there is a factual basis for the conclusion that better administrators than Mr. Chrabaszczyk may be available. The Appellant has not proven that the Committee could not find a better administrator if it sought to do so. This burden is imposed on the nonrenewed educator in cases of nonrenewal of an administrator at the end of his/her contract term. Thus there was a valid reason upon which the Committee's decision was premised. See Tracy v. Scituate School Committee.

Despite the extensive legal arguments of the appellant that seek to impose a requirement that there be "just cause" for this decision, those arguments are not persuasive. The Regents' decision in Jawor is binding precedent on this issue. The appellant's placement on administrative leave, followed by nonrenewal, is not a premature termination of his contract, resulting in imposition of a "just cause" standard. As long as the school committee continues to honor a contract, paying an administrator through the end of the contract term, this is a nonrenewal, not a termination during the term of the contract.

The record created at this level establishes that Mr. Chrabaszczyk's style was at times in conflict with his supervisor's perception of what was needed, i.e., that Johnston High School needed administrative staff whose manner provided a calming influence to the school environment. It was his/her professional opinion that turmoil and unrest in the building was a major factor undermining effective teaching and learning at the high school. Mr. Chrabaszczyk's manner was observed to be boisterous (Jolin, Vol. VII, p. 69), excitable (DiPrete, Vol. 1, pp. 21-22), and histrionic (Pitocchi, Vol. II, pp. 100-101). It was therefore a reasonable conclusion that his style was not conducive to the calm and orderly environment his supervisors were seeking to achieve at the high school at that time.

In matters heard under R.I.G.L. 16-39-1 and 2 the Commissioner is charged with the duty of holding a hearing, "examining" the issues and deciding the dispute. In the modern age it is impracticable for the Commissioner to personally preside over the gathering of evidence in the many cases that come before him in a given year. The Commissioner has delegated to hearing officers the duty to take and review evidence and recommend to the Commissioner findings of fact and conclusions of law. The Commissioner however approves and signs all decisions recommended by hearing officers and may render a final decision other than that recommended by the hearing officer.

In the Commissioner's review in this case, the Commissioner has expressly adopted the findings of fact recommended by the hearing officer in their entirety. As correctly argued by appellant's counsel in the oral argument before the Commissioner on the Commissioner's Proposed Decision, the hearing officer is the agency employee properly situated to make findings of fact based upon her personal exposure to the witnesses and evidence. The findings of fact prepared by the Hearing Officer have been adopted without alteration by the Commissioner in deference to this role. However, the Commissioner has separately reviewed the record of the hearing in this case and has determined that the application of the relevant law to the facts

requires that the decision of the school committee be upheld. The application of the law to the facts is the sole purview of the Commissioner as the statutorily empowered authority to decide disputes of school law and determine matters of education policy.

The Commissioner applies the law in this case to decide that because there is a sound factual basis for Dr. Jolin's good faith professional conclusion that a more qualified administrator could be found by the Johnston School Department to fulfill Mr. Chrabaszc's duties; because this reason for nonrenewal is not a subterfuge for another, impermissible reason to nonrenew such as discrimination; and because there is no legal requirement that a school committee show "just cause" for the nonrenewal of an administrator's contract, the decision of the school committee to nonrenew this administrator must be sustained.

In carefully considering the oral argument made before the Commissioner in this matter on the Proposed Decision, it is clear that the appellant has construed the non renewal to constitute a substantive determination on the part of the Johnston Superintendent and School Committee that the appellant is unqualified. Applying this same logic, the appellant's view would be that if the Commissioner upholds the non renewal that would constitute a substantive determination on the part of the Commissioner that the appellant is unqualified. This conclusion cannot and must not be drawn in cases of non renewal of educators not protected by tenure given the very low legal standard for non renewal of educators not protected by tenure.

The appellant has, subsequent to the close of the hearing on his non renewal, sought additional relief regarding the failure of the Johnston School Committee to conclude the investigation of allegations of unprofessional conduct that it commenced at the time the appellant was placed on administrative leave. The appellant expresses specific concerns regarding damage to reputation linked to this unconcluded investigation. However, in light of the fact that the non renewal is expressly not predicated upon any investigation or allegations but rather is based upon the belief of the Superintendent that a more qualified administrator could be employed, any investigation conducted or not conducted by the school district administration is moot for purposes of the Commissioner's review of the non renewal.

The Commissioner assigns no significance to the existence of the unconcluded investigation. Should the appellant have any claims relating to reputation those would not sound in school law. While such claims may be cognizable in another forum they are not within the jurisdiction of the Commissioner to resolve disputes arising out of school law.

Although the school district administration did not formally evaluate the administrator nor formally, in the context of an evaluation, communicate with the administrator regarding his shortcomings, there is no requirement that the school district administration do so in reading a decision to nonrenew under the precedents in Kagan and Jawor.

The hearing officer in this matter recommended that consideration be given to the failure of the administration to more formally evaluate Mr. Chrabaszc's performance and communicate formally to him the shortcomings so that he could perhaps take steps to remediate them. In addition, the hearing officer recommended that the Johnston administration be faulted for relying on complaints about Mr. Chrabaszc's failure to process disciplinary matters in a timely manner

without also taking into consideration the high volume of disciplinary referrals and the apparent need to ultimately assign additional administrative staff to the review of such disciplinary matters. The hearing officer's recommendation was that these procedural and substantive failures of the Johnston administrators in arriving at the decision to nonrenew Mr. Chrabaszc made their decision arbitrary and unfair.

While the failure to formally evaluate and formally communicate with Mr. Chrabaszc concerning his shortcomings in the eyes of his superiors and the reliance of his superiors upon the complaints of others about his job performance is not necessarily a best practice in terms of educational administration, the Commissioner finds that Rhode Island educational law regarding the nonrenewal of school administrators does not require school committees to follow these steps in making a decision to nonrenew an administrator's contract.

R.I.G.L. 16-12-1.1 clearly states that in passing the "School Administrators' Rights Act" the General Assembly intended "neither to interfere with the discretion of school committees to choose those who shall administer local schools nor to grant tenure to school administrators." The purpose of the act instead is stated as follows:

[T]he General Assembly deems it necessary to the orderly and effective functioning of public education to inform school administrators of the bases or reasons for their suspension, dismissal or nonrenewal of their employment relationship, and to afford administrators an opportunity to be heard before the school committee. Full disclosure of the bases or reasons for suspension, dismissal, or nonrenewal and the hearing which may follow, while providing administrators and school committees a meaningful hedge against mistaken or impermissible actions as well as an opportunity to question and confront those individuals whose judgment or allegations furnish the basis for the actions taken, are ultimately intended to erase harmful innuendo from any suspension, dismissal, or nonrenewal of an administrator.

R.I.G.L. 16-12.1-1

It is not disputed that once the decision to nonrenew was made Mr. Chrabaszc was provided with a statement of the reason for his nonrenewal. He was informed that, based on the unanimous professional judgment of his several superiors in the Johnston administration, the Superintendent was convinced that a more qualified administrator could be found for the job. The purposes of the statute were fulfilled in that Mr. Chrabaszc has had an exhaustive opportunity to hear from his former supervisors as to their conclusions that he lacked the professional demeanor and aplomb to conduct his duties as an administrator in a manner that contributed positively to an overall positive environment in the school. (Testimony of Jolin, Diprete, Pitocchi, Tutalo) He also had an opportunity to seek to persuade the school committee that the superintendent was mistaken in his judgment and that in fact Mr. Chrabaszc was literally "the best man for the job." The school committee however, having received the full testimony in the matter, was within its rights to conclude otherwise and to adopt the view of Superintendent Jolin that a more qualified administrator could be identified for this job at Johnston High School. The existing legal precedent in Rhode Island is that this view is presumed valid in the absence of specific evidence from Mr. Chrabaszc that in fact no more qualified administrator could be found for his job.

It is crucial that the legal standard for non renewal of an educator not protected by tenure be fully understood for what it is, and what it is not. The presumptively valid judgment of a Superintendent that a more qualified teacher or administrator can be recruited must not be understood by non renewed educators, nor by those who may subsequently consider non renewed educators for future employment, as a substantive judgment of lack of qualification of the non renewed educator.

Administrators are entitled to a statement of reasons for a non renewal – however the simple statement that a better qualified educator can be recruited has been ruled sufficient. A Superintendent may determine that an administrator, although well qualified, is not the right fit for the management team that the Superintendent is striving to build within a school district. If, in the unrebutted judgment of the Superintendent, an administrator, no matter how qualified, could be replaced by a more qualified administrator, it is the unrestricted right of the Superintendent to non renew that administrator, pursuant to R.I.G.L. 16-12-1.1.

R.I.G.L. 16-12-1.1 protects administrators against factual mistake in non renewal and legally impermissible bases for non renewal – it does not interrupt the authority of a Superintendent to construct a management team of his or her choosing based on his or her assessment of the relative qualifications of the administrators generally available for employment. Because non renewal of an educator not protected by tenure does not require evaluation of the non renewed administrator, such non renewals should not be construed as a substantive determination, favorable or unfavorable, on the employability of a non renewed administrator in another district which may have different goals, policies and educational philosophy.

The decision of the Johnston School Committee nonrenewing the contract of the Appellant is upheld.

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Peter McWalters, Commissioner

Dated: January 28, 2005