

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

RUTH MOORE, DARLENE SHUMCHENIA,
AMY DICHRISTOPER and HEATHER VALE

V.

PAWTUCKET SCHOOL COMMITTEE

Decision

Held: Physical therapist and certified
occupational therapy assistants are not
covered by the Teachers' Tenure Act.

June 29, 2005

Introduction

This matter concerns the refusal of the Pawtucket School Committee to provide Appellants with the rights set forth in the Teacher Tenure Act.¹

Background

Appellants Shumchenia, DiChristopher and Vale were hired by the Pawtucket School Committee as certified occupational therapist assistants in the summer of 2000. Appellant Moore was hired by the Committee as a physical therapist in November 2002. Upon being hired, DiChristopher, Vale and Moore were each given a “personnel data sheet” with a “tenure date” entered.² Shumchenia’s personnel data sheet states “Not Applicable” with regard to a tenure date. [School Committee Exhibit 1].

Appellants were and remain licensed by the Rhode Island Department of Health to perform the work for which they were hired. Their positions do not require a certificate issued by the Department of Education and Appellants are not certified as educators in Rhode Island. Appellants are members of the Pawtucket Teachers Alliance, Local 930, American Federation of Teachers. The Alliance and the School Committee are parties to a collective-bargaining agreement.

Following their hire, Appellants worked continuously in the Pawtucket public schools. Prior to March 1, 2004, each Appellant was informed that the School Committee had voted “not to renew your teaching contract” for the following reasons:

- Personnel/Program Changes in the district may result in a more senior teacher electing to hold a position currently being held by a less senior teacher.
- It is anticipated that there will be fewer teaching positions in the area in which one is teaching and the individual is one of the least senior teachers in the area.
- Due to the uncertainty of funding levels it is anticipated that it will be necessary to eliminate or consolidate positions or programs which will result in the lack of a position for the least senior teachers.³

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeal in this case. A hearing was held on April 29, 2005. The parties subsequently submitted memoranda of law.

² The date reflected the prospective completion of three full years of service.

³ The School Committee’s decision to nonrenew Appellants was reached at the same meeting in which it voted to nonrenew or dismiss certified educators.

The School Committee's nonrenewal letter concluded with the statement "You are advised that pursuant to G.L.R.I. 16-13-3, you may request a hearing and appeal pursuant to the procedure set forth in G.L. 16-13-4." [School Committee Exhibit 1]. Appellants requested hearings before the full School Committee to challenge the validity of their nonrenewal under the Teacher Tenure Act (R.I.G.L. 16-13-4). The School Committee denied Appellants' requests for hearings. Appellants filed the instant appeal.⁴

Positions of the Parties

Appellants contend that they fall within the definition of "teacher" in the Teacher Tenure Act and thereby are entitled to the protections of that Act. They urge the Commissioner to harmonize the Teacher Tenure Act and the Certified School Teachers' Arbitration Act, which defines the word "teacher" differently. They assert that the broader definition of the term in the latter statute implicitly recognizes that personnel licensed by the Department of Health are to be considered members of the teaching profession. Given the policy and purposes of the legislature in this area, Appellants argue that it is proper for the Commissioner to apply the expanded definition of "teacher" as set forth in the Arbitration Act to the Teacher Tenure Act. By interpreting the statute in this manner, all employees engaged in the teaching profession will receive the same substantive and procedural safeguards and protections, public school labor relations will be improved, and the goal of high quality education will be advanced. Appellants also contend that the School Committee should be equitably estopped from denying them the protections of the Teacher Tenure Act in light of the Committee's assignment of tenure dates, its nonrenewal of Appellants as part of the layoff process for certified teachers,⁵ and its issuance of notices that are based on seniority-related considerations in apparent reliance on the decrease-in-school-population provision of the Act.

The School Committee contends that Appellants are not eligible for hearings under the Teacher Tenure Act because neither physical therapists nor certified occupational therapy assistants are specifically referenced in the Act, they are not certified by

⁴ Appellants did not file a grievance under their collective-bargaining agreement.

⁵ Including the statement in the nonrenewal notice that Appellants could invoke the hearing process contained in the Teacher Tenure Act.

the Department of Education, and they do not have any direct teaching responsibilities. According to the Committee, Appellants' only potential means for contesting the propriety of their layoffs is their collective-bargaining agreement. This would be a purely contractual matter, not a case arising under school law, and therefore outside the Commissioner's authority. The Committee further argues that a statement promising future action cannot support a claim of equitable estoppel, and that equitable estoppel is generally not applied against a government agency acting in a public capacity. It also asserts that Appellants' estoppel claim does not meet the "reasonable reliance" test, and that providing Appellants with Teacher Tenure Acts would be contrary to the public interest.

Discussion

The initial provision of the Teacher Tenure Law reads as follows:

The term 'teacher' as used in this chapter means every person for whose position a certificate issued by the department of elementary and secondary education is required by law.⁶

We examined this provision in the case of Robert F. Kelley vs. Coventry School Committee, July 12, 1974. The school committee decided to abolish the business manager position and therefore terminated the appellant from employment. The appellant sought the protections of §16-13-2 of the Teacher Tenure Act, arguing that he had a contractual relationship with the school committee similar to that of a certified teacher.⁷ He based his argument on the facts that he held a Massachusetts teaching certificate and that the form on which he was tendered a contract in 1972 was the form used by the School Committee in tendering contracts to teachers. In finding this argument to be without merit, the Commissioner stated that "inasmuch as the position of Business Manager is not a position for which a Teacher's Certificate is required by law, the provisions of §16-13-2 do not apply to the appellant."⁸

⁶ R.I.G.L. 16-13-1.

⁷ At that time the Department of Education did not require a certificate for the position of business manager.

⁸ Ibid., p. 4.

The clear meaning of the statutory definition of “teacher” for teacher tenure purposes is reinforced by a review of the legislative activity in this area. Despite Appellants’ claims that the Teacher Tenure Act and the Certified School Teachers’ Arbitration Act need to be “harmonized,” it is clear that the former statute’s inapplicability to non-certified personnel is by the conscious design of the legislature.

As noted by Appellants, the definition of “teacher” in §16-13-1 of the Teacher Tenure Act has remained unchanged since 1956. As enacted in 1966, §28-9.3-2 of the Certified School Teachers’ Arbitration Act stated

For purposes of this chapter, certified teachers shall mean certified teaching personnel employed in the public school systems in the state of Rhode Island engaged in teaching duties including certified support personnel whose positions require a professional certificate issued by the state department of education.

In 1990, the legislature amended §28-9.3-2 to read

For purposes of this chapter, certified teachers shall mean certified teaching personnel employed in the public school systems in the state of Rhode Island engaged in teaching duties, including support personnel whose positions require a professional certificate issued by the state department of education and personnel licensed by the department of health as physical therapists or occupational therapists. (emphasis added).

In 1998, the legislature again amended §28-9.3-2 to read

For purposes of this chapter, certified teachers shall mean certified teaching personnel employed in the public school systems in the state of Rhode Island engaged in teaching duties, including support personnel whose positions require a professional certificate issued by the state department of education and personnel licensed by the department of health as physical therapists or occupational therapists; or other non-administrative professional employees. (emphasis added).

The Teachers’ Retirement Act also is instructive in this regard. Prior to 1995, the statute’s definition of “teacher” in §16-16-1(11) did not mention physical therapists or occupational therapists. In 1995, the legislature added the following language to the statutory definition:

and shall also include occupational therapists and physical therapists licensed by the department of health and employed by a school committee in the state, or by any formalized, commissioner approved, cooperative service arrangement. Except that occupational therapists and physical therapists defined herein who are members of a municipal retirement system may elect within six (6) months of passage of this act to transfer their service credits, assets and contributions to the Rhode Island state employees retirement system.

Therefore, in 1990 and 1995, the legislature amended the definition of “teacher” in the Certified School Teachers’ Arbitration Act and the Teachers’ Retirement Act, respectively, to specifically include physical therapists and occupational therapists. It returned to the Arbitration Act’s definition of “teacher” in 1998 to include “other non-administrative professional employees.” Despite making these changes, the legislature did not amend the Teacher Tenure Act to extend its protections to the types of employees it had granted collective-bargaining and retirement rights. Nor has the legislature revisited the Teacher Tenure Act since. Given the attention that the legislature devoted to physical therapists and occupational therapists during the 1990’s, it is evident to us that it was the intentional act of the legislature not to bring them within the boundaries of the Teacher Tenure Act. We are convinced that if we were to interpret the statute in the manner requested by Appellants, so as to “harmonize” it with the Arbitration Act, we would be violating the clear intent of the legislature. Appellants’ statutory construction argument therefore must fail.

As for Appellant’s equitable estoppel argument, we find the Rhode Island Supreme Court case of Romano v. Retirement Board of the Employees’ Retirement Systems of the State of Rhode Island to be dispositive.⁹ The Court stated in that case that “neither a government entity nor any of its representatives has any implied or actual authority to modify, waive, or ignore applicable state law that conflicts with its actions or representations.”¹⁰ Accordingly, the Court held that the doctrine of equitable estoppel should not be applied against a government entity when the alleged representations or conduct relied upon were *ultra vires* or in conflict with applicable law. As noted above, the clear language of the Teacher Tenure Act and the legislative history in related areas

⁹ 767 A.2d 35 (2001).

¹⁰ Ibid. at pp. 40-41.

establish that the statute does not cover Appellants. To estop the School Committee in this case would contravene state law. Under the Romano decision, we cannot to do so.¹¹

Conclusion

Appellants are not entitled to the procedural and substantive rights of the Teacher Tenure Act. The appeal is denied.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

June 29, 2005

¹¹ The Romano decision would not apply to an estoppel argument concerning Appellants' failure to file a timely grievance under the collective-bargaining agreement.