

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Holly McDougal

v.

Coventry School Committee

.....

DECISION

Held: The appeal of Ms. McDougal is dismissed because it is a dispute over which the Commissioner lacks jurisdiction and, even if jurisdiction were properly assumed, the appeal is not timely and barred under the doctrine of laches. Ms. McDougal's claim that her leave without pay in 2002 was in essence an improperly-imposed suspension has not been substantiated.

DATE: June 6, 2006

Travel of the Case

On January 13, 2005 Holly McDougal, through counsel, sought review of a matter that had arisen in the course of her employment as a tenured teacher in the Coventry School Department. Her request for a hearing by Commissioner Peter McWalters, or his designee, indicated that in school year 2001-2002, during an extended absence from school because of illness, Ms. McDougal notified school officials of her intent to resume her teaching duties on January 14, 2002. Despite a letter from her physician indicating her approval of Ms. McDougal's resumption of her duties, Ms. McDougal remained out of school until she had provided additional documentation. The delay in her return to school is claimed to be a suspension which resulted in a loss of salary and other monetary damages. This claim was assigned to the undersigned for hearing and decision. An agreed-upon hearing date of April 26, 2005 was selected. At time of hearing, counsel for the School Committee made a preliminary motion to dismiss Ms. McDougal's claim, on several bases. The hearing officer determined that efficiency required that a ruling on the Motion to Dismiss should be deferred and consolidated with a ruling on the merits of this case. Following hearing, counsel requested opportunity to submit legal memoranda, a process which concluded on December 27, 2005 at which time the record in this case closed.

Jurisdiction to hear this case is alleged to arise under R.I.G.L. 16-39-1.

Issues

- Does the Commissioner of Education have jurisdiction to hear and decide this dispute, or is it a matter which arises exclusively under the terms of the Collective Bargaining Agreement in effect between the parties?
- Is Ms. McDougal's claim untimely and/or is it barred under the doctrine of laches?
- Did Ms. McDougal fail to exhaust other administrative remedies prior to appealing to the Commissioner?
- Is Ms. McDougal's claim barred under the doctrine of Election of Remedies?
- Was Ms. McDougal suspended during school year 2001-2002 and if she was, did the Coventry School Committee provide her with a pre-suspension hearing and did it have good and just cause for her suspension?

Findings of Relevant Facts:

- Holly McDougal has been employed as a teacher in the Coventry School system for approximately sixteen (16) years. In school year 2000-2001 she was the gifted program teacher coordinator. Tr. pp.12-13.
- In May of 2001 Ms. McDougal became ill with a respiratory infection of unknown origin. Tr.pp.13-14.
- Because of this illness, Ms. McDougal was out of school for the remainder of the 2000-2001 school year during which time she provided a series of doctor's notes substantiating her illness and the need for her to refrain from work "until further notice". Tr.pp.15-16; Appellant's Ex.1.
- During the summer of 2001 Ms. McDougal's illness persisted, and she saw a specialist who diagnosed bacteremia, an infectious disease but one that is not contagious.
- Her doctor cleared Ms. McDougal to return to work at the start of the 2001-2002 school year, but after working for five school days, she became ill again. Tr. pp.20-21.
- On October 17, 2001 Ms. McDougal provided the district with a note from a specialist, Dr. Wendy Clough, who indicated she would be out of work indefinitely due to her medical condition. Appellant's Ex. 2; Tr. p.22.
- On January 3, 2002 Dr. Clough approved Ms. McDougal's return to work on January 14, 2002 and a note indicating this was provided to the personnel office of the Coventry School Department. Appellant's Ex.3; Tr. p.24.
- On or about January 7, 2002 Ms. McDougal spoke to Christine Spagnoli, the Human Resources Manager for the Coventry School Department who, according to Ms. McDougal's testimony, told her that prior to her return to work she would need to provide a doctor's specific diagnosis and address the concern that she might be contagious. Ms. McDougal testified that Ms. Spagnoli also advised her that the school department would have its own physician examine her to confirm the diagnosis. Tr.pp.26-29. Ms. Spagnoli has no recollection of the specifics of this conversation, except that she does recall telling Ms. McDougal that the Assistant Superintendent, Mary Kelly was concerned that Ms. McDougall might be suffering from a contagious disease. Tr. pp. 106-108.
- On January 18, 2002 Ms. Spagnoli sent Ms. McDougal a letter indicating that the ninety (90) days of paid sick leave to which she was entitled under the teachers' contract would end on January 24, 2002 and that if she anticipated returning from work by that date she would be required to present a "fitness-for-duty certificate" prior to her return to work. Ms. Spagnoli went on to indicate in the letter that if Ms. McDougal was unable to return to work when her sick leave ran out, she was forwarding a Request for Leave form so that Ms. McDougal could request extended sick leave without pay.¹ Appellant's Ex.6; Coventry Ex. G, H; Tr. pp. 33-34, 109.

¹ Ms. Spagnoli also forwarded the forms necessary for Ms. McDougal to continue her health coverage by paying the copay amount for health and dental insurance coverage.

- Ms. McDougal signed the Request for Extended Sick Leave without pay and returned it, together with the insurance copay forms and her check for the copay amounts on or about January 25, 2002. Coventry Ex.H, I. Her request for an unpaid leave was approved by Assistant Superintendent Mary Kelly on February 15, 2002. Coventry Ex.H.
- On February 1, 2002 Ms. McDougall submitted a note from her internist, Dr. O’Hair indicating that she was treated for an autoimmune illness and that all testing showed that she was not infectious. Appellant’s Ex.4; Tr. p.30. During this time frame, she was also attempting to secure a “specific diagnosis” from a rheumatologist, but was unable to do so. Tr. pp. 29, 35.
- On or about March 12, 2002 Ms. McDougal submitted another note from Dr. O’Hair in which he confirmed that she was not infectious or contagious and that she could return to work two and one-half (2 ½) days a week starting on March 18, 2002 and a full day as of April 1, 2002. Appellant’s Ex.7.
- Ms. Spagnoli wrote to Ms. McDougal on March 22, 2002 acknowledging Dr. O’Hair’s note as a “return to work notice” and confirming the date and schedule of Ms. McDougal’s return to work. Appellant’s Ex. 8.
- Ms. McDougal returned to work part-time on March 18, and on April 1, 2002 resumed full-time teaching duties.
- Ms. McDougal raised the issue of her loss of salary during the period January 14, 2002-March 18, 2002 with a representative of the teachers’ union and requested that a grievance be filed on her behalf. She was advised at that time that the time limits for filing a grievance had passed. Tr. p. 70.
- Ms. McDougal did not raise any further complaint until filing a request for hearing with Commissioner Peter McWalters on January 13, 2005; She then also filed a Complaint seeking compensatory and punitive damages in Kent County Superior Court on February 23, 2005 based, at least in part, on the same facts she presents in her appeal to the Commissioner. Coventry Ex. N.

Positions of the Parties

Holly McDougal

Through counsel, Ms. McDougal asserts that she was prohibited from returning to work on January 14, 2002 even though she had submitted a note indicating her ability to do so. Because of the school department’s insistence that she provide a doctor’s “specific diagnosis” and that she be examined by the school department’s doctor, she was required to take an unpaid leave. This leave deprived her of the salary she would have earned. It was in essence a suspension under R.I.G.L. 16-13-5. Furthermore, this suspension was without good cause, since at the time she was ready, willing and able to resume her job duties. Had the Coventry School Committee given her a pre-suspension hearing, as is required by the statute, her entitlement to return to school would have become clear. At

no point during her extended illness was there reason to believe that she suffered from a contagious disease, or any illness that would place students and school staff at risk.

As a result of the unlawful suspension which occurred, Ms. McDougal was charged with additional sick leave (through the 24th of January) and then lost salary and full benefits to which she was entitled. Because her improper and unjustified suspension is an issue arising under R.I.G.L. 16-13-5, the Commissioner clearly has jurisdiction to hear the matter and provide an appropriate remedy. There is no question that the Commissioner does not have jurisdiction over issues that arise exclusively under a collective bargaining agreement. However there are cases in which contractual issues are intertwined with statutory issues, such as in the Asadoorian v. Warwick School Committee, 691 A 2d 573 (R.I. 1997). In these cases, resolution before the Commissioner is appropriate. Such is the situation presented by Ms. McDougal's appeal, where issues of medical leave are merged with suspension.

In addition, counsel submits, a teacher may seek to vindicate rights that are protected under both the collective bargaining agreement and education law. For example when a teacher is terminated, the teacher may have the option of proceeding under the grievance provision of the contract or pressing an appeal under the statute. While Ms. McDougal may have looked into the filing of a grievance on her behalf, her failure to do so does not deprive the Commissioner of jurisdiction to hear an issue which clearly arises under the statute governing suspension of teachers. The petitioner also argues that the lawsuit she has filed against the town of Coventry does not preclude her appeal to the Commissioner. She is concurrently pursuing other statutory rights she has under R.I.G.L. 28-5-7 and 42-112-1, both of which prohibit discrimination based upon disability. Ms. McDougal cites Hobson v. Board of Regents for Elementary and Secondary Education, 659 A.2d 1099 (R.I. 1995) as a case in which our Supreme Court implicitly recognized a teacher's ability to proceed to protect her rights under the Teacher Tenure Act and at the same time assert her rights before the Human Rights Commission. The Court in Hobson did not bar one of the claims on the doctrine of election of remedies, but determined that the differing outcomes in the two cases should be "harmonized."

As to the claim that this appeal is time-barred, counsel for Ms. McDougal argues that there is no specific time limit applicable to the filing of an appeal to the Commissioner under R.I.G.L. 16-39-1. Neither the time frame specified in the contract for the filing of a grievance, nor the time limits set forth in the Administrative Procedures Act are applicable to this matter. In response to the defense that the doctrine of laches should bar consideration of Ms. McDougal's appeal, counsel argues that laches is a bar only when prejudice has been demonstrated by the party claiming it as a defense. In this case, the Coventry School Department has not demonstrated that any prejudice has resulted in the three-year delay in Ms. McDougal's petition to the Commissioner.

For the reasons set forth above, Ms. McDougal requests that the Commissioner overturn her suspension and award her the salary, and days of sick leave, she lost as a result of the action of school officials. She also requests an award of attorneys' fees under the Equal Access to Justice Act, R.I.G.L. 42-92-1 et seq.

Coventry School Committee

In its memorandum, the School Committee renews the Motion to Dismiss made at the beginning of the hearing. Counsel for the Committee argues that an unexcused delay of three years is unreasonable. A monetary claim that it not presented during the fiscal year in which it arises is problematic from a budgetary standpoint and the detriment it creates for a department of municipal government (the school department) is obvious. The doctrine of laches would also bar such a claim in that such unreasonable, unexplained delay by Ms. McDougal prevents the department from defending against the allegations made against it. The district argues that securing important testimony is now either impossible or not feasible. This testimony would rebut the allegation that Ms. McDougal was told she was required to provide a "specific diagnosis" prior to her return to the classroom. The disadvantage faced by the School Department in defending the claim after so many years requires that it be barred under the doctrine of laches.

A second ground for dismissal is argued to be the Commissioner's lack of jurisdiction. This issue arises under the Collective Bargaining Agreement between the Coventry Teacher's Alliance and the Coventry School Committee. Despite the petitioner's attempts to characterize the issue as one of suspension under Title 16, the dispute is clearly one which arises exclusively under the collective bargaining agreement. The contract covers the subjects of sick leave and in particular, the subject of extended sick leave without pay in Section 3-3.1. Further, the contract in effect between the parties casts a wide net on issues which give rise to a grievance. Counsel points to the language in Article 8 defining a grievance as any "complaint of unfair or inequitable treatment" as well as the "violation, misinterpretation or misapplication" of the provisions of the Agreement. If Ms. McDougal were unfairly placed on a mandatory extended sick leave without pay, such dispute clearly arises under the contract. Her recourse was to file a grievance under the contract, which she attempted to do but was advised by her union that she was too late.

The facts here do not raise an issue under R.I.G.L. 16-13-5, as is argued by Ms. McDougal. The position of the School Committee is that at no time was Ms. McDougal suspended. There is no record of any suspension in her personnel file. At no time did the School Committee vote to take such action. What is demonstrated by the evidence in this case, counsel submits, is that Ms. McDougal requested and was granted an extended sick leave without pay. Her placement on an extended sick leave without pay on January 24, 2002 is consistent with the school committee's contention that Ms. McDougal's illness continued until mid-March. As evidence of this, counsel points to the note from her internist, submitted some two months after Ms. McDougal now claims she was fully

recovered. This note, from Dr. O’Hair and dated March 12 indicates that Ms. McDougal is not able to return to work until March 18, 2002, and then on only a part-time basis. Dr. O’Hair’s note proves that on March 12, 2002 Ms. McDougal was not yet fully recovered nor was she able to return to work. Therefore, by inference, she could not have returned to work on January 14, 2002 as she alleges. Illness, not her alleged suspension by the School Department, was the reason she did not return to school until March 18, 2002.

The School Committee argues that other obstacles prevent consideration of Ms. McDougal’s claim. First, she has never presented her allegations to either the Superintendent of the Coventry School Department or the members of the School Committee. The Commissioner, acting under his authority to hear appeals under R.I.G.L. 16-39-1 cannot, according to cases cited by the School Department, short-circuit the process for local consideration of claims which arise at the municipal level. The requirement that local school committees first determine such claims effectuates the provisions of R.I.G.L. 16-2-18 which entrust school committees with the “entire care, control, and management of all the public school interests” of a town or city. Initial hearing at the Commissioner’s level undermines the distribution of authority made in this legislative scheme. Ms. McDougal, in bypassing a hearing before the Coventry School Committee, has failed to exhaust her administrative remedies. If she has been improperly “suspended,” the statute on suspension, R.I.G.L. 16-13-5 specifically requires that she first request a hearing before the School Committee.

It is argued that Ms. McDougal’s claim should be dismissed under the doctrine of election of remedies. School Committee Exhibit N, a complaint filed by Ms. McDougal on or about February 23, 2005 is argued to be “on all fours” with her appeal to the Commissioner. This duplicative complaint is presently pending and requires the School Committee, unfairly, to defend on two fronts. Two separate actions also give Ms. McDougal “two bites of the apple”. Citing case law² in which such unfairness has warranted dismissal of the second action filed, the School Committee asks that Ms. McDougal’s appeal be dismissed under the doctrine of election of remedies.

Finally, if the merits of this dispute are reached, the School Committee submits that if the proof supports the contention that school officials prevented Ms. McDougal’s return to the classroom on January 14, 2002 by requesting medical documentation that she was fully recovered and not contagious, its actions in this regard were fully warranted. The situation presented to the School Department was a lengthy illness, several doctor’s notes indicating her ability to return to school followed by her inability to do so, and in the fall of 2001 reference to an undisclosed “medical condition” by an infectious disease specialist (Dr. Wendy Clough, in her note of October 17, 2001, Appellant’s Ex.2). Given the history, a request for a “fitness for duty certificate” and documentation that Ms. McDougal was not contagious was a reasonable measure designed to protect the welfare of students. The fact that the School Department ultimately did not require Ms. McDougal’s examination by the school doctor was within its prerogative. There is still no evidence that Ms. McDougal’s absence from work from

² Including the recent decision of the Supreme Court in Martone v. Johnston School Committee, 824 A.2d 426 (R.I. 2003).

January 14, 2002 to March 18, 2002 was due to a “suspension”. In fact, the evidence shows that even if she were told not to return to work on January 14th, she was physically unable to work until March 18, 2002.

DECISION

Motion to Dismiss:

For reasons set forth below, the motion of the Coventry School Committee to dismiss Ms. McDougal’s appeal is granted. Holly McDougal’s unexplained, three-year delay in requesting review of the allegations she makes in this appeal, together with the prejudice this delay has worked on the School Committee, bars her claims under the doctrine of laches. Ms. McDougal does not explain, or seek to excuse, the prolonged period of time that elapsed from January 14, 2002 to January 13, 2005 when she brought her claim of wrongful suspension to the Commissioner. A fact central to her claim is what information was conveyed to her by Christine Spagnoli, the former Human Resources Manager for the Coventry School Department during a telephone conversation in early January of 2002. Ms. Spagnoli’s memory as to what she told Ms. McDougal has clearly been affected by the passage of time. Although she recalls conveying a concern that Ms. McDougal might be contagious, she recalls little else of what was said. The Coventry School Committee is clearly placed at a disadvantage in defending against the allegations made against it at this late date.

There is also merit to the argument that Ms. McDougal has failed to exhaust her administrative remedies by proceeding within a reasonable time before the Coventry School Committee to present her claim of wrongful “suspension”. As the Commissioner ruled in Maciocio v. North Providence School Committee³ since the 1988 amendment by the General Assembly to R.I.G.L. 16-13-5 which provided a suspended teacher with “a hearing and appeal pursuant to the procedure set forth in Section 16-13-4”, a teacher suspended for cause who wishes to challenge his or her suspension must proceed as indicated in R.I.G.L. 16-13-4. An appeal directly to the Commissioner in such situations is foreclosed.

Although the School Committee has produced evidence that there is a lawsuit pending in Kent County Superior Court in which Ms. McDougal seeks recovery for the same losses she alleges she incurred due to her wrongful suspension, the filing of this complaint does not constitute separate grounds for dismissal of her petition to the Commissioner. Her lawsuit was filed subsequent to her appeal to Mr. McWalters, and the grounds for relief she advances in that proceeding are somewhat different from those asserted in this appeal.

Even if the claim were not time-barred and if proper administrative remedies had been exhausted, this dispute does not present a suspension issue under R.I.G.L. 16-13-5. The facts are that Ms. McDougal was not suspended. Documentary evidence indicates

³ Decision dated December 9, 2003.

that she was on an unpaid leave. If one accepts her version of the conversation with Ms. Spagnoli as accurate, she was *required to request* extended sick leave without pay, when she should have been (a) permitted to resume her teaching duties or (b) placed on an administrative leave with pay until the question of her being contagious was resolved. As we view it, Ms. McDougal's entitlement to return to work, or be placed on paid leave while any question of her fitness to return to work was addressed, are issues which "arise" exclusively under the collective bargaining agreement between the School Committee and the Coventry Teachers' Union (Appellant's Ex. 5). Although placement on unpaid leave may be tantamount to a suspension in some case and present issues under R.I.G.L. 16-13-5, this is not one of those cases. The evidence here is that Ms. McDougal submitted a request for unpaid leave. Her allegation that she understood she had no other option and that this was required by her employer does not take her complaint out of the contract and place it under Title 16. The issue would be whether the school department had the right to defer her return to work until she had provided additional documentation and was examined by the school doctor. Resolution of this issue would be controlled by reference to the contract, not state law.

The question of whether any inquiry into Ms. McDougal's fitness to return to work was justified and the issue of appropriate documentation of her fitness for work fall squarely under the provisions of the contract. Article 3 of the contract addresses the subject of sick leave and Section 3-3.1 entitled "Extended Sick Leave Without Pay" makes references to documentation of "fitness" and the need for examination by the school's physician. Assuming for the sake of argument that the School Committee was guilty of misinterpreting, or misapplying, the sick leave provisions, this is a contract issue. If the argument is that Ms. McDougal should have been on a paid administrative leave pending resolution of documentation required for her return to work, this issue arises under Section 3-9 "Discretionary Full Pay Leave". The language of Section 14-14.6 which prohibits a teacher's loss of compensation without "good cause" is also applicable to the claim made by Ms. McDougal. Given the sections of the contract cited above, together with the broad definition of "grievance" found in Article 8 of the contract, Ms. McDougal had a dispute which arises under the provisions of the collective bargaining agreement.

In the event our ruling on the Motion to Dismiss is found to be in error, we find that Ms. McDougal was not wrongfully suspended under R.I.G.L. 16-13-5. As indicated in our analysis of the jurisdictional issue, it is our view that Ms. McDougal was not suspended but rather placed on an unpaid leave at her own request. Furthermore, she has not shown that the School Department's actions caused her loss of salary during the disputed period. Even assuming that her account of the conversation with the Human Resources Manager is accurate, and that she was told not to return to work on January 14, 2002, there is insufficient evidence that the School Department's directive actually caused Ms. McDougal's ongoing absence from school from January 14, 2002-March 18, 2002. There is evidence contradicting her assertion that she was able to resume her job duties on January 14, 2002. Despite her testimony that she was fully recovered at that time, and some documentary evidence to support this⁴, we find that this evidence is

⁴ I.e. the January 3, 2002 note of Dr. Clough

contradicted by the March 12, 2002 note from her internist, and the fact that he further deferred Ms. McDougal's return to March 18, 2002.

For the foregoing reasons, Ms. McDougal's appeal to the Commissioner is denied and dismissed.

For the Commissioner,

Kathleen S. Murray
Hearing Officer

APPROVED:

Peter McWalters, Commissioner

June 6, 2006
Date