

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

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**Anne Gorman**

**v.**

**Jamestown School Committee**

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**DECISION**

Held: Anne Gorman was entitled to statutory notice under R.I.G.L. 16-13-3 prior to the reduction in her employment from a full-time school psychologist to a .6 position for the 2005-2006 school year.

DATE: August 2, 2006

## **Travel of the Case**

On July 6, 2005 Commissioner Peter McWalters received an appeal filed on behalf of Ms. Anne Gorman with respect to a June 28, 2005 decision of the Jamestown School Committee sustaining its prior decision to reduce her position in the school department from full time to a .6 position, effective for the 2005-2006 school year. The appeal was assigned to the undersigned for purposes of hearing and decision on July 26, 2005. After an initial hearing date in early September was agreed to, counsel notified the hearing officer that hearing would not be necessary, because there were no facts in dispute. Counsel for the parties submitted a Stipulation of the Facts, along with ten agreed-upon exhibits. The legal issue, as framed by counsel, is:

Was Anne Gorman entitled to statutory notice under Rhode Island General Laws Section 16-13-3 prior to reduction in employment from 1.0 FTE to .6 for the 2005-2006 school year?

Briefs and reply briefs were submitted on the parties' behalf. This process concluded on December 7, 2005 at which time the record closed.

## **Findings of Relevant Facts**

- Anne Gorman held the position of school psychologist in the Jamestown School Department and had the status of a tenured teacher during the 2004-2005 school year. Stipulations 1 and 2; Ex.1.
- On February 28, 2005 the Superintendent of Schools for the town of Jamestown wrote Ms. Gorman to notify her that she would be presenting to the School Committee names of those teachers whose contracts would not be renewed, as well as the names of teachers "displaced" by the closing of classrooms or elimination or reduction of positions. The Superintendent included in her letter notice that Ms. Gorman's position would be reduced in 2005/2006 to a .6 position. Exhibit 2.
- At its March 3, 2005 meeting the Jamestown School Committee voted to reduce Anne Gorman's position from full time to .6 FTE. Stipulation 4; Ex.3.
- By letter dated March 23, 2005 Superintendent Katherine E. Sipala notified Anne Gorman that "pursuant to the General Laws of Rhode Island (16-13-2), the Jamestown School Committee, at its meeting held March 3, 2005, voted to reduce your teaching position to .6 for the 2005/2006 academic year". Stipulation 6; Ex.3 and 5.<sup>1</sup>
- On June 22, 2005 the Jamestown School Committee heard the appeal of its decision to reduce Anne Gorman's employment from a 1.0 position to a .6 position for the

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<sup>1</sup> The March 23 letter also advised Ms. Gorman that "in accordance with Rhode Island General Law (16-13-4) she was entitled to a hearing with the School Committee and appeal of this decision. See Ex. 5

2005/2006 school year. After hearing, the Committee voted to deny Ms. Gorman's request to rescind its prior decision, finding that a reduction in employment to a .6 position is not a "dismissal" and, therefore, Section 16-13-3's notice provisions are inapplicable. Notice of this decision was provided to Ms. Gorman in a letter dated June 28, 2005. Stipulation 9; Ex. 7.

### **Positions of the Parties:**

#### Anne Gorman

Through her counsel, Ms. Gorman argues that, given her status as a full-time, tenured teacher in the Jamestown School District, a reduction in her employment to a part-time, .6 teacher amounts to a partial termination or dismissal under R.I.G.L. 16-13-3 and must be grounded in good and just cause. This proposition is argued to be long settled decisional law in Rhode Island by virtue of the Board of Regents' decision in the case of Ella Barry and Carolyn Healey v. Warren School Committee, a May 27, 1982 decision. In its decision in Clifford v. Board of Regents, et al., Chrabazez v. Smith, et al.<sup>2</sup> the Superior Court implicitly accepted this proposition when it noted that the Board of Regents' position in Barry and Healey established the rule that a bona fide financial exigency may constitute "good and just cause" for the termination of a tenured teacher's services. Thus, there is significant and controlling precedent establishing that a reduction in services of a tenured teacher constitutes a "dismissal".

Thus, when Ms. Gorman's position was reduced by the School Committee in March of 2005, she was entitled to all of the procedural and substantive due process requirements set forth in the applicable statutes.<sup>3</sup> The requirements, listed at page 3 of Ms. Gorman's brief, include:

- a notice of dismissal provided to the teacher, in writing, on or before March 1<sup>st</sup> of the school year immediately preceding the school year in which the dismissal is to become effective
- good and just cause for the dismissal
- a complete statement of the cause for the dismissal by the governing body of the schools at least one month prior to the close of the school year
- a complete record of the hearing, with a copy furnished to the teacher

Given that it is undisputed that none of these statutory requirements were met by the Jamestown School Committee, the reduction of her position from full-time to .6 should be rescinded and the decision of the School Committee overturned. Counsel asks that Ms. Gorman be made whole for any economic losses she has suffered as a result of her partial dismissal.

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<sup>2</sup> WL 859783 (R.I. Super. 1987)

<sup>3</sup> Reference is initially made by Ms. Gorman to Sections 16-13-2 and 16-13-4, but in the specific enumeration of substantive and procedural rights citation to 16-13-3 and 16-13-4 is made.

## Jamestown School Committee

The School Committee takes the position that the provisions of R.I.G.L. 16-13-3 which govern the dismissal of tenured teachers are inapplicable because the reduction of a tenured teacher's position is not a dismissal. A "dismissal" is argued to be a complete, permanent and final separation of the teacher from the district's employ. Support for this interpretation of the statute is found in the Rhode Island Supreme Court's decision in Ciccone v. Cranston School Committee, 513 A.2d 32 (R.I. 1986) in which the Court clearly stated that the hearing and appeal provisions referenced in Section 16-13-4 provided procedural protection only to tenured teachers who face permanent dismissal. The Court made a distinction between a teacher confronted with permanent dismissal and a teacher who faced a suspension of his or her employment. The distinction in this case is between a teacher who faces complete and permanent separation from employment, and a teacher who, as Ms. Gorman does, retains her job, but at a reduced level. She has not been "dismissed" and may not therefore invoke the protections of Section 16-13-3.

The Committee argues that Ms. Gorman is attempting to delay the effectiveness of the reduction in her work hours by characterizing this action as a "partial dismissal". Counsel notes that the procedural protections she claims were found to be inapplicable in the Ciccone case in a situation in which the teacher was subjected to an indefinite suspension (effectively a 100% reduction). Even though the consequences were more serious in the case of Mr. Ciccone's indefinite suspension, the Court was not persuaded that an indefinite suspension was tantamount to a dismissal. In Ms. Gorman's case, the procedural protections should likewise be unavailable to her since the decision of the School Committee was merely to reduce her work hours. She has not been subjected to a complete, permanent and final dismissal. The case cited by Ms. Gorman as authority for a deferral of the effectiveness of its decision to the 2006-2007 school year, Quattrucci v. East Providence School Committee,<sup>4</sup> is not applicable. In Quattrucci, the tenured teacher had been permanently and completely dismissed, but because of noncompliance with the March 1<sup>st</sup> deadline for notice to her of this action, her dismissal could not be effective for the "ensuing" school year. Unlike the tenured teacher in the Quattrucci case, Ms. Gorman remains employed by the Jamestown School department.

Counsel argues that the reliance Ms. Gorman's attorney places on the Barry v. Warren School Committee line of cases as "long settled decisional law in Rhode Island" for the proposition that a reduction in a teacher's hours is a dismissal is misplaced. He notes that in the Warren School Committee decisions, the issue of whether a partial reduction in work hours constituted a dismissal was not raised or decided. The Commissioner and the Board of Regents focused on several significant issues, but none of the issues was that which is raised in this case on behalf of the Jamestown School Committee. Thus, there really is no precedent. More closely aligned with the issue in this case is the Supreme Court's decision in Ciccone, supra, in which the court found the procedural protections sought by the suspended teacher to be unavailable, because there was no permanent and final "dismissal". This same distinction supports the position that

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<sup>4</sup> Decision of the Commissioner dated October 28, 2002)

Ms. Gorman was not entitled to the procedural and substantive protections of R.I.G.L. 16-13-3. Her appeal should be denied and the School Committee's reduction decision should be affirmed.

### DECISION

When a public school district in Rhode Island unilaterally reduces a full-time tenured teacher to the status of a .6 teacher, such reduction constitutes a "dismissal" and the teacher has been "dismissed" as these words appear in R.I.G.L. 16-13-3. Whether the school committee's action is viewed as a "partial dismissal" or as a dismissal from a full-time position and appointment to a part-time position, the effect is the same. The teacher's employment is substantially changed and compensation is diminished. Our teacher tenure law mirrors due process in that deprivations of property require notice, hearing and "good and just cause", i.e. the substantive and procedural protections set forth in R.I.G.L. 16-13-3 and 16-13-4. The School Committee makes a good point that there is no binding precedent for this proposition. In the cases cited, the precise issue at hand was not raised by the school committee involved<sup>5</sup>. The Jamestown School Committee raises this issue for the first time. In our opinion, past omissions to make the argument that a reduction in hours is not a dismissal were not due to oversight, but rather because basic logic supports the conclusion that a mandatory reduction in pay and work hours is a dismissal.

Although the Jamestown School Committee is correct, as far as we can determine from a reading of the decision, that in the Barry and Healey v. Warren School Committee case this precise issue was not raised, the Board of Regents nonetheless definitively stated:

The appellants were both tenured nurse-teachers. A reduction in their work day and their pay amounts to a partial termination or dismissal and must be grounded on "good and just cause" as required by Sec. 16-13-3. General Laws of RI, 1956, as amended.<sup>6</sup>

This proposition was implicitly affirmed in a later case before the Commissioner and Board of Regents entitled Phelan v. Burrillville School Committee<sup>7</sup>. Again, we recognize that neither the Commissioner nor the Board of Regents makes a practice of raising arguments *sua sponte*; however, the notion that a reduction in hours of a tenured teacher's position might be anything but a dismissal or termination is not even hinted at as a legal issue to be resolved when raised by the parties' arguments in a subsequent dispute.

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<sup>5</sup> the Warren School Committee

<sup>6</sup> decision of the Board of Regents dated May 27, 1982 at page 1.

<sup>7</sup> Decision of the Commissioner dated August 26, 1991; decision of the Board of Regents dated February 21, 1995.

The School Committee's reliance on Ciccione v. Cranston School Committee, 513 A.2d 32 (R.I. 1986) is misplaced. The Court in Ciccione determined that a "permanent dismissal" triggered the protections of R.I.G.L. 16-13-3, as distinguished from the indefinite suspension imposed upon Mr. Ciccione. Jamestown takes the position that a reduction does not effect a "permanent dismissal" because the "reduced" employee is still employed by the district. A dismissal, the Committee submits, must be "complete, permanent, and final". We would point out that the Court in Ciccione does not use the word "complete" in its statements as to what the characteristics of a dismissal are. We would also note that Ms. Gorman's reduction to a .6 position "for the 2005-2006 academic year" suggests a permanent, rather than a temporary, alteration in her work hours. If it were intended that her full-time position would be available to her at some point after the 2005-2006 school year, we expect that the March 23, 2005 notice (Exhibit 5) would have so indicated. Such action would have constituted a "suspension" from her full-time position, rather than a dismissal from her full-time position, which is how we perceive what has occurred. Our statutory scheme provides the option of suspending tenured teachers in situations such as declining enrollment<sup>8</sup> (which we understand to be the reason for the reduction in Ms. Gorman's hours of employment).<sup>9</sup> However, the school committee has not chosen the suspension option. Applying two of the characteristics argued by the School Committee to be indicative of a dismissal, a "permanent and final" loss of her full-time position has occurred.

We would note that after the Ciccione decision, the General Assembly amended the suspension statute to give suspended teachers the hearing and appeal rights set forth in R.I.G.L. 16-13-4. This 1988 amendment,<sup>10</sup> was followed in 1992<sup>11</sup> by further amendments which established a March 1<sup>st</sup> notice deadline for the dismissal of tenured teachers as well as for the suspension of teachers (except in situations of "emergency performance related cause). Taking the current provisions of R.I.G.L. 16-13-2 – 16-13-6 as a whole, they establish a legislative intent to accord teachers substantial procedural protections whenever their job status is adversely affected. The Committee's argument that we should interpret R.I.G.L. 16-13-3 as inapplicable to the situation of reduction in the hours of a tenured teacher would be inconsistent with a more obvious legislative intent to extend, not restrict, such procedural protections.

For the foregoing reasons, we answer the legal issue presented by the parties in the affirmative and sustain the appeal of Anne Gorman. Given the framing of the legal issue, we are unclear as to whether the parties have agreed that there are no substantive defects in the dismissal of Ms. Gorman.<sup>12</sup> Therefore, we decline to order a remedy at this time and direct the parties to confer to determine an appropriate remedy. If they are

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<sup>8</sup> See R.I.G.L. 16-13-6.

<sup>9</sup> We make no finding as to the reason for the reduction of her position to a .6 FTE level. The notice to Ms. Gorman did not state a reason; however, the brief submitted on the School Committee's behalf identifies decreased enrollment as the basis for the School Committee's decision. See page 1 of the School Committee's brief.

<sup>10</sup> P.L. 1988, ch.357.

<sup>11</sup> P.L. 1992, ch. 170.

<sup>12</sup> The brief submitted by Ms. Gorman would imply that issues as to the existence of good and just cause exist.

unable to do so, we will schedule a hearing upon receipt of notice as to the inability of the parties to resolve this issue.

For the Commissioner

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Kathleen S. Murray, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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August 2, 2006  
DATE