

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

ROSEMARY DAVIDSON

V.

MIDDLETOWN SCHOOL COMMITTEE

Decision

Held: School Committee did not approve school counselor's request to rescind her resignation and it did not act unreasonably or arbitrarily in doing so.

Date: January 31, 2007

Introduction

This matter concerns an educator's appeal from the refusal of the Middletown school district to permit her to rescind her resignation.¹

Background

At the outset of the 2005-06 school year, Petitioner embarked on her 16th year as a guidance counselor at John F. Kennedy School in Middletown. Over the years she had received excellent evaluations for her work. In January 2006, Petitioner contemplated retirement. She concluded that she and her husband should "take some time and be able to travel and do some things together . . . and spend more time with the grandchildren, who all lived near me." [Tr., p. 11].

Petitioner decided to take advantage of the school district's "Early Retirement Incentive Program." To be eligible for the program, an educator must be employed by the district for at least 15 years, vested in the Rhode Island retirement system, and eligible to collect retirement benefits or be 55 years old. Eligible employees "must notify the Superintendent of Schools, in writing, not later than February 1, of the school year of retirement. This notification must contain an irrevocable resignation effective the last day of school." [Joint Exhibit 1].

Petitioner met the eligibility requirements and submitted a letter of resignation to the superintendent on January 25, 2006. The letter stated Petitioner's "intent to retire in June 2006 from the position of school counselor in the Middletown Public Schools." [Petitioner's Exhibit 1]. Petitioner stated in her letter that "[t]he next phase of my life will include spending more time with my grandchildren and traveling on a non-school vacation schedule." [Ibid.]. Petitioner's letter did not specifically mention the word "irrevocable."

The School Committee produced a letter from the superintendent to Petitioner dated February 22, 2006 informing Petitioner that the School Committee had accepted her resignation at its February 16th meeting.² Petitioner did not receive the letter, but she

¹ The Commissioner of Education designated the undersigned hearing officer to hear and decide the appeal. A hearing was held on September 8, 2006. The parties subsequently submitted memoranda.

² Although the superintendent's "recommendation on personnel," which covered requests for resignations, leaves and appointments, is set forth in the Committee's minutes of the February 16th meeting, there is no mention of a motion or vote related to such recommendation.

testified that she was told by her principal that her resignation had been accepted by the Committee.

Tragically, on May 8, 2006, Petitioner's husband died of a heart attack. Petitioner rethought her plans, eventually deciding that retirement was no longer in her best interests. On May 30, 2006, she sent a letter to the superintendent "requesting that you consider rescinding my retirement . . ." [Petitioner's Exhibit 1].

The superintendent discussed the rescission request with Petitioner's union representative, and a memorandum of agreement permitting Petitioner's return to her position was signed by both parties.³ On June 14, 2006, the memorandum was presented to the School Committee. The Committee agreed to accept Petitioner's rescission on the condition that the superintendent verify with the union that the memorandum of agreement did not violate any other union member's recall rights.⁴

After reviewing the matter in light of the recall rights question, the union was unwilling to agree to Petitioner's return.⁵ Without the agreement of the union, the School Committee would not approve Petitioner's request to rescind her resignation. During the summer of 2006, the School Committee voted to eliminate Petitioner's guidance position for budgetary reasons.

Positions of the Parties

Petitioner contends that the Commissioner of Education has jurisdiction to hear this matter and that the School Committee improperly failed to allow Petitioner to withdraw her resignation. Petitioner argues that her January 25, 2006 letter of resignation did not have the required "irrevocable" language in it, that there is no documentation that the School Committee accepted her resignation at its February 16, 2006 meeting, and that the Committee actually voted to accept the rescission of the resignation at its June 14, 2006 meeting. According to Petitioner, when the Committee voted to accept the rescission on the condition that the union be in agreement, "a valid and approved withdrawal of the retirement" was

³ In the meantime, Petitioner contacted the Retirement Board and was informed that it had received her resignation from the school district, but that she could rescind her resignation if the district agreed.

⁴ Although the collective-bargaining agreement in effect at the time did not contain a provision granting recall rights, the district and the teachers' union had a longstanding practice of extending such rights to laid-off teachers. The current teachers' collective-bargaining agreement contains a recall-rights provision.

⁵ A guidance counselor had been laid off for financial and enrollment reasons two years earlier.

created because “a signed approval from [the union] was in hand that evening.” Petitioner further argues that no enforceable “past practice” existed with regard to recall rights, and that in light of the sequence of events in June 2006, no vacancy ever occurred in Petitioner’s position that would give rise to any recall right even if that practice existed. Based on the vote at the June 14, 2006 meeting and the unreasonable and arbitrary condition that the Committee imposed on its approval of Petitioner’s request, Petitioner’s resignation was withdrawn and she is entitled to reinstatement to a position of elementary guidance counselor.

The School Committee renews its motion to dismiss this appeal on the ground that the Commissioner of Education does not have jurisdiction over this matter because it solely involves a dispute over a term in a collective-bargaining agreement. On the merits, the Committee contends that the evidence shows that Petitioner fully intended her resignation to be irrevocable, and that the School Committee did not formally act on Petitioner’s rescission request until its meeting of June 14, 2006, when, in light of the emergence of the recall-right issue, it voted to grant conditional approval of Petitioner’s request. Because the condition was never fulfilled, “the School Department clearly faced the prospect of violating the collective bargaining agreement in reinstating Petitioner to her position.”

Discussion

The Commissioner of Education has jurisdiction over disputes that arise under any law relating to education.⁶ It is well established that the Commissioner does not have jurisdiction over disputes which arise solely under collective bargaining agreements.⁷ In light of the issues raised by Petitioner with regard to the School Committee’s February 16 and June 14, 2006 meetings, and her claim that the Committee exercised its discretion in this matter in an unreasonable and arbitrary fashion, we find this case to fall within our jurisdiction.

We initially find that Petitioner’s January 25, 2006 letter to the superintendent constituted an irrevocable resignation effective as of the last day of the 2005-06 school year. It is clear from Petitioner’s letter that she is closing the book on her school counselor career in Middletown and focusing on “the next phase” of her life. Furthermore, she did not take any action to the contrary upon being informed by her principal that her resignation had been

⁶ See R.I.G.L. 16-39-1 and 16-39-2.

⁷ Dennis Smith v. Tiverton School Committee, June 26, 2000 and cases cited therein.

accepted by the School Committee. For these reasons, we find that Petitioner had effectively resigned as of the last day of school.

Petitioner accurately points out that the minutes of the School Committee's February 16, 2006 meeting do not reflect any vote on the superintendent's recommendation regarding tendered resignations. School committee minutes are the official record of school committee action. However, the record does contain evidence of the School Committee's acceptance of Petitioner's resignation. We have no doubt that the superintendent sent the February 22, 2006 letter to Petitioner. Petitioner was told by her principal that the Committee had accepted her resignation. The school district sent notice of Petitioner's retirement to the State Retirement Board. In view of this evidence, we are unable to find that the absence of language in the minutes of the meeting, which may have been a clerical mistake, proves that the School Committee did not accept Petitioner's resignation at its February 22, 2006 meeting.

Petitioner also accurately points out that prior to the June 14, 2006 School Committee meeting, representatives of the school district and the union signed a memorandum of agreement permitting Petitioner to return as a counselor. Signed memoranda ordinarily produce a binding agreement between the parties. The circumstances of this case involve an irrevocable resignation, however. The resignation, in effect, created a vacancy. A superintendent needs the consent of the school committee to appoint school department personnel.⁸ Petitioner's return to her counselor position, after the acceptance of her resignation, therefore would constitute an appointment by the school district. Thus, her request needed to be presented to the School Committee for its consent. Furthermore, it was at the Committee's June 14th meeting that the mutual mistake of the parties was discovered. This mistake was material in nature and it clearly rendered the memorandum of agreement defective. The School Committee, which was obviously sympathetic to Petitioner's plight, authorized the superintendent to address the defect. Unfortunately for Petitioner, the superintendent was unable to secure the union's consent to Petitioner's return to work.

This brings us to Petitioner's final argument and the ultimate issue in this case: whether the School Committee abused its discretion by conditioning the approval of Petitioner's rescission request on the union's agreement to her return to a guidance position.

⁸ R.I.G.L. 16-2-9(a)(13) and 16-2-11(a)(7).

While sympathetic to Petitioner, the School Committee did not want to take action that would result in the filing of a grievance. The Committee was aware at its June 14, 2006 meeting that a potential recall-right claim existed. It was not unreasonable for the Committee to proceed in a manner so as to avoid a journey through the grievance-arbitration procedure in the teachers' contract. This is particularly true where the potential grievance does not appear to be frivolous.⁹ To avoid a grievance, the School Committee needed the union's agreement to Petitioner's return to employment. That agreement never materialized.¹⁰ The School Committee therefore did not rescind Petitioner's resignation for fear that such action would generate a grievance, require the commitment of resources, and expose the district to financial liability. The Committee's reluctance to embark on such a course was not unreasonable or arbitrary. While we regret that matters did not work out the way in which Petitioner planned and hoped, Petitioner has not proven that the School Committee abused its discretion in this matter. Accordingly, the appeal is denied.

Conclusion

The Middletown School Committee did not approve Petitioner's request to rescind her resignation and it did not act unreasonably or arbitrarily in doing so.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: January 31, 2007

⁹ It is neither appropriate nor possible for us to determine the relative merits of the "past practice" and other aspects of the union's potential grievance.

¹⁰ We are not unmindful that a union owes a duty of fair representation to all of its members, and that judicial recourse exists with regard to perceived violations of this duty. Belanger v. Matteson 346 A.2nd 124 (1975).