

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

.....

**Kevin D. Quinn**

v.

**South Kingstown School Committee**

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**DECISION**  
**ON**  
**MOTION TO DISMISS**

Held: The Appellant takes issue with a provision of the collective bargaining agreement that provides an annual stipend for teachers who hold certificates from the National Board for Professional Teaching Standards, and not the national board certification he holds as a school guidance counselor. The issue of interpretation of the contract is dismissed for lack of jurisdiction. The second issue, a claim that this provision of the contract results in a denial of equal protection, is one over which the Commissioner’s jurisdiction is unclear, and the matter is scheduled for further hearing on this issue, and the NEASK is joined as a necessary party to this dispute.

DATE: April 16, 2007

## **Travel of the Case**

On December 13, 2006 Mr. Kevin Quinn, a guidance counselor at South Kingstown High School, appealed to Commissioner Peter McWalters with respect to a decision by the South Kingstown School Committee denying his request for the stipend for “National Board Certification” provided for in the collective bargaining agreement. The undersigned was designated to hear and decide this appeal on January 9, 2007 and the matter was scheduled to be heard on February 15, 2007. Prior to the hearing, on January 22, 2007, the School Committee filed a Motion To Dismiss the Appeal for Lack of Jurisdiction, together with a Motion to Postpone the Hearing, pending a decision on the Motion To Dismiss. Mr. Quinn responded to both motions in writing on January 25, 2007. On February 8, 2007 the scheduled hearing was cancelled pending a ruling on the Motion to Dismiss.

## **Issue**

Does the Commissioner have jurisdiction over Mr. Quinn’s appeal?

## **Factual Background:**

The facts in this matter do not appear to be in dispute, but since the ruling on this motion is based on the factual assertions contained solely in the documentation received to date, we have not made findings of fact. The appellant is a certified school counselor and serves as a guidance counselor at South Kingstown High School. He holds a certificate issued by the National Board for Certified Counselors, Inc.<sup>1</sup> During school years 2005 and 2006 Mr. Quinn took the position that his certification from the National Board for Certified Counselors rendered him eligible for the stipend provided in Article 8-C-3 (d) of the collective bargaining agreement in effect in the district. This provision of the 2005-2008 Agreement provides that:

- d. Any teacher who earns National Board Certification shall be paid an additional stipend of \$3,000 per year for each contract year during which the teacher maintains such National Board Certification.

On each occasion that Mr. Quinn requested payment of the stipend, the Superintendent denied his request, indicating that only teachers who receive certification from the National Board for Professional Teaching Standards were eligible for the stipend. Following Superintendent Hicks’ April 7, 2006 denial of his request, Mr. Quinn

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<sup>1</sup> Documentation to date does not indicate whether this is a public or private organization, but it would appear that this entity issues the credential constituting National Board Certification for guidance counselors.

requested that his union file a grievance on his behalf. The union declined to file a grievance for the reasons set forth in a September 22, 2006 letter to Mr. Quinn<sup>2</sup>.

Thereafter, Mr. Quinn appealed the Superintendent's decision to the South Kingstown School Committee. On November 14, 2006 Mr. Quinn made a presentation to the members of the School Committee with respect to his eligibility for the stipend, but the Committee voted unanimously to deny Mr. Quinn's request. In a letter dated November 15, 2006 Superintendent Hicks explained the reason for the Committee's action. He indicated that the parties had agreed that the National Board Certification stipend would be paid only to those teachers who held certificates awarded by the National Board for Professional Teaching Standards and that this was the intent behind the language contained in the collective bargaining agreement. It is from this decision that Mr. Quinn filed his December 13, 2006 appeal to Commissioner McWalters.

### **Position of the Parties**

#### **South Kingstown School Committee:**

The School Committee submits that the Commissioner has no jurisdiction to determine the merits of a dispute which centers upon language contained in the current collective bargaining agreement between it and the South Kingstown teachers' union. Eligibility for payment of the annual stipend for National Board Certification is governed by the contract, and not by state education law. It is only in disputes involving the latter that the Commissioner has jurisdiction. Since Mr. Quinn has been precluded from moving forward with a grievance in which he, or the union on his behalf, can press his claim that the contract should not be construed to exclude those, like himself, who hold other National Board Certifications, he understandably seeks another forum in which to assert his entitlement to this stipend. However, given the clear line of cases which have clarified<sup>3</sup> that the Commissioner's appellate authority extends only to those cases "arising under any law relating to schools or education", this matter must be dismissed. Resolution of Mr. Quinn's claim involves no reference to, or interpretation of, a law relating to schools or education.

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<sup>2</sup> Essentially the teachers' union shared the same interpretation of the contract's language, i.e. that the stipend for "National Board Certification" referred to certification by the National Board for Professional Teaching Standards and not other national board certifications. During negotiations for the most recent contract, a union proposal to expand eligibility for the stipend to those holding other national board certifications had been rejected.

<sup>3</sup> Since the mid-1980's the Commissioner has somewhat consistently declined to entertain disputes which arise solely under the provisions of a collective bargaining agreement. Previous to the decisions in Madden v. Warwick School Committee, April 23, 1984 and Hoag v. Providence School Board, June 27, 1988 the Commissioner had exercised rather broad appellate authority even to matters which were contractual in nature.

## Kevin Quinn

Mr. Quinn's focus before the School Committee was on the language appearing in the collective bargaining agreement which provides an annual stipend to those holding "National Board Certification". Mr. Quinn holds National Board Certification as a school counselor, but apparently not the type of national certification referenced in the Agreement, or intended by the parties to warrant the recognition of a salary bonus. From the documentation submitted to date, it would appear that Mr. Quinn seeks to have a more expansive interpretation of the contractual language made by his employer to render him eligible for this annual stipend.

In response to the Motion to Dismiss, Mr. Quinn urges the Commissioner to adjudicate this controversy because, he argues, it is within the Commissioner's authority to act as a "super arbitrator" and to preside over all "due process hearings" which proceed through the local educational system. Mr. Quinn notes the Commissioner's statutory obligation, set forth in R.I.G.L. 16-1-5(10) is "...to decide such controversies as may be appealed to the commissioner from decisions of local school committees". Mr. Quinn has followed the process set forth in School Committee policy which enables employees to appeal any decision made by an administrative officer to the next higher authority, and having exhausted his opportunity for a remedy at the local level, the dispute he has with his employer is ripe for adjudication by the Commissioner.

An additional contention is made by Mr. Quinn in his January 25, 2007 response to the Motion to Dismiss. Mr. Quinn asserts that he is seeking equal protection under the General Laws of Rhode Island so that his National Board Certification will be recognized to the same extent as that of the National Board for Professional Teaching Standards. Without the intervention of the Commissioner, he contends that he will continue to be subject to discriminatory treatment by the South Kingstown School Committee. Jurisdiction is clearly present, he contends, so that the district will be required to comply with the laws which prohibit discriminatory action against individuals within Rhode Island public school districts.

Mr. Quinn submits that for these reasons the Motion to Dismiss should be denied and that his appeal be heard without further delay.

## **DECISION**

This appeal centers on a provision of the collective bargaining agreement in effect between the School Committee and the South Kingstown teachers' union (NEASK). Mr. Quinn's entitlement to the stipend described in Article 8-C-3(d) is purely a question of interpretation of this contractual provision and the intent of the parties. Resolution of this issue does not implicate state education law in any way, and, therefore, the Commissioner of Education lacks jurisdiction over this issue.

The second contention of the appellant, Mr. Quinn, is that he is being subjected to discriminatory treatment because the provision in the collective bargaining agreement recognizes a specific national board certification other than the one he holds. This is alleged to constitute a denial of equal protection of the laws<sup>4</sup>. There obviously is no legislative classification at work in this case and no statute which creates entitlement to the stipend Mr. Quinn has been found ineligible to receive. The collective bargaining process and resulting agreement of the parties have created the distinction between the two types of national board certifications at issue in this case. This is also not a case in which the School Committee, as an agent of the state and a department of municipal government, has participated in the creation of an agreement which effectuates invidious discrimination, or creates a distinction on an illegal basis, such as race, gender, etc. Nevertheless, the appellant should be given the opportunity to articulate this constitutional claim more fully.

The Commissioner has, in the past, considered constitutional claims when coupled with issues arising under a law or laws relating to schools or education e.g. student suspensions giving rise to First Amendment issues. There has not been a definitive ruling as to the Commissioner's jurisdiction over such constitutional claims when presented in isolation. See the discussion in Schiavulli v. Aubin, 504 F.Supp. 483 (D.R.I. 1980). At the time of the hearing to be scheduled in this matter, the parties will have opportunity to address the issue of jurisdiction of this second claim as a preliminary issue.<sup>5</sup> Given the implications this case may have on the provision of the collective bargaining agreement at issue, the NEASK is also requested to become a party to this appeal, and a copy of this decision will be mailed to the union as notice of this request.

For the foregoing reasons, the motion to dismiss Mr. Quinn's appeal is granted as to the contractual issue but with respect to his second claim, which appears to be constitutionally-based, is denied at this time.

For the Commissioner,

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Kathleen S. Murray, Hearing Officer

APPROVED:

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Peter McWalters, Commissioner

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April 16, 2007  
Date

<sup>4</sup> The language used in Mr. Quinn's January 25, 2007 letter is that he is seeking "equal protection under the General Laws of Rhode Island" and that his national certification "has an unequal application under the laws".

<sup>5</sup> Should they wish to do so.