

Travel of the Case:

On February 18, 2007 Michael Cantone wrote to Commissioner Peter McWalters to request a hearing with respect to a decision of the Cranston School Committee. The Committee had voted on February 12, 2007 to accept the Superintendent's recommendation that he not be reappointed to the position of baseball coach for the 2007 season. The matter was assigned for hearing and decision, and on March 2, 2007 the parties were notified of a March 19, 2007 hearing date. A hearing was held on March 19, 2007 at which time both testimony and documentary evidence were received. Counsel for the School Committee raised the issue of jurisdiction by a motion to dismiss at the outset of the hearing. Consistent with past cases in which ruling on such a motion is deferred for efficiency purposes, a ruling on this motion was consolidated with a ruling on the merits of the case. The record in this matter closed on April 4, 2007 when the transcript was received.

Issues

- Does the Commissioner have jurisdiction to decide this appeal?
- Was the decision of the Cranston School Committee not to reappoint Michael Cantone as the baseball coach for the 2007 season arbitrary or capricious?

Findings of Relevant Facts:

- Michael Cantone served as the head coach of the baseball team at Cranston High School East for the past nineteen (19) years. Over these years, he has been a dedicated and successful coach, whose hard work has been recognized both informally and formally. App. Ex. 2, 9, and 10;
- Since the 2004 baseball season¹ there has been concern expressed by the members of the School Committee about the low number of games played by the junior varsity team at Cranston High School East. The School Committee's concern in this regard was relayed to Mr. Cantone by the school's Athletic Director, Michael Traficante, verbally in 2004 and in writing in 2005. Tr. pp. 118-122, 143, 151; App. Ex. 3².

¹ When the junior varsity baseball team played only six (6) of the twelve (12) games scheduled for the season. S. C. Ex. B

² The letter of September 26, 2005 indicated that the members of the Committee were very concerned with the number of junior varsity baseball games Cranston High School East played compared to the number of games played at Cranston High School West. The Committee notified Mr. Cantone that it "strongly recommended" that he make greater effort rescheduling and making up junior varsity baseball games that are cancelled for one reason or another. App. Ex. 3

- During the 2005 baseball season, the junior varsity team played ten (10) of the eleven (11) games scheduled for its regular season. S.C. Ex.C.
- The schedule of junior varsity baseball games for the 2006 season was increased by two (2) games, i.e. from eleven (11) to thirteen (13) games, but, the team ended up playing only seven (7) of the games scheduled³. App. Ex.5 and 6.
- After providing Mr. Cantone with written notice and informal hearing, the Superintendent determined on July 24, 2006 that he would recommend that Mr. Cantone not be reappointed as the head baseball coach because of his failure to increase the number of games played by the junior varsity team in the 2006 season. App. Ex.7 and 8.
- The members of the Cranston School Committee heard this matter on February 12, 2007⁴ and voted to uphold the Superintendent's recommendation that Mr. Cantone not be reappointed to the position of head baseball coach. S.C.Ex.A.
- The Cranston School Committee adopted a policy on June 20, 2005, entitled "Athletic Coaches- 4112.5". App. Ex.11.
- Policy 4112.5 provides for the filling of coaching vacancies on the basis of the "best qualified person available" and sets forth some of the criteria to determine qualifications of individual applicants. App. Ex. 11.
- The policy also provides for annual evaluation of all coaches through a formal evaluation process and use of an end-of-season evaluation form. App. Ex. 11.
- The policy states that a coach must receive a rating of adequate or better on a majority of the five categories of the evaluation document in order to be successfully evaluated and/or reappointed. The policy further states that any coach who receives an unsatisfactory evaluation "as described above" will be placed on probation for one year. App. Ex. 11.
- Subsequent to the Committee's adoption of the policy on June 20, 2005, Mr. Cantone did not receive a formal evaluation of his performance during the 2005 season⁵. Tr. p. 15. His evaluation for the 2006 season was not provided to him until August 11, 2006, after he had met with the Superintendent and Cranston High School East administrators and after he had been informed that he would not be reappointed as baseball coach. App. Ex.2 Tr. pp.24-25.
- Mr. Cantone received a rating of Adequate on all five (5) of the performance categories evaluated in his August 2006 evaluation, i.e. a "successful evaluation", making him eligible for reappointment; according to the policy, even if he had received an "unsatisfactory evaluation", i.e. not been evaluated as adequate in a

³ The games which were not played were postponed due to weather-related field conditions.

⁴ Mr. Cantone testified that he initially sought the School Committee's intervention on September 8, 2006, but that he then requested that the hearing be deferred until after a newly-elected Committee was in place. Tr. pp. 94-95.

⁵ Which we would assume had just ended.

majority of the five (5) categories, he would have been reappointed and placed on probation for one year. App. Ex.2 and 11.

Positions of the Parties:

Michael Cantone

Mr. Cantone submits that his performance over the past nineteen years has been exemplary, especially considering the dedication he has shown by being present at games even at times when the needs of his family warranted his presence. His team – the same team on which he played very successfully as a high school student – has always had the benefit of his loyalty and dedication. In his opinion the procedures followed in the decision not to recommend him for reappointment as coach for the 2007 baseball season demonstrate a lack of respect and a failure to appreciate his achievements and sacrifices for the program over the years. Moreover, the decision-making process failed to conform to the policy on Athletic Coaches adopted by the Cranston School Committee on June 20, 2005. Since the administration and School Committee failed to follow the provisions of this policy in acting to displace him from the program this year, the decision itself is arbitrary and capricious. The action taken unfairly deprived him of a process which, if followed, would have resulted in his reappointment for the 2007 baseball season, at least on a probationary basis.

On the substance of the performance issues raised by the School Committee, Mr. Cantone acknowledges that there have been concerns expressed since 2004 with the low number of games actually played by the junior varsity team. He shared those concerns and did everything he could as head coach to make sure that the junior varsity team played more games during the season. Unfortunately, the basis of the problem is weather and field availability, conditions which have persisted since 1994. Budget constraints over the last few years have caused Coach Cantone to schedule most of the junior varsity games at home, at Cranston Stadium, which is the field designated for the team's use. Weather-related field conditions and restrictions on the times the field is available to the junior varsity team combined for a postponement of many of the regular season games. Despite his efforts, it was difficult to schedule make up games. To compensate for the low number of games in 2006, Coach Cantone extended the season to practice with the junior varsity team until the end of June (on his own time) so that they would further develop their skills. Since he did all he could to "upgrade" the junior varsity program by scheduling more games in 2006 and attempting to make up games postponed because of weather or field unavailability, the decision of the school administration is penalizing him for conditions beyond his control. Therefore, from a substantive standpoint, the decision of the School Committee is arbitrary, capricious, and unfair.

Cranston School Committee:

As a threshold issue, counsel for the Committee submits that the Commissioner lacks jurisdiction over this dispute. Mr. Cantone was a coach, not a teacher, and his non-renewal or non-reappointment does not arise under a law relating to schools or education. It is only matters which do arise under education laws and disputes which are resolved with reference to such laws, that are within the Commissioner's jurisdiction under R.I.G.L. 16-39-1 and 16-39-2. In the recent case of Zuba v. Pawtucket School Committee⁶, cited by counsel in his motion to dismiss, the Commissioner declined to assume jurisdiction of an employment dispute involving a school bus driver, consistent with the principle cited above and affirmed in many cases also cited in that decision. An allegation that the School Committee has somehow violated one of its own policies (related to the employment of athletic coaches) does not involve the construction or application of an education law. The matter should be dismissed, the School Committee argues, and not decided on its merits.

As to the procedures utilized by the Cranston High School East administration and the School Committee in determining that Mr. Cantone would not be reappointed, counsel submits that the process was fair and that there was no intent to treat Mr. Cantone with a lack of respect or deference for the many years he has served as a dedicated head coach. The process utilized should have brought to his attention the concern of members of the School Committee with the low number of games played by the Cranston High School East junior varsity baseball team, especially in comparison to their peers at Cranston West. The Athletic Director spoke to Coach Cantone, along with his assistant coach, on numerous occasions to emphasize the need to schedule more games and make up those that were cancelled because of weather and field conditions. After a 2005 season in which only ten (10) games were played by the junior varsity team, the Athletic Director informed Coach Cantone, in writing, of the Committee's concern with the number of games played and made a recommendation that greater effort be made to reschedule and make up games that were cancelled. The next year the junior varsity team was scheduled to play only thirteen (13) games and ended up playing only seven (7) games. At that point Mr. Cantone had had sufficient notice, and ample opportunity, to rectify the persistent problem with an inadequate junior varsity playing schedule at Cranston East.

From a substantive standpoint, the decision not to reappoint Coach Cantone was justified in that he failed to increase the number of games played by the Cranston High School East junior varsity baseball team to a level commensurate with that of Cranston High School West, despite the previous request from the School Committee that he do so. The reasons he has cited – weather and field unavailability – are not the cause of the low number of games, but rather the initial schedule and the failure to make up games – factors within the coach's control. The decision was justified and should not be overturned by the Commissioner, submits the School Committee.

⁶ Decision of the Commissioner dated May 31, 2005.

DECISION

Counsel for the School Committee raises jurisdiction as a threshold issue. Although it would appear that a substantial issue exists with respect to the Commissioner's jurisdiction in this matter⁷, we decline to dismiss this case. First, because the Appellant is pro se, the arguments which might support the Commissioner's authority to decide this dispute have not been fully presented and such an important issue should be resolved, if possible, after advocates have presented arguments on both sides of the issue. Secondly, the Appellant Michael Cantone received a letter from the Chairman of the School Committee on February 13, 2007 which not only notified him of the Committee's decision, but advised him "you have the right to appeal this decision to the Commissioner of Education". In this context, then, even acknowledging the principle that lack of jurisdiction is a defense that cannot be waived, it is appropriate to address the merits of this dispute. To do so in this matter does not disadvantage the party raising the defense, since we find on the merits in favor of the Cranston School Committee.

The Appellant, Michael Cantone, has established that the School Committee did not follow the steps provided for in the policy that it enacted on June 20, 2005. It did not formally evaluate him in 2005, and in 2006 did so only after the Superintendent's decision on reappointment had been made. On the basis of the language of the policy, Mr. Cantone did receive a "successful" or satisfactory evaluation, even though the Athletic Director indicated at the bottom of the August 11, 2006 evaluation that it was "Unsatisfactory". Again, following the policy's language,⁸ even if his evaluation had been "Unsatisfactory", Mr. Cantone would be entitled to a probationary year before termination as baseball coach. The School Committee presented no good and sufficient explanation as to why the policy was not followed. The mere fact that a revised evaluation instrument was being worked on does not adequately explain why the 2006 evaluation was not completed and provided to Mr. Cantone in a timely way. There was no explanation as to why the policy's provisions as to the definition of an "unsatisfactory" evaluation were not applicable in his case. While it is true that the policy does not clearly *entitle* the recipient of a "successful"⁹ evaluation to reappointment, there is at the very least the implication that such performance will warrant reappointment.

Based exclusively on the evidence presented by Mr. Cantone, one would conclude that both in process and in substance, the School Committee's decision not to reappoint him was arbitrary and capricious. After all, he had no prior notice of deficiencies in his performance and, as of his last formal evaluation, had received a rating of "Adequate" in all of the areas of performance evaluated in 2006.

⁷ We would note the existence of at least two cases in which the Commissioner heard employment disputes involving coaches: Magliocco v. Middletown School Committee, June 14, 1990; O'Connell v. Newport School Committee, June 13, 1990. In neither of those cases was the issue of jurisdiction raised.

⁸ "Any coach who receives an unsatisfactory evaluation as described above will be placed on probation for one year".

⁹ Defined as the receipt of a rating of adequate or better on a majority of the five categories of the evaluation document. See Appellant's Ex. 11.

However, when such evidence is viewed along with the proof submitted on the School Committee's behalf, the inference of arbitrary, capricious, and unfair decision making is rebutted. From a process standpoint, the letter to Coach Cantone dated September 26, 2005 clearly positions the issue of the adequacy of the number of junior varsity games as a major concern of the Cranston School Committee. Reference is made to the number of games played by the junior varsity team at Cranston High School West, presumably not just to note a disparity, but also to provide guidance as to the number of games the Committee would like to see in the junior varsity schedule at Cranston High East. This communication conveyed in no uncertain terms the importance of an increase in the number of games played by the junior varsity team and gave Coach Cantone the opportunity to create and execute a schedule which would accomplish this. Thus, although Mr. Cantone was not evaluated at the conclusion of the 2005 season¹⁰ he received clear notice of the School Committee's dissatisfaction with the junior varsity program and its recommendation that he make a greater effort to increase the number of games. The 2006 baseball season presented Mr. Cantone with an opportunity to remedy the deficiency noted in the School Committee's notice to him of September 26, 2005.

Obviously, weather conditions and field availability affected the ability to play many of the games scheduled for the 2006 junior varsity team, a point Mr. Cantone made throughout his testimony. However, it is difficult to attribute weather and field availability as the cause for a seven (7) game season in 2006 when such factors were to be anticipated, and yet the initial schedule increased by only two games from the year before. Given the letter of notice he had received, Mr. Cantone's decision to schedule fewer than the number of games scheduled by Cranston West's coach disregarded an implicit, if not explicit directive of the Committee, conveyed through the Athletic Director. If Mr. Cantone was unable to put such a schedule together for good reasons, he should have documented those reasons and presented them to the Athletic Director, Superintendent, and School Committee.

At the hearing at this level, there was no evidence of steps taken to substantially increase the schedule for the junior varsity team. If there were communications received from other coaches that their teams were unavailable on dates Coach Cantone proposed for games or scrimmages, these communications were not submitted into evidence. If buses for "away" games were not able to be funded, and thus more games at other schools were not scheduled (in anticipation of an un-playable field at Cranston Stadium), there was no evidence of a request for additional buses or funding. There was no evidence that permission had been sought to utilize other fields in the event the field at Cranston Stadium was unavailable. While there was some evidence of efforts to make up games that had been postponed during the 2006 season due to rain, this does not prove that weather and field availability were the primary causes for a seven (7) game season during 2006. Scheduling has been shown to be the major factor in the low number of games played in the 2006 season. Coach Cantone did not demonstrate that factors beyond his control prevented him from increasing the 2006 junior varsity schedule.

¹⁰ Testimony of the Athletic Director was that no coaches were evaluated in 2005 because a new evaluation instrument was being worked on.

Although the decision of the School Committee not to reappoint Coach Cantone did not conform to the process set forth in policy, the process it did utilize provided Mr. Cantone with notice and opportunity to address a deficiency in his performance, i.e. the number of games in the junior varsity schedule. In effect, he did receive the year's probation that he would have received had he been identified as "unsatisfactory" under the provisions of the policy on Athletic Coaches at the conclusion of the 2005 season. He did not adequately address this deficiency in 2006. This reason supports the Committee's decision and insulates it from any determination that it was arbitrary and capricious. Thus, Mr. Cantone's appeal is denied and dismissed.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

April 30, 2007
Date