

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

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Raymond Boss

v.

North Smithfield School Committee

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DECISION
ON
MOTION TO DISMISS

Held: The Appellant’s claim is dismissed for lack of jurisdiction. The claim of Mr. Boss, the former Director of Facilities and Food Services in North Smithfield, that his termination by the School Committee on November 20, 2006 was improper or violated his rights is not a claim over which the Commissioner has been granted, or should exercise, jurisdiction.

DATE: April 10, 2008

Travel of the Case

On November 29, 2006 Raymond Boss, through his attorney, filed an appeal with Commissioner Peter McWalters alleging that he was aggrieved by the November 20, 2006 decision of the North Smithfield School Committee to terminate him as an employee. Mr. Boss had been the school district's Director of Facilities and Food Services. On December 8, 2006 the undersigned was designated to hear and decide this appeal. Written acknowledgment of the appeal and a request that the parties provide an agreed-upon hearing date was also sent on December 8, 2006. The parties were initially unable to agree upon a date because conferring on the matter was complicated by the Appellant's counsel's relocation of her office. The matter was scheduled for hearing by agreement of the parties for May 30, 2007.

At the time hearing in this matter was convened, counsel for the North Smithfield School Committee made a verbal motion to dismiss on the basis of lack of jurisdiction. In response, counsel for Mr. Boss indicated that she would, after review of the cases cited by counsel for the School Committee, determine her position on the motion. If opposed to the dismissal of Mr. Boss' appeal, she agreed to file a written objection with any supporting memorandum by June 20, 2007. It was also agreed that the School Committee would have one week in which to respond in writing to any memorandum filed on the Appellant's behalf. An extension of time for the submission of the Appellant's objection to the motion to dismiss and any supporting memorandum was requested and granted, with written confirmation from the hearing officer that the filings would be received no later than July 6, 2007. When no objection or memorandum on the Appellant's behalf was submitted by July 6, 2007 the hearing officer again wrote to the parties on July 27, 2007 to inquire if a new date for this submission had been agreed upon. Council for the School Committee wrote on August 2, 2007 to confirm that no further extension had been agreed upon. On December 3, 2007 the hearing officer again wrote to counsel for the parties and requested that if the Appellant had an objection to the motion to dismiss and a supporting memorandum that she submit it no later than December 21, 2007.

Thereafter, on December 13, 2007 the hearing officer was notified that Mr. Boss was no longer represented by counsel. After waiting for Mr. Boss to obtain new counsel and/or proceed pro se, the hearing officer wrote to Mr. Boss and counsel for the School on February 12, 2008 to indicate that Mr. Boss had until March 3, 2008 in which to file a written objection, with any supporting memorandum, on the issue of jurisdiction. On February 29, 2008 a written communication was faxed from Mr. Boss, but it did not address the issue of the Commissioner's jurisdiction to hear this matter. It did contain a request for additional continuance so that Mr. Boss could obtain certain records from the North Smithfield School Department and the Rhode Island Department of Education. On March 6, 2008 the hearing officer wrote to Mr. Boss and counsel for the School Committee that the request for another extension of time in which to file any objection to the motion to dismiss was denied.

DISCUSSION

The motion to dismiss for lack of jurisdiction over the subject matter of this dispute stands without objection and no arguments have been presented by either Mr. Boss or his former counsel with respect to why the Commissioner should review the decision of the School Committee. In this posture, the motion must be granted.

The termination of Mr. Boss from his position as Director of Facilities and Food Services for the School Department on November 20, 2006 was by a “decision or doing” of the School Committee; however, not all persons aggrieved by a “decision or doing” of a school committee have a right to appeal to the Commissioner. It is only when the dispute “arises under any law relating to schools or education” that the aggrieved party may appeal to the Commissioner. See Lapierre v. Cranston School Committee, decision of the Board of Regents for Elementary and Secondary Education dated May 11, 1989. Consistent with this is the notion that when an interpretation or application of a law relating to schools or education is presented, the Commissioner’s expertise in the field of education will be called into play. When the review does not involve an educational law, regulation, or even a policy, the aggrieved party must seek a remedy in the appropriate forum. The termination of a Director of Facilities is akin to the termination of a school business manager and the Commissioner has expressed doubt as to his jurisdiction in such a dispute. See LaSalle v. Cranston School Committee, decision dated November 12, 1991.¹ In this case, the Appellant has not advanced any theories on which to premise the Commissioner’s jurisdiction.

Because the Commissioner lacks jurisdiction over this controversy, this matter is dismissed. To the extent Mr. Boss seeks to raise issues with respect to the legality of his dismissal, he must do so in the appropriate forum.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

April 10, 2008
Date

¹ See also Zuba v. Pawtucket School Committee, decision of the Commissioner dated May 31, 2005. Quinn v. South Kingstown School Committee, decision of the Commissioner dated July 31, 2007.