

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

.....

Frances Rochefort

v.

East Greenwich School Committee

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DECISION

Held: The Appellant has proven that she reasonably relied to her detriment on her appointment by the Superintendent as a part-time Latin teacher for the 2007-2008 school year. She stopped looking for another position in mid-August, after being contacted by the district to make sure that she would be available for the position for the upcoming year. There were no other qualified candidates, and she did not receive notice that the School Committee had withheld its consent to her appointment until August 29, 2007, the day before she was scheduled to begin work.

DATE: September 4, 2008

Travel of the Case:

At a meeting of the East Greenwich School Committee on August 27, 2007 a motion to approve the appointment of Frances Rochefort as a .4 Latin teacher at Archie Cole Middle School, effective August 30, 2007, did not pass. Ms. Rochefort appealed this action to the School Committee and after a hearing on November 6, 2007, the School Committee denied her appeal. She then appealed to Commissioner Peter McWalters on November 16, 2007. The undersigned was designated to hear and decide this appeal on December 3, 2007. By agreement of the parties, the matter was heard on March 10, 2008. Thereafter briefs were filed by counsel, a process which concluded on July 25, 2008 at which time the record closed.

Jurisdiction to hear this matter arises under R.I.G.L. 16-39-1 and 16-39-2.

Issue

Was the East Greenwich School Committee legally obligated to approve the Superintendent's appointment of Frances Rochefort to the position of Latin teacher at Cole Middle School for school year 2007-2008 under the doctrine of equitable estoppel?

Findings of Relevant Facts:

- Frances Rochefort is a teacher who holds life certification to teach Latin and French at the secondary level. Tr. p.17; App. Ex.1.
- Ms. Rochefort retired in 1990 after teaching at Coventry High School and then later, from 1977 to 1990 at Cranston High School East. Tr. p.17.
- During school years 1999-2000 through 2006-2007 Ms. Rochefort was a part-time teacher of Latin in East Greenwich at Cole Middle School. Since the 2003-2004 school year, she has been required to reapply every year so that the district could make a good faith effort to find a non-retired teacher for this position. She has taught under a series of one-year contracts and been notified each year of the approval of her appointment by the East Greenwich School Committee. Tr. pp.16-20; App. Ex. 3-6. In the 2006-2007 school year, the Committee approved her appointment a week after she began her teaching duties. App. Ex.6.
- After the district had advertised the position for the 2007-2008 school year in May of 2007, Ms. Rochefort was once again the only certified candidate to apply. Principal Michael Zajac indicated to her in mid June that she was "the candidate" and that he would be "moving her name forward" for selection by the Superintendent. Tr. pp. 22-23, 82.

- On or about August 2, 2007 Mr. Zajac called Ms. Rochefort to tell her that there was another candidate for the position, a person who had teaching experience in private school and, if she obtained two additional credits by the end of the summer, could become certified to teach Latin at the Middle School. Upon receiving notice that she was no longer “the candidate”, Ms. Rochefort immediately began her search for another teaching position. Tr. pp. 23-24, 83-85, 113. S.C. Ex.D.
- In the middle of August, the Superintendent became aware that the other prospective candidate had not taken the required course and would not be certified by the end of the summer. This other candidate then withdrew her name. Tr. p. 86, 113-114.
- Immediately thereafter, Principal Zajac, after speaking with the Superintendent, called Ms. Rochefort because at that point they did not have another candidate. Mr. Zajac testified:

I called her, and I mean I was concerned that she would not be available because it had been some time; so I called and she said she was still available, and I said, I asked her if she was interested and I would move her recognition forward to the School Committee.

When Ms. Rochefort indicated that she would be available to take the position, the Principal put together the “paperwork” related to Ms. Rochefort’s appointment, forwarded it to Superintendent Meyers and it was placed on the School Committee’s agenda for August 27, 2007. Tr. pp. 86-88; S.C. Ex.C.

- Ms. Rochefort planned on working in the position at Cole Middle School from that point forward. Tr. p. 25.¹
- Immediately thereafter, Ms. Rochefort received a welcoming letter and packet sent by Superintendent Meyers. Superintendent Meyers sent the packet to Ms. Rochefort because he thought it was reasonable to assume that the School Committee would approve her appointment. Tr.pp. 25-26, 130-131; App. Ex. 2. During his three years in East Greenwich, the School Committee had not withheld its consent to any of his appointments. Tr. p. 110.
- On August 27, 2007 the East Greenwich School Committee withheld its approval of the Superintendent’s appointment of Ms. Rochefort to teach Latin at the Middle School.² The minutes do not reflect any discussion of the motion to appoint her. (See minutes of the August 27, 2007 meeting). Neither Principal Zajac nor Superintendent Meyers was present at the time the School Committee considered Ms. Rochefort’s appointment. Tr. pp. 88 and 114.³

¹ We find it implicit in this testimony that Ms. Rochefort then ceased her efforts to secure a position elsewhere because the district had called her to make sure she was still available and would continue to be available for the 2007-2008 school year.

² The minutes reflect that the motion to approve Ms. Rochefort’s appointment “did not pass”. The minutes do not include a record by individual members of the vote taken on this motion as required by R.I.G.L. 42-46-7.

³ As indicated above, the minutes of the School Committee’s meeting do not reflect the vote or a discussion of reasons. Testimony was not presented from any member of the East Greenwich School Committee as to the reason for his/her vote with respect to Ms. Rochefort’s appointment. There was some testimony from both Mr. Zajac and Mr. Meyers on this point. Mr. Meyers testified that the chair of the School Committee

- Mr. Zajac called Ms. Rochefort on August 29, 2007⁴ to notify her of the School Committee’s action on her appointment and told her to call Superintendent Meyers if she had any questions. Tr. p. 25, 91; S.C. Ex.A. When Ms. Rochfort called the Superintendent on September 3rd and asked the reason why the School Committee had rejected her appointment, Mr. Meyers indicated that it was because she was a retired teacher and that the Department of Education was requiring the School Committee to advertise the position again to comply with the requirement that it make a “good faith effort” to hire a non-retired teacher.Tr. pp. 60-62.
- On September 7, 2007 the district requested that an “Emergency Certificate” be issued to a person who was not certified. That person was ultimately hired for the position. Tr. p. 119; App. Ex. 8.
- Ms. Rochefort’s evaluation for the 2006-2007 school year noted her successful teaching performance and observed that she “has continued to challenge students at Cole Middle School to become Latin scholars.”App. Ex.7.

Positions of the Parties

The Appellant:

Through her counsel, Ms. Rochefort argues that from approximately the middle of August of 2007, when she was contacted by school officials and notified that she had been selected by the Superintendent, she reasonably relied to her detriment on her appointment to a part-time Latin position at Cole Middle School. Although she was fully aware that her appointment was subject to the approval of the East Greenwich School Committee, she had received the Committee’s approval in four prior years, had served as an excellent and dedicated teacher during that time, and, since there was no other certified candidate available for the position and the district had contacted her in mid-August to make sure she would be available, she stopped seeking other employment and prepared herself for the school year that was about to begin.⁵ When the School Committee withheld its consent to her appointment on August 27 and she was notified of this on August 29, 2007 (the day before school was to begin), she was unable to secure employment for the 2007-2008 school year.

Counsel for the Appellant submits that these basic facts, together with other rather unusual facts existing in this case, render the School Committee’s action unjust and

called him the day after the meeting and indicated that the Committee had “concerns about Ms. Rochefort’s attendance during the 2006-2007 school year”. The Superintendent testified that he did not know what information the Committee had with respect to the nature or extent of Ms. Rochefort’s absences during that school year. Based on this record, we cannot find as a fact that the reason for the School Committee’s rejection of Ms. Rochefort’s appointment was because of the 25.5 days she was absent due to illness during 2006-2007. This was also not the reason given to Ms. Rochefort when she asked the superintendent what the reason was.

⁴ Ms. Rochefort’s written record of the “Sequence of Events” (School Committee Ex.A) resolves the discrepancy in the testimony as to whether Mr. Zajac called her on the 28th or 29th of August.

⁵ Ms. Rochefort is a retired teacher, who has worked in East Greenwich since the 1999-2000 school year.

inequitable and establish the basis for equitable estoppel. On this basis, the Appellant requests that the Commissioner provide her with a remedy for the School Committee's unreasonably late and unexplained decision to withhold its consent to her appointment. The Appellant also notes that the School Committee went on to appoint a person who was not certified and who obtained an Emergency Certificate a short time after the School Committee's August 27, 2007 meeting despite the fact that she, a fully certified teacher, was available to fill the position.

In memoranda submitted on the Appellant's behalf, her counsel argues that Ms. Rochefort reasonably relied on the "promises" of Mr. Michael Zajac (Principal at Cole Middle School) and Mr. Charles Meyers (Superintendent of Schools in East Greenwich) as agents of the School Committee that she was "the candidate" for the (.4) position of Latin teacher at Cole Middle School. Mr. Zajac conveyed to Ms. Rochefort information that there were no other certified candidates who had applied for the position and that she had been selected by the Superintendent who would seek the necessary approval from the East Greenwich School Committee.⁶ As in past years, Ms. Rochefort knew that she would at some point receive a formal letter notifying her of the Committee's approval of her appointment. The prior year's approval by the School Committee (for the 2006-2007 school year) had come after she had assumed her teaching duties and her formal appointment letter that year actually came one full week after the start of classes. Neither she, nor the district, had perceived School Committee action as a precondition to her assumption of her teaching duties at that time.

In addition to her arguments with respect to promissory estoppel Ms. Rochefort argues that the doctrine of equitable estoppel should also preclude the School Committee from withholding its consent to her appointment. The Appellant submits that the communications from Principal Zajac and Superintendent Meyers, her experience with the process followed in East Greenwich, the district's familiarity with her teaching performance and the fact the School Committee had approved her appointment in several preceding years made her reliance reasonable – even though final approval was understood by all involved to be necessary. The nature and timing of the various communications to her in mid-August made her reliance all the more reasonable. The call from Principal Zajac who was concerned with the possibility that he would not be able to properly staff his school was to confirm her availability and to notify her that she was again "the candidate"- the only candidate. This call was followed by a formal letter of welcome to the faculty. The beginning of the school year was imminent. All of these factors induced her to cease her efforts to secure another position. Any reasonable person would have relied on the fact of her appointment, given all the circumstances in this case. In fact, the Superintendent testified that he reasonably assumed she would be appointed consistent with the way she had been in the past years, and for this reason included her in those who received his letter of welcome to the 2007-2008 school year.

⁶ Mr. Zajac actually conveyed this information in June of 2007 after the close of the application period and again in mid-August, when he called Ms. Rochefort to tell her that the candidate who had the possibility of becoming certified by the opening of the school year had not enrolled in the course she needed for certification and that he wanted to make sure she was still available.

Her counsel argues that School Committee approval had “never appeared to be a significant part of the hiring process” in fact it was “somewhat of a rubber-stamping of the School Principal’s preferred hiring choice”. Ms. Rochefort’s rejection was the first time in Mr. Meyers’ three-year tenure as Superintendent that the School Committee withheld its consent. The Committee rejected his appointment of the only person who had applied for and met the qualifications for the position and who had been a successful teacher in the district for several years. The Committee went on to select for the position a teacher who was not certified to teach Latin, and who obtained an Emergency Certification only days after school began.

Ms. Rochefort’s 2006-2007 evaluation closed with the comment “We are fortunate to have the continued services of such an experienced teacher as Mrs. Rochefort. This evaluator congratulates her on another successful year of working with young Latin students in East Greenwich”. Ms. Rochefort’s counsel argues that it is unfair and inequitable that Ms. Rochefort’s loyalty and dedication to her students in East Greenwich was responded to in this way. He argues that, given all of the circumstances here, her reliance on her appointment to the position was reasonable. Her reliance caused her to cease her efforts to find a position somewhere else. It worked to her detriment. The unreasonably late and arbitrary exercise of the authority of the Committee to withhold consent is inequitable and under the doctrine of equitable estoppel should not be upheld by the Commissioner.

East Greenwich School Committee:

Counsel for the School Committee points out that throughout the process of filling the position of Latin teacher at Cole Middle School the Committee endeavored to do exactly what the law requires: to fill the position with a non-retired teacher. The statutory mandate to fill teaching vacancies with non-retired teachers, found in R.I.G.L. 16-16-24(b), was the driving force behind the communications that Ms. Rochefort received throughout the summer of 2007. Although she was alternately told that she was and then was not the candidate for the Latin position, this was due to the fact that state education officials had indicated that a non-retired applicant for the position should be considered because she was “potentially certifiable” by the end of the summer. This is exactly the kind of “good faith effort” needed to fill the position with a non-retired teacher and to ensure that newly-qualified educators are tapped (this also prevents “double dipping” by retirees in the state pension system). Unfortunately, these efforts resulted in some inconvenience to Ms. Rochefort, but certainly did not create the factual predicate for the doctrine of estoppel, promissory or otherwise.

When the other potentially certifiable candidate failed to take the required coursework and withdrew her application in mid-August, Mr. Zajac notified Ms. Rochefort that she was again the only candidate and that her name would be brought forward by the Superintendent for approval by the School Committee. Neither this statement, nor the other circumstances present here, provided the basis for justifiable reliance on the part of Ms. Rochefort. Neither Mr. Zajac nor Mr. Meyers ever indicated

to Ms. Rochefort that she was hired for the position or represented that they had the final authority to make the appointment. These administrators indicated to her that she was “the candidate” to be presented to the Committee with the Superintendent’s recommendation. Neither Mr. Zajac nor Mr. Meyers had statutory authority to hire teachers. In fact, Ms. Rochefort indicated that she “knew and understood” that she would not become employed in the position until the School Committee appointed her in a public session. It is clear from her own testimony that she understood the conditions remaining to be fulfilled before she would secure the position. Therefore, any reliance on her part was unreasonable and does not support equitable estoppel.

Assuming, arguendo, that it could fairly be construed that Mr. Zajac and/or Mr. Meyers told Ms. Rochefort that she was hired for the position, or that she understood this to be the case, these statements could not and should not be binding because it would nullify the School Committee’s statutory authority to make such decisions. Such representations by school administrators would be ultra vires and non-binding pursuant to the Rhode Island Supreme Court’s decision in Romano v. The Retirement Board of Employees’s Retirement System of the State, 767 A.2d 35 (R.I. 2001). Although it may have appeared in the past that the School Committee’s approval of appointments made by the Superintendent was “rubber stamping”, the Committee’s consideration and vote on such appointments is in fact a necessary and important step in the process of hiring public school teachers. Moreover, it is a step in the process that is required by state education law.

It is true that Ms. Rochefort was the only certified person in the applicant pool after the district advertised the position in June of 2007. However, when the district determined at the beginning of August that it would give a non-certified candidate for the position the opportunity to complete her certification by September and notified Ms. Rochefort that she was no longer at that point “the candidate”, this action was perfectly appropriate. This was not an “extraordinary accommodation”, considering the statutory mandate to hire non-retired teachers. When Mr. Zajac notified Ms. Rochefort in mid-August of the withdrawal of the other candidate and that Ms. Rochefort’s appointment would then be brought forward to the School Committee, the district acted appropriately and consistently with its obligation to have made a “good faith effort” to secure a non-retired certified teacher. At its meeting of August 27, 2007 the School Committee chose not to appoint Ms. Rochefort to the position. Although it did not express a reason at the time of its vote, Principal Zajac and Superintendent Meyers “came to understand” that the basis for this action was due to her excessive absences during the 2006-2007 school year. The School Committee exercises broad discretion in making hiring decisions, and in this case, its decision to withhold consent to Ms. Rochefort’s appointment was a proper exercise of that discretion.

DECISION

The unusual facts in this case and on which this decision is based do not challenge the prerogative of school committees to give consent to the appointment of school

department personnel selected by superintendents. Our state law clearly imposes a duty on school committees to give or withhold consent to appointments made by superintendents. A school committee's approval is not, nor should it ever become a "rubber stamp". That being said, this case requires a recognition that when the law⁷ was revised in 1988, the changes made by the General Assembly transferred from school committees to superintendents the power to make appointments of all school department personnel. The authority of a school committee is to give advice and consent to such appointments. The Commissioner must review the exercise of this authority consistent with his own statutory obligation to hear educational disputes *de novo*. See Patnaude v. New Shoreham School Committee, decision of the Commissioner dated June 27, 1997. In this appeal, Ms. Rochefort requests that the East Greenwich School Committee be estopped from hiring someone other than her for the position at Cole Middle School under the doctrines of promissory and equitable estoppel. Estoppel may be invoked against a governmental agency when appropriate circumstances, justice and right so require. Schiavulli v. School Committee of the Town of North Providence, 114 R.I. 443; 334 A.2d 416 (1975)

The legal argument presented to the Commissioner is that because of the circumstances present, it was so unfair and inequitable for the School Committee to exercise its authority to reject Ms. Rochefort's appointment on August 27, 2007, that its authority to withhold consent to her appointment should be circumscribed. We find on the basis of the facts in this record that a compelling case of equitable estoppel⁸ has been presented. We do not know if the members of the School Committee were made aware of the unusual facts here when it heard the matter on appeal on November 6, 2007, but these are the central facts in the record at this level. The School Committee's agents, Mr. Zajac and Mr. Meyers in good faith clearly sought to ensure that Ms. Rochefort would remain available to fill the position they had, after extensive efforts, been unable to fill with a qualified teacher. They, as professional educators and representatives of the district, were clearly concerned in mid-August about the prospect of having no certified teacher available for the Middle School Latin program. It was they who contacted Ms. Rochefort (who was at that time trying to secure another position) to make sure she was still and would be available to meet their district's needs. This was after they had already made "good-faith efforts"⁹ to find a non-retired teacher and had followed up on the Department of Education's suggestion that they facilitate the certification of another candidate. The other candidate did not obtain the needed certification and withdrew. After confirming with Ms. Rochefort that she would be available, Mr. Zajac communicated to her on or about August 16, 2007 that her appointment by the Superintendent would be brought before the School Committee at its next meeting.

As a result, Ms. Rochefort, an experienced teacher certified in an area of evident shortage, took herself off the market at a critical time when districts such as East

⁷ R.I.G.L. 16-2-9 and 16-2-11

⁸ The Appellant's arguments with respect to promissory estoppel are found to be without merit. Neither Principal Zajac nor Superintendent Meyers promised or assured Ms. Rochefort that she would be employed during 2007-2008.

⁹ As required by R.I.G.L. 16-16-24 (b)

Greenwich “scrambled” to fill such positions at the end of the summer. It worked to her detriment because in spite of her subsequent efforts (after she was informed of the School Committee’s action), she was unable to secure a position for 2007-2008. This was not a situation in which the quality of Ms. Rochefort’s teaching services was unknown to the School Committee. It had considered her credentials and approved her appointment in past school years. This also was not a situation in which a non-retired certified teacher became available for employment at the last minute, justifying the displacement of Ms. Rochefort’s appointment. As indicated in our findings of fact, there was insufficient evidence of the School Committee’s reason in rejecting her appointment. The inequity imposed on Ms. Rochefort by this situation is compelling and supports relief under the doctrine of equitable estoppel.

We want to make clear that the statutory authority of the East Greenwich School Committee was not relinquished because it had never previously rejected a selection made by its Superintendent or because it had appointed Ms. Rochefort for a number of years in succession. These facts did not bind the School Committee to reappoint her to serve in the same capacity in school year 2007-2008. Most certainly it had the right, in fact the statutory obligation, to search for a qualified candidate to teach secondary Latin who was not a retired teacher, and to do so until it was clear that even with good faith efforts, it was unable to secure such a teacher for the upcoming school year. This case is one in which all the facts and circumstances – especially the actions taken in good faith by representatives of the School Committee in mid August to secure Ms. Rochefort’s services and the “eleventh hour” timing of the School Committee’s rejection of her appointment – support the Appellant’s argument of equitable estoppel.

For the foregoing reasons, the appeal is sustained and the parties are directed to confer to attempt to resolve the issue of appropriate remedy. If the parties are unable to settle the issue of remedy, the hearing will be reconvened for this purpose.

For the Commissioner,

Kathleen S. Murray, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

September 4, 2008
Date