

State of Rhode Island
and
Providence Plantations

Commissioner of Education

Jean Campbell

v.

Cranston School Committee

DECISION

Held: The Appellant's claim that the Cranston School Committee violated her rights when it did not provide her with a non-renewal hearing on July 14, 2008 is denied and dismissed. When Ms. Campbell submitted an unconditional notice of her intent to retire, effective June 30, 2008, the School Committee was not under an obligation to hold a formal hearing on the issue of whether Ms. Campbell's contract should be renewed because the issue had become moot. Upon the Committee's acceptance of her retirement on July 14, 2008 there was no longer a controversy and Ms. Campbell had no personal stake in persuading the members of the committee that a final decision not to renew her contract would be in error or impermissible.

Travel of the Case

On July 24, 2008 counsel for Jean Campbell filed a notice of appeal from the Cranston School Committee's decision to deny Ms. Campbell a non-renewal hearing pursuant to R.I.G.L. 16-12-1 et seq.¹ On July 30, 2008 the undersigned was designated to hear and decide this appeal, and offered the parties August 12, 2008 as a hearing date. The parties requested that the hearing be converted to a pre-hearing telephone conference and thereafter agreed to submit a statement of undisputed facts and an agreed-to list of exhibits to streamline the hearing process. On January 6, 2009 counsel completed a Joint Statement of Undisputed Facts and a list of agreed-upon Exhibits and indicated that they were ready to proceed with the hearing². The hearing officer wrote on January 14, 2009 that the parties should select an agreed-upon date for hearing and the date of March 3, 2009 was then selected.

At the time of hearing, testimony was taken and additional documentary evidence was submitted by the Cranston School Committee. At the outset, an attempt was made to identify the issues and determine the remedy sought by the Appellant so that the hearing officer could determine which party had the burden of going forward. After discussion³, the Appellant clarified that her contract had not in fact been non-renewed, that she did not seek an order compelling the School Committee to hold a hearing on the issue of non-renewal and did not seek reinstatement to her position. Rather, she sought to pursue damages commensurate with an additional year of salary because proper procedures were not followed. Her sole contention is that she was entitled to a hearing, despite her retirement.

Following the hearing on March 3, 2009, counsel for both parties submitted memoranda summarizing their respective positions and arguments. This process concluded on April 20, 2009 at which time the record closed.

Issue

- **Was Ms. Campbell's right to a hearing under R.I.G.L. 16-12.1-3 violated when the Cranston School Committee refused to provide her with a non-renewal hearing after it accepted her letter of retirement on July 14, 2008?**

Findings of Relevant Facts:

¹ The section for school administrators is actually 16-12.1-1 et seq.

² The correspondence from the Appellant's attorneys on January 6, 2009 indicated that Ms. Campbell's appeal was from "the Cranston School Department's decision to non-renew her employment without the benefit of the hearing she had requested under R.I.G.L. 16-12.1-3."

³ Tr. pp. 12-24.

* Jean Campbell was employed as an administrator in the Cranston School Department for over sixteen (16) years, the last four (4) as Administrative Director of Secondary Reform and Special Projects. Tr. pp. 28-31.

* In her capacity as an Administrator in the district over the last several years she has served many different functions, including that of grant writer. According to her Superintendent, her work was exemplary. Tr. pp. 29, 86.

* In April of 2008 the Cranston School Committee advised Superintendent Richard Scherza of funding decisions which necessitated a consolidation of administrative positions within the district. Tr. pp. 92-100. After review, Mr. Scherza determined that Ms. Campbell's position could be eliminated and the duties she performed redistributed to other staff of the district. Tr. pp. 92-100.

* On April 25, 2008 Mr. Scherza provided Ms. Campbell with a letter dated April 24, 2008 advising her of his intent to recommend to the Cranston School Committee that it not renew her contract with the district. The April 24, 2008 letter identified funding as the basis for the recommendation and indicated that it would be presented to the School Committee at its meeting on May 19, 2008. Joint Statement of Undisputed Facts; Joint Ex.C.⁴

* On May 19, 2008 the Cranston School Committee voted to accept Superintendent Scherza's recommendation that Ms. Campbell's contract not be renewed and she was advised of this vote on May 29, 2008. Joint Ex. D. The letter informed Ms. Campbell that prior to final action being taken on the non-renewal of her contract, the School Committee would afford her the right to a prompt hearing, if she chose to have one. Joint Ex. D.

* The School Committee reissued notice of its vote to accept the Superintendent's recommendation of non-renewal on June 9, 2008⁵ and reiterated that Ms. Campbell could choose to have a hearing before the Committee prior to its final action on her non-renewal. Joint Ex. F.

* On June 10, 2008 Ms. Campbell notified the School Department that because of a medical procedure she had that same day, she would be out of work for a minimum of three weeks. Joint Ex.K. A doctor's note confirmed that Ms. Campbell would be unable to return to work until after June 30, 2008. Joint Ex. L.

⁴ For clarity, the Joint Statement of Undisputed Facts will be referred to as such and the Joint Exhibits will be referred to as originally marked by the parties prior to the hearing, i.e. Joint Ex. A, B, C, etc. Referring to the joint exhibits by the B-1, B-2, etc. designation as stated at page 27 of the transcript became unnecessarily complicated.

⁵The May 29, 2008 notice was signed by Superintendent Scherza. The second notice was signed by the Chairman of the School Committee.

* On June 16, 2008 counsel for Ms. Campbell requested a hearing in order to address the decision of the School Committee not to renew her contract. Joint Ex.G.

* On June 25, 2008 Ms. Campbell was notified in writing that the hearing on her non-renewal was scheduled for July 14, 2009. Joint Ex. H.

* By letter dated June 29, 2008, Ms. Campbell notified Mr. Raymond Votto of the Human Resources Office that as of June 30, 2008 she was retiring from the Cranston Public Schools. Her letter requested that appropriate paperwork, which was enclosed with her letter, be forwarded to the Rhode Island Retirement Board "as soon as feasible." Copies of Ms. Campbell's letter were sent to the Cranston School Committee. Joint Ex.O; Joint Statement of Undisputed Facts.

* In order to access more advantageous medical benefits available under the Cranston administrators' group contract that was expiring on June 30, 2008, Ms. Campbell determined that she needed to submit her letter of retirement prior to that date. Tr. pp. 51-53.

* At its meeting on July 14, 2008 the School Committee resolved to accept Ms. Campbell's retirement; the Committee did not provide Ms. Campbell with a hearing on the issue of her non-renewal. Joint Statement of Undisputed Facts. Ms. Campbell and her attorneys were notified after the Executive Session held at the beginning of the meeting that the agenda the School Committee would be entertaining that evening would be such that the Committee would act on Ms. Campbell's retirement first and there would be no hearing taking place on her non-renewal. Stipulation, Tr. p.110; S.C.Ex.1.

* Superintendent Scherza wrote to Ms. Campbell on July 15, 2008 notifying her of the School Committee's acceptance of her retirement, effective June 30, 2008 and thanking her for her service to the Cranston Public Schools. Joint Ex. N.

* On July 17, 2008 counsel for the School Committee wrote to Ms. Campbell's attorney to confirm that as a result of the Committee's acceptance of Ms. Campbell's letter of retirement, it would not be offering her a hearing on her non-renewal.

Positions of the Parties

It is Ms. Campbell's position that once the Cranston School Committee voted not to renew her contract at its May 19, 2008 meeting, she had an irrevocable right to be heard on that issue and to make the case that her nonrenewal due to funding shortages was shortsighted. In light of the fact that her grant writing activities produced revenue of over two million dollars to the

district in 2007-2008 alone, and it is conceded by the district that her performance was in all respects exemplary, the School Committee clearly should not have accepted the Superintendent's recommendation that her position be the one to be eliminated.

Although she became eligible for more advantageous medical benefits by retiring by June 30, 2008, she did not want to retire at that time and hoped to have convinced the School Committee to extend her employment by at least six additional months, at which time she would have accumulated an optimal thirty-two (32) years of service in the retirement system. Because her hearing was not scheduled in a timely fashion, and due to the manipulation of the Committee's agenda on the night her hearing was scheduled, she never had the opportunity to make the case for renewal of her contract. If she had been successful in renewing her contract, Ms. Campbell asserts that she would not have retired on June 30, 2008.

Counsel for Ms. Campbell makes the argument that her entitlement to a hearing was triggered by the **notice** received of her impending non-renewal following the School Committee meeting of May 19, 2008. Her subsequent retirement neither waived nor cancelled her right to a hearing and, counsel notes, the School Committee has not argued that she waived her right to a hearing. Counsel submits that even if, under some circumstances, an administrator's retirement could nullify a prior request for a non-renewal hearing, it should not have such effect in this case. In Ms. Campbell's situation, it is argued that the School Committee delayed her hearing, coerced her retirement and manipulated the schedule of the July 14, 2008 meeting to vote to accept her retirement before her scheduled hearing. Because of these unusual circumstances, neither her retirement nor the fact that the School Committee ultimately took no final action on her non-renewal should have deprived Ms. Campbell of her right to be heard.

Ms. Campbell's right to be heard was an entitlement arising under both R.I.G.L. 16-12.1-3 and the group contract governing the terms of employment of the Cranston Association of School Administrators. (Paragraph I Section III, entitled "Dismissal"). Thus, the Committee breached its contract and violated the statute by not providing Ms. Campbell with the hearing she had requested. The hearing is required not just when non-renewal is performance-based, but also when, as in this case, the administrator wishes to demonstrate that the decision failed to take into account the loss of funding from grants generated by her activities.

Even assuming, arguendo, that Ms. Campbell's letter of retirement could be construed to have an impact on her right to a non-renewal hearing⁶, her June 29, 2008 letter of retirement was conditional and subject to rescission. If the School Committee had not "manipulated" the agenda of its July 14, 2008 meeting, Ms. Campbell would have had the opportunity to withdraw or rescind her letter of retirement if she had prevailed at her hearing. Ms. Campbell and her attorneys were fully prepared to present her case for renewal at a hearing they fully expected to precede any action on her retirement. Because the School Committee chose to act on her retirement first, she was effectively prevented from exercising the option to rescind or withdraw her retirement letter after making her arguments as to why she should remain employed. She argues that she would not have retired on June 30, 2008 if the School Committee had been persuaded to renew her contract.

Finally, the Appellant argues that her retirement was involuntary and was the product of duress and misinformation provided by the district. She argues that, like the employee in the case of Commissioner of the Metropolitan District Commission v. Civil Service Commission et al.⁷ she should not be precluded from challenging her layoff after her retirement because she experienced the same financial duress brought upon her by the non-renewal notice and was similarly unaware that her retirement letter could have consequences on her right to be heard by the School Committee. Even after the Cranston School Committee had her retirement letter in hand, it gave her no indication that her right to a hearing was in jeopardy. Counsel suggests that the Committee took advantage of the impending financial hardship confronting Ms. Campbell and deprived her of her right to a hearing on the basis of what was clearly an involuntary retirement. For this reason, the School Department should be held liable for violating R.I.G.L. 16-12.1-1 et seq and for breaching Ms. Campbell's employment contract.

The School Committee

The position of the School Committee is that once Jean Campbell submitted her letter of retirement and the School Committee voted to accept it, the issue of non-renewal was rendered moot. The School Committee did not take any final action to non-renew Ms. Campbell at any point in time. Implicitly, the Committee argues that Ms. Campbell's submission of a letter of retirement, effective June 30, 2008 obviated any requirement that it determine whether her impending non-renewal was appropriate. Counsel dismisses accusations that the School Committee "ran out the clock" forcing her to retire before she could have the benefit of a hearing on her proposed non-renewal. Counsel notes that when it received notice of Ms. Campbell's medical procedure and notes from her doctor indicating that she would be out of work and unable to return prior to July 7,

⁶ Counsel for Ms. Campbell notes that the School Committee has not argued that she waived her right to a non-renewal hearing by submitting her letter of retirement.

⁷ 25 Mass.App.Ct.573, 521 N.E.2d 401 (1988)

2008, it reasonably assumed that her hearing should be deferred until she was no longer incapacitated. There was no intent to delay her hearing. Counsel submits that at no time did Ms. Campbell or her attorneys request that the hearing be held before June 30, 2008 and at no time did they register an objection to the scheduled date of July 14, 2008. Neither Ms. Campbell, nor her attorneys, requested that the School Committee hold off on acting on her retirement until after her non-renewal hearing.

The School Committee submits that Ms. Campbell's retirement was for personal reasons and designed to take advantage of more favorable medical benefits available to her under the expiring administrators' contract. She was not forced to retire when she did by the School Department-her decision was entirely voluntary. Furthermore, if the School Committee had taken final action on Ms. Campbell's non-renewal, it would have confirmed a fiscal situation which necessitated the central office staffing cuts that prompted Superintendent Scherza's recommendation to non-renew her contract. Implicit is the argument that if Ms. Campbell had received a hearing on her non-renewal, the Committee's decision would have been consistent with its initial vote and she therefore was not prejudiced by the failure to accord her a hearing.

DECISION

Despite the valiant efforts of counsel for the Appellant to demonstrate otherwise, Jean Campbell's retirement on June 30, 2008 rendered moot the issue of whether the non-renewal of her contract should be approved by the School Committee. The facts here support a conclusion that once she submitted her letter of retirement to the Committee with the request that paperwork be completed and forwarded to the State Retirement Board "as soon as feasible" the controversy that had arisen with respect to her proposed non-renewal was not one in which she had an ongoing personal stake.⁸ The opportunity to present the members of the Cranston School Committee with all of the reasons her contract should be renewed was no longer purposeful in the sense that it would not affect final action the Committee might take with respect to her ongoing employment within the district. Absent a personal stake in the outcome of a controversy with respect to her non-renewal, the matter scheduled for hearing on July 14, 2008 had become moot and the School Committee was under no obligation to provide Ms. Campbell with a hearing. In our view, the obligation to provide a hearing to administrators under R.I.G.L. 16-12.1-1 et seq. does not exist separate and apart from the prospect of "final action dismissing or not renewing the employment of an administrator." Since Ms. Campbell had indicated not only an intention to retire, but in fact notified school officials of her decision to retire effective June 30, 2008, there was no longer a justiciable controversy with respect to her

⁸ See *Sullivan v. Chafee*, 703 A. 2d 748 (R.I. 1997); *State, Dept. v. Correctional Officers*, 866 A.2d 1241 (R.I. 2005)

proposed non-renewal. Any issues Ms. Campbell sought to address with respect to her non-renewal were moot because Ms. Campbell decided to retire and so notified the School Committee on June 30, 2008. Her retirement was fully effectuated, from a technical standpoint, when the School Committee accepted her retirement by formal resolution at its July 14, 2008 meeting.

Although the Appellant has attempted to make the case that her retirement was to take place only if she were not successful in persuading the School Committee that her contract should be renewed, this contention is not supported by the facts in the record. Other than her testimony of March 3, 2009, there is no evidence that Ms. Campbell made her retirement on June 30, 2008 conditional or subject to any contingency. A review of her letter would indicate that her final decision had been made. She requested that her employer submit the appropriate paperwork to the Rhode Island Retirement Board “as soon as feasible”. She made no request to hold the required paperwork in abeyance until the outcome of her hearing on July 14, 2008. In fact her letter makes no mention at all of her previously-scheduled non-renewal hearing. The record does not indicate that there were any communications from Ms. Campbell or her attorneys to school officials on the subject of retirement⁹ between the time of the submission of her retirement letter on June 30, 2008 and the night scheduled for her non-renewal hearing. There is no evidence that Ms. Campbell sought to clarify her previous communication in any way or that she requested the School Committee to structure the agenda so that her non-renewal hearing would be taken up first, so that if she were successful at the hearing, she could then withdraw her retirement letter and rescind her retirement.

Evidence of what transpired on the night of the School Committee’s meeting of July 14, 2008 also confirms that Ms. Campbell’s decision to retire was final and unconditional. The facts do not indicate that she sought to make the Committee aware of a conditional nature of her retirement when the Committee came out of Executive Session that night and she and her attorneys were informed that the agenda would be such that the resolution to approve her retirement would be acted on first and that she would not be provided a non-renewal hearing. There is no evidence that after learning she would not receive a non-renewal hearing, Ms. Campbell alerted school officials that they had misconstrued her intent and that she had sent a retirement letter only in the event of a contingency, i.e. if the School Committee’s final decision on her non-renewal was not in her favor.

Although Ms. Campbell now seeks redress of the alleged violation of her right to a non-renewal hearing before the Commissioner, the nature of her requested remedy supports the conclusion that ever since July 29, 2008 when

⁹ Ms. Campbell did submit a doctor’s note on June 30, 2008 indicating that she would be able to return to work as of July 7, 2008 (Joint Ex.M)

she penned her retirement letter, the issue of her non-renewal has been moot. She has made it clear during these proceedings that she does not seek to undo her retirement from the Cranston School Department. She also does not seek an order directing the School Committee to hear her out. At this point Ms. Campbell does not wish to “make her case” before the School Committee to present the compelling arguments she feels would have convinced the Committee to preserve her position¹⁰. As we view it, the stake Ms. Campbell had in a justiciable controversy was ongoing employment, and she cannot seek damages for a procedural violation when she no longer seeks reinstatement and has not done so since June 30, 2008. Stated another way, we disagree with counsel’s position that Ms. Campbell’s reinstatement need not be “on the table” in order for her right to a hearing to exist, or for a remedy to be fashioned for its alleged violation. Without presenting a claim for reinstatement, Ms. Campbell’s non-renewal issues were and continue to be moot.¹¹

Ms. Campbell argues that the Commissioner should, in a second stage of these proceedings, fashion a remedy consisting of monetary damages (Tr. p.12). The argument is that if her letter of retirement is construed to abrogate her right to a non-renewal hearing, it should not have such effect because it was the product of duress and misinformation attributable to the School Committee. The facts do not support this argument. While there were time constraints on her decision to retire imposed by the June 30, 2008 expiration of the group contract and its more advantageous retirement provisions, there is no evidence that district officials delayed the hearing date to take advantage of this. Rather, it would appear that school officials tried to schedule the hearing to accommodate the anticipated period of Ms. Campbell’s recovery from a medical procedure. If she had requested and been refused an expedited hearing, or requested that her non renewal hearing take place in advance of any action on her retirement letter, our findings in this regard might be different. There is no evidence of duress caused by any action of the Cranston School Committee, or its representatives. The compulsion to retire on or before June 30, 2008 stemmed from the

¹⁰ Another issue Ms. Campbell wanted to present was evidence regarding a disagreement she had with Superintendent Scherza regarding his lack of support for her attendance at a principals’ conference at Harvard University in April, just about the time his recommendation with respect to her contract shifted from recommending a three-year contract to proposing her non-renewal. Tr. pp. 11-12.

¹¹ See the discussion of mootness as it related to a correctional officers’ union member’s grievance after he had left his employment with the state at pp.1246-1247 of State of Rhode Island Department of Corrections v. Rhode Island Brotherhood of Correctional Officers, 866 R.I. A2d 1241 (R.I. 2005). The case cited by the Appellant in her brief, Commissioner of the Metropolitan District Commission v. Civil Service Commission, 521 N.E. 2d 401 (Mass. App.Ct. 1988) is also instructive on the mootness issue. The employee in that case (Mr. Vafides) consistently sought his reinstatement to his position as he appealed his layoff, even though, as the Court noted in footnote 5 Mr. Vafides’ had retired and would probably follow his reinstatement with a second retirement.

expiration of the School Administrators' contract (Joint Ex. J) and the fact that medical benefit co-payment was anticipated to rise under the terms of individual contracts to be negotiated for the subsequent year.

Ms. Campbell also asserts that once she had submitted her letter of retirement, she had no reason to suspect that it would affect the hearing that had been scheduled on her non-renewal. She submits that the School Committee provided her with no warning or notice - no information at all - in this regard¹², so she appeared on the night of July 14, 2008 fully prepared to plead her case. While it is unfortunate that the parties did not discuss in advance of that night the effect Ms. Campbell's retirement letter might have on the hearing that had previously been scheduled, it was reasonable for the School Committee to conclude that evening that Ms. Campbell's retirement obviated the need for a hearing on her non-renewal. Based on this record we do not conclude that the Committee "manipulated" its agenda in order to accept Ms. Campbell's retirement and deny her right to a hearing. It did act on her retirement first so as not to consume School Committee members, and utilize public resources, to hear a controversy that had become moot.

If the Committee had utilized duress, misinformation and manipulation to secure her retirement and it truly was involuntary, Ms. Campbell would now be asking the Commissioner to rescind her retirement and allow her opportunity to prove that her contract should have been renewed. We find the fact that Ms. Campbell does not seek reinstatement to be indicative that her retirement was a voluntary and final decision she made on June 30, 2008 that made the issue of non-renewal of her contract moot. For the foregoing reasons, we find that the School Committee was under no obligation to provide her with a non-renewal hearing on July 14, 2008. Her appeal is denied and dismissed.

Kathleen S. Murray

APPROVED:

Deborah A. Gist, Commissioner

Date

¹² The basis of any obligation of the School Committee to advise Ms. Campbell on the legal effect of her retirement letter is unclear.