

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

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M. KATHERINE O'NEILL

V.

WARWICK SCHOOL COMMITTEE  
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**Decision**

Held: Request under Title 16 is barred because  
Petitioner elected to use her contractual remedy to  
challenge her termination from employment.

Date: February 09, 2010

## **Introduction**

This matter concerns the termination of a tenured teacher.<sup>1</sup>

## **Background**

On August 21, 2008, the Warwick School Committee voted to terminate the employment of Petitioner M. Katherine O'Neill, a tenured teacher. On August 25, 2008, the Warwick Teachers Union filed a grievance stating that "[t]he Union alleges that the School Committee has violated the contract by reason of the fact that it has terminated Mrs. O'Neill from her teaching position without just cause." [Joint Exhibit 3]. The grievance was marked as "No. 496." [Ibid.].

After requesting that certain grievance steps be waived, the Union notified the superintendent of schools on September 17, 2008 that "[t]he Union Executive Board has voted to proceed to arbitration on a grievance concerning the fact that the School Committee has violated the contract by reason of the fact that it has terminated Ms. O'Neill from her teaching position without just cause." [Joint Exhibit 8]. The Union's letter, again marked as "Grievance No. 496," concluded with the statement that "[w]e shall contact the American Arbitration Association regarding administration." [Ibid.].

In a letter dated September 23, 2008, the American Arbitration Association notified the Teachers Union and the School Department that "[t]he Union filed with this office on September 22, 2008 a Demand for Arbitration of a controversy arising out of a Collective Bargaining Agreement" between the parties. [Joint Exhibit 10]. The letter referred to "Grievance #496: Mary Katherine O'Neill/Termination." [Ibid.].

On October 29, 2009, counsel for the Teachers Union wrote to counsel for the School Department and requested that a School Committee hearing be scheduled for Petitioner and that clarification of the statement of cause for her termination be provided. On November 10, 2008, the American Arbitration Association notified the Teachers Union and the School Department that Grievance 496 was to be heard on June 3, 2009. On November 13, 2008, the Teachers Union notified the School Department that Petitioner "has elected to waive a termination hearing before the Warwick School Committee and will proceed directly to arbitration." [Joint Exhibit 13]. By letter dated December 8, 2008, the Teachers Union informed the School Department

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<sup>1</sup> A request for hearing was filed on July 23, 2009. The School Committee filed a motion to dismiss on August 20, 2009. Petitioner filed a response to the motion on August 24, 2009. The parties subsequently agreed to a stipulated record.

that Petitioner had not waived a termination hearing before the School Committee and asked that the November 13th letter be disregarded.

On February 6, 2009, counsel for the School Department wrote to counsel for the Teachers Union and stated that Petitioner was not entitled to a hearing before the School Committee because she had elected her remedy by pursuing arbitration under the collective-bargaining agreement. An arbitration hearing took place on June 3, 2009, and further hearing dates were scheduled. On July 23, 2009, Petitioner requested a hearing before the Commissioner.

### **Positions of the Parties**

In support of its motion to dismiss, the School Committee cites Martone v. Johnston School Committee<sup>2</sup> and argues that Petitioner is barred from pursuing this action because she has elected arbitration as her exclusive remedy.

Petitioner contends that she never elected arbitration. Instead, arbitration was “thrust upon her” despite her request for a hearing before the School Committee pursuant to Rhode Island General Law 16-13-4. According to Petitioner, the School Department ignored Petitioner’s request and *sua sponte* scheduled arbitration.

### **Discussion**

The Martone case concerned a teacher who claimed he had been suspended by the superintendent and was seeking a hearing before the school committee pursuant to the “suspension for cause” statute, i.e., Rhode Island General Law 16-13-5. In its decision, the Rhode Island Supreme Court stated as follows:

On August 31, 2001, Martone filed a grievance pursuant to the [collective bargaining agreement]. Thereafter, on November 27, 2001, he petitioned the Superior Court for a writ of mandamus demanding that the committee provide him a hearing pursuant to §16-13-5 [footnote omitted]. By initially electing to use the grievance process to challenge the sanction that the committee imposed against him, Martone ‘had selected the remedy to adjudicate [his] claim, and [he] should have pursued that remedy to its conclusion.’ State Department of Environmental Management v. State Labor Relations Board, 799 A.2d at 278 (quoting Cipolla v. Rhode Island College Board of Governors for Higher Education, 742 A.2d at 282).

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<sup>2</sup> 824 A.2d 426 (2003).

Accordingly, pursuant to the election of remedies doctrine, Martone is not entitled to a §16-13-5 hearing.<sup>3</sup>

The School Committee took its action in this case on August 21, 2008. Petitioner's collective-bargaining representative, the Warwick Teachers Union, filed a grievance on her behalf on August 25, 2008. The Teachers Union represents Petitioner and her fellow bargaining-unit members before the School Committee with regard to their terms and conditions of employment. To our knowledge, labor organizations, not employers, are authorized to file grievances under collective-bargaining agreements. Consistent with this belief, the evidence in this case shows that the August 25, 2008 grievance was filed by Petitioner's labor representative, not her employer. It further shows that the Teachers Union, not the School Department, filed for arbitration. The School Department did not initially select Petitioner's remedy in this matter nor did it schedule the arbitration hearing. The June 3, 2009 arbitration hearing was scheduled by the American Arbitration Association after the Teachers Union filed a September 22, 2008 demand for arbitration. Under Martone, Petitioner was bound to pursue the grievance and arbitration remedy that was initially engaged by her agent to challenge her termination. Having elected her remedy in August and September 2008, Petitioner was not entitled to the statutory remedy she attempted to invoke in October and November 2008. Accordingly, we grant the Motion to Dismiss.

### **Conclusion**

The request for hearing is barred because Petitioner elected her contractual remedy.

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Paul E. Pontarelli  
Hearing Officer

Approved:

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Deborah A. Gist  
Commissioner of Education

Date: February 09, 2010

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<sup>3</sup> 824 A.2d at 430.