

State of Rhode Island  
And  
Providence Plantations

Commissioner of Education

David J. Alba

v.

Cranston School Committee

### **DECISION**

Held: The Appellant has not proven that his non-renewal as a principal was invalid or that his rights under the School Administrators' Rights Act (R.I.G.L. 16-12.1-1 et seq.) were violated by the Cranston School Committee.

DATE: August 3, 2010

## **Travel of the Case:**

On August 5, 2009 an appeal was filed with Commissioner Deborah A. Gist regarding David J. Alba's non-renewal as principal of the Glen Hills School in Cranston. A letter of acknowledgment and a request for agreed-upon hearing dates was sent on August 25, 2009 by the undersigned, designated on August 18, 2009 to hear this appeal. At the request of the parties, a pre-hearing conference was held on October 27, 2009. At this conference, counsel agreed to submit this appeal on an Agreed Statement of Facts followed by memoranda on the legal issues raised before the Commissioner. The Agreed Statement of Facts was submitted on December 4, 2009 and memoranda prepared by counsel followed on January 5, 2010 and February 17, 2010 at which time the record was closed.

Jurisdiction to adjudicate this dispute arises under R.I.G.L. 16-39-2 and 16-12.1-6.

## **Findings of Relevant Facts:**

The Agreed Statement of Facts dated December 1, 2009 is hereby incorporated as the Findings of Relevant Facts and is attached hereto as Exhibit "A." The record in this case also consists of Exhibits A-X<sup>1</sup> (there was no Exhibit W) submitted by the parties as an attachment to the Agreed Statement of Facts.

## **Positions of the Parties:**

### **Appellant David J. Alba:**

Counsel for the Appellant advances several arguments to substantiate his claim that his non-renewal by the Cranston School Committee was invalid. It is alleged that serious procedural flaws invalidate the Committee's decision that Mr. Alba would not be reemployed as a principal in the Cranston school system during 2009-2010. His counsel submits that Mr. Alba had given two years of exemplary service as an elementary principal at the Glenn Hills School. Superintendent Richard Scherza gave Mr. Alba a positive evaluation in March of 2009 and recommended to the School Committee that his contract be renewed for one year. Despite Mr. Alba's solid performance, favorable evaluation, and the recommendation of the chief administrator of the district, the School Committee nonetheless voted down the Superintendent's recommendation on his renewal on April 20, 2009. Then, in violation of statutory provisions that restrict the Committee's role to policy-setting and require delegation of administrative decisions to the Superintendent, the School Committee proceeded to notify Mr. Alba on May 8, 2009 that it had "non-renewed his contract" because "there are more qualified individuals available to better meet the needs of the District." In fact, no such vote had been taken by the Committee at all, but rather the 6-1 vote had been to reject the Superintendent's recommendation of a one-year renewal of Mr. Alba's contract. Since the School Committee had not actually voted to non-renew Mr. Alba as a principal in the district at its April 20, 2009 meeting, the formulation and communication to him of a "reason" for such action on that date was similarly ultra vires and invalid. At no time did the Superintendent communicate a position that individuals better qualified than Mr. Alba were available for his position. The record of that meeting

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<sup>1</sup> The hearing officer wrote to counsel to request a complete Exhibit A (Administrator's Contract) and a more legible copy of Exhibit H (Mr. Alba's Evaluation by Superintendent Scherza in March of 2009) on June 24, 2010.

is devoid of any discussion or vote on a reason for any decision that Mr. Alba's employment in the district would be coming to an end.

If the Committee's April 20, 2009 vote to reject Mr. Scherza's recommendation for a one-year renewal of Mr. Alba's contract is viewed as a vote to non-renew his employment, then this situation clearly compromises Mr. Alba's due process rights. Mr. Alba's property rights in continued employment as an administrator in Cranston would require a "modicum of due process" including notice of the intended action, a reason, and at least a brief opportunity for Mr. Alba to be heard. No such pre-deprivation due process was provided to him. If non-renewal was effectuated by the Committee's vote on April 20, 2009, such action also fails to conform to the specific procedural requirements of the "Administrators' Bill of Rights" (R.I.G.L. 16-12.1-1 et seq.). The only notice Mr. Alba had received prior to April 20, 2009 was that a discussion of a one-year renewal of his contract was to take place and that the members of the School Committee would be taking up the recommendation of Superintendent Scherza.

Adding to these substantive and procedural deficiencies in the action purportedly taken by the Cranston School Committee was what transpired after the fact (post-April 20, 2009). Mr. Alba was notified on May 8, 2009 that "prior to the School Committee taking a final action of not renewing your contract" he would receive a prompt hearing if he so desired. Furthermore, the chair of the Committee had unilaterally, and without any authorization, determined that the reason would be that "more qualified individuals" were available for his position. Such a reason was an arbitrary attempt by the chairman of the Committee to "fill in the blank" of what a reason could be. If the School Committee can validly act to non-renew an administrator without a recommendation from the Superintendent (and it is argued that it could not) then it certainly must vote to determine what the reason for such action will be. It did not do so in Mr. Alba's case, to his great detriment.<sup>2</sup>

When the Cranston School Committee finally provided Mr. Alba with a "hearing" on June 30, 2009 there was no prior disclosure of what specific shortcomings or performance deficiencies the Committee had found to be at issue. Despite repeated requests of his attorney for "pre-hearing discovery" which Mr. Alba's attorney sought in order to prepare his case, the hearing was convened without providing Mr. Alba with this necessary information. Mr. Alba's counsel had reason to think that there was some specific information with respect to deficiencies and/or complaints on which the members of the School Committee relied, and would continue to rely, because one member of the Committee had stated during public session that it was his belief Mr. Alba was not "prepared or equipped" for the job of principal based on "a great deal of information" presented to him. This "information" (that had obviously been shared with the other members of the School Committee) could have been false or unjustified, but unless it was conveyed to Mr. Alba's attorney, it was impossible to refute.

The "hearing" that was provided to David Alba became meaningless. Add to this unfairness the fact that one member of the Committee had already formed and publicly expressed his opinion that Mr. Alba lacked the qualifications to be a principal (not just that there were better qualified individuals available for his position) and the record clearly demonstrates that Mr. Alba's rights to a fair hearing were violated. Bias and arbitrary treatment are also evidenced by the fact that another

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<sup>2</sup> The burden of proof of an administrator/teacher whose employment is non-renewed because of a desire or good faith belief that more qualified administrators are available is quite difficult, given the precedent in such cases.

elementary principal whose non-renewal was being considered was nonetheless renewed because there had not been sufficient documentation of what the specific issues were with her performance and she had not been provided with an “improvement plan.” Without explanation, Mr. Alba has been singled out for differential treatment, or stated another way, subjected to arbitrary and capricious decision making on the part of the Cranston School Committee.

In anticipation of the argument by the district’s attorney that the Superior Court’s order of September 1, 2009 (denying Mr. Alba’s Motion for Preliminary Injunction) is entitled to preclusive effect in these proceedings, this is not the case, counsel asserts. No final judgment was entered in the Superior Court and therefore the doctrines of *res judicata* and collateral estoppel do not apply. By its own terms, the Order entered by the Court on September 1<sup>st</sup> was “self-limiting,” in that the judge’s findings were declared binding only for purposes of the Motion for provisional relief that Mr. Alba had requested at that time. Thus, although the Court may have found that Mr. Alba was not entitled to preliminary relief, the matter is now properly before the Commissioner and the Appellant has demonstrated ample grounds on which the School Committee’s decision should be overturned, he should be reinstated and provided with lost wages and other benefits he has been improperly denied.

### **Cranston School Committee**

The Cranston School Committee had the requisite authority to non-renew Mr. Alba’s employment as a principal in the school district. The statutory authority of the Committee to act here, even in the absence of a recommendation from the Superintendent, was confirmed in an advisory opinion from the Deputy Commissioner/General Counsel David Abbott dated December 8, 2008. In that letter, the Deputy Commissioner confirmed that with respect to initial appointments and reappointments of personnel, school committees were constrained by school law to give or withhold their consent to appointments made by a superintendent. “With respect to other types of personnel decisions (e.g. terminations, suspension, non renewal(s) the nature of the School Committee’s involvement varies depending on such factors as the terms of the employee’s contract or whether the employee is covered by the teacher tenure act or the school administrators’ rights act.”

The contract Mr. Alba entered into with the Cranston School Committee contained a clause which clearly obviated the need for his non-renewal to be supported by a recommendation of the Superintendent. In fact, Article VII of the contract provided for the “automatic termination” of Mr. Alba in the event the School Committee did not vote to renew his contract on or before December 30, 2008. His “automatic termination” was not to become immediately effective on that date, however. Rather, in the absence of a vote to renew his contract, he would be “deemed non-renewed as of July 1, 2009.” This language is clear and unambiguous, and Mr. Alba voluntarily and freely agreed to be bound by these terms when he entered into this contract with the School Committee. His contract, according to the RIDE advisory, could determine whether non-renewal could be accomplished only on recommendation of the Superintendent. Mr. Alba agreed that it would not. Just as it is undisputed that Superintendent Scherza did not recommend Mr. Alba’s non-renewal at any time, it is also undisputed that there was no affirmative vote of the School Committee to renew Mr. Alba’s contract on or before December 30, 2008.

From a procedural perspective, Mr. Alba received all of the elements of due process required by case law<sup>3</sup> and by the Administrators' Bill of Rights. His non-renewal did not take effect until June 30, 2009. Prior to the end of his employment with the district (i.e. prior to any deprivation of salary and benefits), Mr. Alba was afforded not just a minimal hearing, but a full evidentiary hearing. This occurred on June 30, 2009. It was on that date, and not until after a full hearing, that the Cranston School Committee voted to take "final action" on Mr. Alba's non-renewal. A 3 to 1 majority of a quorum of the Committee approved a motion to non-renew Mr. Alba. Despite the contention otherwise, there is no evidence supporting a bias on the part of member Frank Lombardi. The facts are that he made a "single innocuous comment" regarding Mr. Alba at a prior meeting based on information that he had become aware of at that time. Mr. Lombardi cannot be expected to isolate himself from knowledge about a contested matter within the district. Most importantly, he clearly affirmed his open mind about the issues at the time Mr. Alba's hearing was convened on June 30, 2009.

This action was supported by testimony from two members of the administration<sup>4</sup> that other, more qualified individuals were available to fill the position of principal at the Glen Hills School. Mr. Alba chose not to participate in the evidentiary portion of the hearing<sup>5</sup> despite the fact that it presented him with the opportunity to present any and all information to convince the School Committee to offer him a new contract. If Mr. Alba and his counsel had remained for the evidentiary portion of the meeting on June 30, 2009, they could have cross-examined witnesses attesting to their concerns about Mr. Alba's failure to be proactive, his need for mentoring, his failure to secure the necessary textbooks, etc. If needed, counsel could have requested a continuance of the hearing to secure additional witnesses on behalf of Mr. Alba. Given that he did not avail himself of the advantages of the hearing such as it was provided, Mr. Alba's contention that pre-hearing discovery would have further assisted him is undermined.

Finally, the School Committee submits that the findings made by Judge Lanphear in a Superior Court proceeding are binding and are dispositive of the issues in this case. In an Order denying Mr. Alba's request for a preliminary injunction to maintain him in his principalship, Judge Lanphear made several findings. He found that Mr. Alba had a contract of a limited term, expiring on June 30, 2009 and that his contract provided him with minimal rights to ongoing employment. He further found that the Cranston School Committee acted properly in acknowledging the completion of Mr. Alba's contract in April of 2009. When Mr. Alba requested his rights under the statute (which had been incorporated into his contract), the Committee fully complied. The Court found that the Committee acted in conformity with requirements of the statute as well as with procedural and substantive due process requirements when it provided him with notice and a full hearing on June 30, 2009. Counsel for the School Committee submits that these findings are binding in this forum and should form the basis of the Commissioner's dismissal of this appeal.

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<sup>3</sup> The Appellant has contended that his right to a pre-deprivation hearing under Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985) was denied.

<sup>4</sup> One of whom, Peter Nero, was slated to assume the role of Superintendent on the following day. Superintendent Scherza also testified at the hearing and reaffirmed his position/recommendation that Mr. Alba should be signed to a one-year contract because in his second year as principal he had already improved and had demonstrated the capacity to be a good principal.

<sup>5</sup> His attorney did address the members of the School Committee at the outset, reasserting his request for "pre-hearing discovery" of the facts underlying the assertion that more qualified individuals were available for Mr. Alba's position.

## DECISION

The facts in this case present a situation in which a School Committee voted down its Superintendent's proposal to renew an elementary principal. A difference of opinion on the issue of renewal of an administrator's contract may not be unusual, but the effect in this case was to create some unusual issues under state education law. The Appellant's primary argument is that the School Committee was without authority to non-renew Mr. Alba's contract in the absence of a recommendation from the Superintendent. This argument is not persuasive. The applicable statutes (R.I.G.L. 16-2-9, 16-2-11 and 16-2-18) clearly give school committees the authority to give advice and consent to appointments of all school department personnel. The renewal or extension of an administrator's contract is essentially a reappointment of the individual employed.<sup>6</sup> Since under the statute the School Committee has the explicit authority to withhold its consent to such action, then by implication it must have the authority to take the necessary steps to effectuate its decision. In this case its decision to withhold consent to the reappointment/renewal of Mr. Alba required the Cranston School Committee to go through certain procedural steps required for an administrator's nonrenewal.

We find that the School Committee followed all legally-required procedures in effectuating its decision to reject Mr. Scherza's recommendation. According to the terms of the contract in place between Mr. Alba and the Cranston School Committee, he was "deemed" to have been non-renewed, effective June 30, 2009 when the School Committee voted on April 20, 2009<sup>7</sup> to reject the proposal that he receive a one-year renewal of his contract. Mr. Alba invoked the provisions of the Administrators' Bill of Rights, R.I.G.L. 16-12.1 et seq. Pursuant to this law, he was entitled to notice of the reason for his proposed nonrenewal and an opportunity to be heard prior to any "final action" by the School Committee. The Committee was presented with a problem: what was deemed to have already occurred (under the contract) was required to be fully and fairly considered by a quorum of the Committee before its "final action" (under the statute). The Committee also had the obligation to provide Mr. Alba with:

**A concise, clear, written statement, privately communicated,  
of the bases or reasons for the...nonrenewal (R.I.G.L. 16-12.1-3)**

The terms of the contract Mr. Alba signed on July 1, 2008 provided for his automatic nonrenewal based on the absence of affirmative action to renew or extend his contract. The Committee had ultimately voted to reject the proposal that he be renewed. The reason for the Appellant's nonrenewal was, technically speaking, the failure of the Committee to vote affirmatively on his renewal. Providing this reason to Mr. Alba would have conveyed no insight whatsoever as to the underlying reasons why Superintendent Scherza's proposal was rejected. What the chairman of the School Committee endeavored to provide to him was his conclusion as to the consensus reached by the members of the Committee during their discussions each time the proposal to renew Mr. Alba's contract was raised including at the time of their vote on April 20, 2009. The chairman,

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<sup>6</sup> See the opinion of Deputy Commissioner David V. Abbott dated December 8, 2008 that the lengthening of contract from one to three years would constitute an "appointment" of that employee for an additional period.

<sup>7</sup> Actually, without affirmative action to extend or renew his contract renewal by the date of December 30, 2008 Mr. Alba had already been "deemed non-renewed as of July 1, 2009" according to Paragraph VII of his contract ("Renewal").

Michael A. Traficante, inferred from the discussions of the members of the School Committee that they were of the opinion that more qualified individuals were available to better meet the needs of the district (see Exhibit L.). It was this reason that was provided in the formal notice sent to Mr. Alba by Chairman Traficante on May 8, 2009. We find the notice to be legally sufficient under the statute, although evidently it was constructed by inferences drawn by Chairman Traficante.

It is true, as counsel for the Appellant argues, that the Chairman was not specifically authorized by a vote of the School Committee to prepare the May 8, 2009 notice to Mr. Alba or authorized to identify the reason for Mr. Alba's nonrenewal. There is no evidence that the School Committee had formulated a collective reason for its "non-action." However, the members of the School Committee had received information on the level of Mr. Alba's performance over the two years he had been employed as a principal at the Glen Hills School<sup>8</sup>. This information included an informal assessment by Superintendent Richard Scherza at a meeting on December 15, 2008 at which time he commented that "they had been working with" Mr. Alba and "made a lot of interventions."<sup>9</sup> There is evidence that the members of the Committee engaged in a lengthy discussion of Mr. Alba's overall performance again during its executive session at the meeting of March 16, 2009<sup>10</sup> at which time Mr. Scherza reaffirmed his opinion that Mr. Alba was a "good educator." The evidence in this case supports the inference drawn by the chairman, and communicated to Mr. Alba, that the reason for his nonrenewal was that six of the seven members of the Committee had concluded that there were more qualified individuals available for his position. The Appellant has presented no evidence on this record that the reason provided in the May 8, 2009 notice was inaccurate.

The precedent established in the cases of Kagan v. Rhode Island Board of Regents for Elementary and Secondary Education, 1997 WL 1526517 (R.I. Super.) and the Commissioner's decision in Chrabaszcz v. Johnston School Committee (January 28, 2005) is that when the reason for non renewal<sup>11</sup> is the belief that a more qualified candidate is available, the burden of the employee in a subsequent hearing is quite difficult. The individual non-renewed must convince the Committee that there is not a more qualified individual available somewhere for the position. There is no burden on the School Committee to prove, or even identify, any underlying performance deficiencies. See Chrabaszcz at page 9. The conclusion that there are more qualified individuals available is presumed to have factual support and be otherwise valid.<sup>12</sup>

Mr. Alba's claim is that he was entitled to "specifics" before participating in the hearing held by the Committee on June 30, 2009. His attorney requested pre-hearing discovery of the specific concerns and incidents on which the Committee relied so that he could prepare evidence to rebut such

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<sup>8</sup> Although Superintendent Scherza had evaluated Mr. Alba in March of 2009, the record does not reflect that the results of his evaluation were ever presented to the members of the School Committee or that they relied on his formal evaluation in voting to reject the proposal to renew Mr. Alba's contract on April 20, 2009.

<sup>9</sup> Mr. Scherza nonetheless was recommending a one-year contract renewal for Mr. Alba at that meeting because he felt that Mr. Alba had the capacity to show more and that he should have additional opportunity to prove himself. Ex.C.

<sup>10</sup> Ex. F.

<sup>11</sup> of a teacher or administrator

<sup>12</sup> In Chrabaszcz, supra, neither the existence of extraordinary circumstances affecting the individual's performance nor the failure to assess his performance through a formal evaluation was found to undermine the validity of the School Committee's nonrenewal decision or render it arbitrary and capricious. In the case at hand, Mr. Alba was evaluated in March of 2009 but there is no evidence that the results of his evaluation played a role in the decision of the School Committee.

allegations. He further argues that he was ill-equipped to test the “good faith” belief that the Committee members allegedly had that a more qualified person could be secured for his position at the Glen Hills School. He contends that without being provided with this information, the June 30, 2009 hearing was fundamentally unfair and did not fulfill Mr. Alba’s right to due process. Although there is a great deal of logic to the Appellant’s arguments, binding precedent in Kagan and Chrabaszcz require their rejection. Under previous decisions with respect to the “better qualified” reason for nonrenewal, there was no obligation of the Committee to identify specific concerns, incidents, or complaints at the time of the hearing provided to Mr. Alba. His was the very difficult burden to prove that the Committee could not secure a more qualified person for his position. He did not do so.<sup>13</sup>

The record before the committee has been supplemented at this level with respect to Mr. Alba’s performance. The evaluation prepared in March of 2009 by Superintendent Scherza was included as Exhibit H<sup>14</sup> in the agreed-upon exhibits. This evaluation indicates that Mr. Alba was determined to be “Proficient” and “Adequate” in all areas in which he was evaluated. The highest rating he could have achieved on each standard was “Distinguished.” This confirms the assessment conveyed to the Committee by the Superintendent on March 16, 2009 that Mr. Alba was a good educator and is consistent with the opinion he expressed at that time that Mr. Alba had the potential to perform at an even higher level if given the opportunity.

For the foregoing reasons<sup>15</sup>, the appeal is denied and dismissed<sup>16</sup>.

For the Commissioner,

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Kathleen S. Murray

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Deborah A. Gist

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August 3, 2010  
Date

<sup>13</sup> Mr. Alba and his counsel left the June 30, 2009 hearing after he made several procedural arguments to the members of the Committee.  
<sup>14</sup> A legible copy of Ex.H was supplied at the request of the hearing officer on June 29, 2010.  
<sup>15</sup> There is no evidence that Mr. Lombardi’s previously-expressed opinion with respect to Mr. Alba’s qualifications disqualified him from participating in the June 30, 2009 hearing.  
<sup>16</sup> The findings of fact and conclusions of law of the Commissioner’s decision are substantially the same as those made in the Superior Court proceeding, but were not influenced thereby.