

STATE OF RHODE ISLAND  
AND  
PROVIDENCE PLANTATIONS

COMMISSIONER OF  
EDUCATION

Nancy Del Prato

v.

Cumberland School Committee

DECISION

Held: The Appellant was not notified by March 1, 2010 that she was being dismissed from her position as a tenured teacher in the Cumberland school department. Therefore, her dismissal could not legally become effective until the 2011-2012 school year, assuming that it is supported by good and just cause.

DATE: September 15, 2010

## **Travel of the Case**

On April 28, 2010 Nancy Del Prato's attorney filed an appeal on her behalf with Commissioner Deborah A. Gist. The matter was assigned for hearing and decision on May 10, 2010 at which time a letter of acknowledgement was sent with a request that the parties confer to select a hearing date. The parties notified the hearing officer of their availability on June 15, 2010 and the hearing proceeded on that date. There was no testimony taken at the hearing, but the parties stipulated to the relevant facts and to the authenticity of several exhibits that were entered on the record.

The transcript was received on June 24, 2010 and the record closed on July 13, 2010.

Jurisdiction to decide this dispute arises under R.I.G.L. 16-39-1 and 16-39-2. The parties have agreed that the issue of timeliness of the notice will be the subject of a preliminary ruling by the Commissioner, with the issue of whether or not there was "good and just cause" for Ms. Del Prato's dismissal to be deferred but not waived.<sup>1</sup>

## **ISSUE**

Under Rhode Island law, what is the effective date of the notice of dismissal (non-renewal) of Nancy Del Prato, a tenured teacher in the Cumberland School Department, who received said notice on March 3, 2010.

## **Findings of Relevant Facts:<sup>2</sup>**

- During the 2009-2010 school year, Nancy Del Prato was a tenured teacher in the employment of the Cumberland School Department. Tr. p. 6.
- On February 22, 2010 Superintendent Donna A. Morelle sent a written notice to Ms. Del Prato that she would be recommending "that her position not be renewed for the 2010-2011 school year" at a meeting of the School Committee scheduled for February 25, 2010. S.C. Ex. A. This notice was sent to Ms. Del Prato by certified mail and she received it on February 26, 2010, the day after the School Committee's meeting. App. Ex.3.
- On February 25, 2010 the Cumberland School Committee voted to non-renew Ms. Del Prato's contract, effective at the end of the 2009-2010 school year. App. Ex. 1.

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<sup>1</sup> See the discussion at pages 13-16 of the Transcript. See also Ms. Del Prato's letter of appeal dated April 26, 2010. The hearing officer assumes, based on the statements of counsel at the hearing that a preliminary ruling on the issue of timeliness of the notice and its effective date will be of assistance to the parties. It was inferred that the Cumberland School Committee had not yet heard Ms. Del Prato's appeal of her dismissal pursuant to R.I.G.L. 16-13-4, but would do so at a subsequent time.

<sup>2</sup> At the time of hearing, the parties stipulated to the relevant facts in this case.

- A written notice of the School Committee’s action was prepared by Superintendent Morelle on February 26, 2010, mailed to Ms. Del Prato on March 1, 2010 and received by Ms. Del Prato on March 3, 2010. Tr. pp. 11-13; Appellant’s Ex. 1 and 2.
- There were two reasons for the Cumberland School Committee’s action with respect to Ms. Del Prato’s employment, according to the notice she received. The first was her “ongoing performance<sup>3</sup>” and the second was “fiscal exigency<sup>4</sup>.” App. Ex. 1.

## **Positions of the Parties**

### **Appellant Nancy Del Prato**

The Appellant’s argument is that the facts in this matter are clear and not in dispute. The law on this issue is well-settled and the Commissioner is under an obligation to apply established precedent. Since it was not until March 3, 2010 that Ms. Del Prato received the notice informing her that her employment would not be renewed,<sup>5</sup> her non-renewal was not timely under the statute. The deadline set forth in R.I.G.L. 16-13-3 is explicit and unambiguous and requires that Rhode Island school committees give tenured teachers notice of an impending dismissal by March 1<sup>st</sup> if the dismissal is to be effectuated the following school year. Under the Commissioner’s decision in Quattrucci v. East Providence School Committee a notice of dismissal provided after the statutory deadline is not effective for the subsequent school year, but is effective for the following school year. The Quattrucci decision was upheld by the Board of Regents in a decision dated October 28, 2004. On appeal, the Rhode Island Superior Court upheld the Regents’ decision<sup>6</sup> and affirmed that although the dismissal could not be effective for the subsequent school year, it was effective for the following school year.

The Cumberland School Committee, in acting on the non-renewals of numerous teachers in its system prior to March 1<sup>st</sup>, was evidently aware that such actions were controlled by R.I.G.L. 16-13. Yet it ultimately failed to conform its behavior to the notice requirements, at least with respect to the Appellant Nancy Del Prato because she was not given notice prior to the statutory deadline of March 1<sup>st</sup>.

In anticipation of the argument that the applicable statute governing Ms. Del Prato’s dismissal is R.I.G.L. 16-12-6 (which has no deadline for teacher dismissals) rather than 16-13-3 (which imposes a March 1<sup>st</sup> deadline) counsel for the Appellant submits that these two statutes must be read

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<sup>3</sup> Superintendent Morelle stated with respect to Ms. Del Prato’s ongoing performance, “I feel that based upon this factor, there may be more qualified candidates available next year.” Appellant’s Ex. 1.

<sup>4</sup> The letter of February 26, 2010 indicated that because non-renewal notices were required to be given to teachers prior to March 1 (a date well in advance of final action on the school budget), that when the necessary information was available to determine the extent of fiscal exigencies it faced, the district could be in a position to rescind a substantial number of actions “necessitated by the statutory deadline ...” App. Ex. 1.

<sup>5</sup> The parties have agreed that in this case Ms. Del Prato’s “non-renewal” was intended as a dismissal, since she was a tenured teacher in the district and thus not employed pursuant to an annual contract subject to annual renewal. Under the statute, she was considered to be in continuous service. See R.I.G.L. 16-13-3.

<sup>6</sup> C.A. No. PC 04-6767, May 30, 2006.

in pari materia. In a recent case of teacher dismissal on the basis of misconduct<sup>7</sup>, the Commissioner was called upon to read the statutes in pari materia and ruled that R.I.G.L.16-12-6 applied only to those situations in which a teacher was being dismissed for misconduct reasons and that dismissal of a tenured teacher for performance reasons was governed by R.I.G.L. 16-13-3. Here, since Ms. Del Prato is being dismissed because of her “ongoing performance,” the applicable statute is R.I.G.L. 16-13-3 rather than 16-12-6. She also points out that 16-13-3 should control because another rule of statutory construction is that “the specific governs the general.” R.I.G.L. 16-13-3 is specific to the dismissal of tenured teachers, whereas 16-12-6 contains nothing more than a recitation of reasons for dismissal related to misconduct.

For these reasons, the Appellant contends that the notice of non-renewal (dismissal) which she received on March 3, 2010 is effective for the 2011-2012 school year and not the 2010-2011 school year (recognizing that the parties have agreed to reserve the issue of whether there was just cause for Ms. Del Prato’s dismissal).

### Cumberland School Committee

The brief of the Committee identifies the issue here as arising out of the notice provisions of R.I.G.L. 16-13-3 and 16-13-4 as it relates to teacher non-renewal. Although it is stipulated that Ms. Del Prato did not receive notice that the School Committee had acted to non-renew her employment on February 25, 2010 until March 3, 2010, it is the position of the Committee that the notice was sufficient and meets all statutory requirements. A second argument advanced on the Committee’s behalf is that regardless of the effective date of the notice, the Appellant has failed to make a timely written request for a hearing on the issue of her termination to the Cumberland School Committee. Implicit in this argument is that her failure to file a request for hearing with her employer bars her from proceeding to the Commissioner’s level to appeal the timeliness of her notice.

Counsel for the Cumberland School Committee submits that Ms. Del Prato was well aware of issues that caused her to be placed on administrative leave at the end of the 2008-2009 school year and caused the Committee to continue her on a leave with pay during 2009-2010. There were communications between the Appellant and her employer throughout this period of time in which the Committee sought an explanation for these issues and, since the information provided by Ms. Del Prato “was insufficient,” the School Committee determined that it would vote to terminate her employment on February 26, 2010.

The notice that was ultimately given to Ms. Del Prato on March 3, 2010 is timely, the Committee argues, because a special statute governs the dismissal of teachers in Cumberland (and Woonsocket). That statute, R.I.G.L. 16-12-6, as amended, delineates the process that is to be used in dismissing a teacher from these two communities and it does not require that notice of a teacher’s dismissal be provided by March 1<sup>st</sup> or any other date. The only time limitation expressed in the statute specific to Cumberland (and Woonsocket) is that the hearing, if one is requested, can be scheduled no sooner than thirty (30) days after a notice of the “charge or charges against him or her” has been received by the teacher.

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<sup>7</sup> McCrink v. Providence School Board, decision of the Commissioner dated October 20, 2009

Recent precedent confirming that March 1<sup>st</sup> is the controlling date for providing notice of a teacher's dismissal, including Quattrucci supra and Garcia et al v. Providence School Board<sup>8</sup> are not applicable to dismissals of teachers employed in Cumberland and Woonsocket. Dismissals of teachers in these two communities are controlled by R.I.G.L. 16-12-6 and not by the teacher tenure law.

In addition, counsel for the Committee cites cases in which the Superior and Supreme Courts in Rhode Island have found the date of mailing of a notice of appeal to be significant for purposes of commencing an appeal and points out that the mailing of Orders and Judgments, according to Rule 77 of the Superior Court Rules, is sufficient notice for all purposes. The Committee argues that a similar standard should be reasonable and sufficient under R.I.G.L. 16-13-3 (assuming, arguendo, that this statute is controlling). Since the Superintendent mailed the notice to Ms. Del Prato on March 1, 2010, this should constitute compliance with the statute. There is simply no reason why the date of March 1<sup>st</sup> should be rigidly adhered to, especially in situations when the teacher is already aware of the reasons for the Superintendent's proposal and that her dismissal is contemplated.

For the foregoing reasons, the School Committee asks that Ms. Del Prato's appeal be dismissed.

### **DECISION**

Despite the valiant attempts of counsel for the School Committee to distinguish Ms. Del Prato's dismissal, and Cumberland's entire process, from the strictures of the teacher tenure law, we find that R.I.G.L. 16-13-3 is applicable to the dismissal of a tenured teacher from employment in Cumberland. Although R.I.G.L. 16-12-6 cited to be controlling by the School Committee<sup>9</sup> does not contain a deadline for notice to be provided to teachers dismissed by school committees in Cumberland and Woonsocket, this statute must be read in pari materia with the teacher tenure act. We do not agree, however, with the argument of counsel for the Appellant that R.I.G.L. 16-12-6<sup>10</sup> applies only to dismissals based on misconduct and that R.I.G.L. 16-13-3 controls the dismissal of teachers for performance reasons.<sup>11</sup> It is not that clear. There appears to be some overlap in the three sections. The discussion of teacher dismissals in Chapter 12 is, we find, somewhat unclear. In McCrink, the task was to construe the two applicable sections of the law and to read them in pari materia. The Commissioner determined that when a tenured teacher is dismissed for misconduct that arises after March 1<sup>st</sup> the notice deadline of Section 16-13-3 was not applicable. Such an

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<sup>8</sup> Decision of the Commissioner dated July 2, 2007; affirmed by the Board of Regents on September 3, 2008.

<sup>9</sup> The discussion regarding "Special rules as to Woonsocket and Cumberland" was actually placed in a separate section, 16-12-6.1 when the General Assembly enacted Chapter 317 of the Public Laws of 2009 on November 13, 2009. Section 16-12-6 now reads "Dismissal of Teachers.—The school committee of any town may, on reasonable notice and hearing, dismiss any teacher for refusal to conform to the regulations made by the committee, or for other just cause."

<sup>10</sup> And implicitly now also 16-12-6.1.

<sup>11</sup> We would note that the grounds for dismissal stated in the current version of 16-12-6 ("Dismissal of Teachers") are "refusal to conform to the regulations made by the committee, or for other just cause" and the grounds recited in 16-12-6.1("Special rules as to Woonsocket and Cumberland") are "violation of law, flagrant or persistent violation of the rules and regulations legally prescribed by the school committee, inefficiency, incapacity, insubordination, conduct unbecoming a teacher, or other just cause."

interpretation avoided the absurd result of continuing the employment of a teacher guilty of misconduct which justified his or her immediate termination simply because of serendipitous timing.

In this case, the Appellant's dismissal is stated to be based on her "ongoing performance" and "fiscal exigency." The district concedes that it was aware of issues with Ms. Del Prato's performance well before March 1, 2010. With respect to fiscal exigency, the Superintendent's notice of February 26, 2010 (Appellant's Ex.1) confirms that it is precisely because of the applicability of a statutory March 1<sup>st</sup> deadline that notices were being sent to all teachers whose positions might be affected by budget cuts. In construing the applicable statutes in pari materia and applying them to the facts of this case, we find that the March 1<sup>st</sup> statutory deadline was applicable and that the notice sent to Ms. Del Prato did not comply with this provision of the law.

Counsel for the Committee has presented additional arguments that the mailing of the notice is the operative act for compliance purposes or, in the alternative, that Ms. Del Prato's receipt of written notice of her dismissal on March 3, 2010 was sufficient. However, as the Appellant notes in her brief, the requirements of actual receipt by the affected teacher and strict adherence to the March 1<sup>st</sup> deadline are well established in precedent at the Commissioner's level and beyond.<sup>12</sup> The legal effect of notice received after March 1<sup>st</sup>, as affirmed by both the Board of Regents and the Superior Court in the Quattrucci case, is to make such action effective in the following school year. Therefore, Ms. Del Prato's dismissal, if supported by good and just cause, will be effective at the start of the 2011-2012 school year.<sup>13</sup>

For the foregoing reasons, her appeal is granted as to this preliminary issue of notice, and this matter is remanded to the Cumberland School Committee.

For the Commissioner,

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Kathleen S. Murray

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Deborah A. Gist

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September 15, 2010  
Date

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<sup>12</sup> See also Akturk v. Department of Children, Youth, and Families, September 25, 1996 decision of the Commissioner; Appeal of Narragansett Teacher Non-Renewal, decision of the Commissioner dated August 24, 1993; Rapp, Education Law § 6.15 (4)(b).

<sup>13</sup> The Committee's additional argument that Ms. Del Prato failed to file an appeal with the School Committee in a timely manner cannot be responded to because there are insufficient facts in the record with respect to this assertion. At the time of hearing the parties stipulated to all relevant facts and narrowed the issue before the Commissioner to the legal effectiveness of Ms. Del Prato's notice of dismissal.