0008-11

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

HOWARD UNION OF TEACHERS

V.

DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES

DECISION

Held: Only two of eight Appellants have proven that DCYF violated the provisions of the Teacher Tenure Act and RIGL 16-7-29 when they were employed to teach at the Rhode Island Training School in the capacity of per diem substitute teachers. DCYF is ordered to pay additional compensation to Appellants Maraziti and Martin as calculated by the parties in Appellants' Ex.9. Because the positions they filled either no longer exist or are no longer vacant, the additional remedy they seek, i.e. retroactive appointment to these positions, is not appropriate.

DATE: May 26, 2011

Travel of the Case

On February 28, 2008 the Howard Union of Teachers, the collective bargaining agent for the teachers' union at the Rhode Island Training School ("RITS"), filed a request for hearing with the Commissioner. After an initial hearing on May 7, 2008, it was determined that the union would file an amended appeal to identify the teachers that it claimed had been improperly employed as substitutes at the RITS. An amended letter of appeal was filed on May 23, 2008 that identified the following appellants: Diana Martufi; Kelley Tinaro; Justin Jackvony; Ronald Martin; Julia Nelson; Michael Panzarella; Raymond Mountain; and Julie Maraziti. Thereafter, the parties exchanged information on the exact nature of the claims and the remedies sought by each teacher and attempted to reach an agreed-upon settlement of these claims. After numerous attempts at settlement, the parties notified the hearing officer that a hearing would be necessary.

This matter was heard on March 4 and June 10, 2010, and then on January 19, 2011. The record in this matter closed on February 3, 2011 when the transcript of the last hearing was received.

Jurisdiction over this appeal lies under R.I.G.L. 16-39-1.

ISSUE

Were the Appellants employed as per diem and/or long-term substitute teachers at the Rhode Island Training School when the Teacher Tenure Act required that they be employed under annual contract and compensated according to the salary schedule negotiated under the collective bargaining agreement? If so, what is the appropriate remedy?

Findings of Relevant Facts:

- Each of the Appellants was employed at the RITS in the capacity of a substitute teacher and was compensated as a per diem teacher or long-term substitute[1] for varying periods of time. During the times they were employed in a substitute capacity, each of the Appellants performed all of the duties of a regularly-employed teacher. None of the Appellants received medical or other fringe benefits under the collective bargaining agreement. App. Ex. 1-7, 9 and 15; Tr. Vol. II pp. 16-19; 38-40; 45-56; 61-64; 73-74; 82-88; Vol. III pp.5-8.

- Appellant Tinaro had two (2) years of in-state, public school teaching experience at the time she was employed as a substitute at RITS and Appellant Martin had three (3) years of experience. Tr.Vol. II pp. 43-44; 86.

- Appellant Maraziti was employed as a substitute from September, 2005- August, 2006 in a part-time position teaching history. According to the testimony of the principal, Arlene Chorney, Ms. Maraziti filled a vacant position during this time but the position was not filled by a regular teacher because it was scheduled to be abolished when the RITS moved to a new facility. Tr. Vol.III p. 27.

[1] Three of the Appellants (Jackvony, Panzarella and Mountain) were employed as both per diem substitutes and long-term substitutes.

- Appellant Martufi was employed as a substitute from February - June, 2008 in the same part-time position teaching history. According to the testimony of the principal, Arlene Chorney, Ms. Martufi filled a vacant position during this time. Tr. Vol. III p. 27. Dr. Chorney decided not to fill the vacancy with a regularly-employed teacher because the vacancy arose in February, after a regularly-employed teacher had left and at a time when the principal expected that the position would be abolished when the RITS moved to its new facility. She held a reasonable belief at that time that the move to the new facility was imminent. Tr. Vol. III. pp. 59-62; 68-69.

- Appellants Jackvony and Panzarella were employed as substitutes from October of 2007 to August of 2008. They were hired to fill a position[2] teaching physical education that had become vacant when the teacher holding that position retired in late September of 2007. According to the testimony of the principal, although the position was vacant (Tr.Vol. III p. 26), she did not fill this vacancy because the RITS was in the process of requesting a waiver from the Rhode Island Department of Elementary and Secondary Education ("RIDE") to authorize abolishment of this position[3]. After a meeting with RIDE officials, it was her expectation that authorization for the waiver would be granted within a short period of time. Tr. Vol. III pp. 63-65.

- Appellant Tinaro was employed from February - August, 2008 as a substitute English teacher in the detention center at the RITS. According to the testimony of principal Arlene Chorney, the position in which Ms. Tinaro taught was not vacant at that time because the person who had previously occupied this position, Sheila DiRaimo, had rights to return to it at any time as a member of the bargaining unit. She was working in the position of vice principal of the RITS on an "acting" basis. Tr. Vol. III pp. 27-28, 62-63.

- Appellants Martin, Mountain and Nelson were employed as substitute teachers at the RITS teaching special education to students in a self-contained class in the "YCC."[4] According to the testimony of principal Arlene Chorney, the position in which the Appellants taught was not vacant [5] because it belonged to a teacher for whom another, temporary position had been created. It was expected that the regularly-employed teacher would resume her position once the RITS moved to its new facility. Tr. Vol. III pp. 28-33; 65-67.

- Dr. Chorney testified that as of February of 2008 she held a reasonable belief that the move to the new facility was imminent. Tr.Vol. III pp. 60-68.

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[2] Mr. Jackvony and Mr. Panzarella each worked part time and together filled the one full-time position.

[3] Ms. Chorney testified that the basis for the waiver was that certain other programs in place at the RITS fulfilled the required elements of a physical education program. Ms. Chorney testified that she did not know if RIDE ultimately granted or denied the waiver request, but in any event the position was not abolished and it was filled with a teacher under an annual contract in September of 2008. Tr.Vol. III pp. 70-71.

[4] "YCC" is the Youth Correctional Center, the most secure unit at the RITS.

[5] Ms. Chorney testified that this special education position was not "vacant" but "it was just not filled" after the teacher who held it complained that she did not feel safe in the building in which her class was located. A temporary position was created for her at another location where she could "be of service to students" in a resource position. This temporary position was "filled" by the teacher who feared for her safety at the YCC after a limited posting within the RITS. Tr. Vol.III pp.28-33. It was anticipated that the temporary position would not exist once the move to the new facility took place, and it was abolished at the time of the move.

- The above-described special education position was filled by substitute teachers during the entire period from September, 2005 through August, 2008. Though not certified in special education, Appellant Mountain covered this position from September of 2007 until the first week of November of that year[6] Tr. Vol. IV p.40.

- On September 14, 2007, then-Commissioner Peter McWalters wrote to the Director of DCYF noting that "for the second consecutive year, a special education teaching position …remains vacant and is being filled with per diem substitutes." The Commissioner also noted that "[T]his ongoing vacancy raises serious issues under the Rhode Island Teachers' Tenure Act" and various other applicable laws and regulations, as well as a 1993[7] settlement agreement between RIDE and DCYF. App. Ex. 10.

- After meetings of administrators and staff of RIDE and DCYF, the Commissioner again wrote to the Director of DCYF on January 10, 2008, thereby noting that "…it is clear that DCYF's current inability to appropriately staff a special-education class and various other classes…is adversely affecting the education which residents of the Training School are legally-entitled to receive." The letter from Mr. McWalters went on to require DCYF to take immediate steps to obtain the necessary funding and to provide required educational services. App. Ex. 11.

- On February 25, 2008, the special education class to which Commissioner McWalters referred in both of his letters was reopened and Appellant Nelson was hired as a long-term substitute and taught the students of this class from February until August of 2008. Tr.Vol.II pp. 77-78; App. Ex. 9.[8]

- The RITS moved to a newly-constructed facility in March of 2009. Tr.Vol.IV p.76 (Stipulation of the parties).

Positions of the Parties

The Appellants

The union argues on behalf of the named Appellants that the evidence in this case proves that all four (4) of the positions at issue were vacant positions and filled by either per diem or long-term substitutes in violation of R.I.G.L. 16-13-2. The compensation paid to the individual Appellants as substitute teachers did not comply with R.I.G.L. 16-7-29, requiring that public school teachers be paid in accordance with a salary schedule that recognizes years of service, experience and training for all certified personnel who are regularly employed. Under the provisions of 16-12-8 all of the General Laws that apply to certified teachers in the cities and towns apply equally to certified teachers in state schools. The RITS is bound by the provisions of the teacher tenure law and the certified members of its staff enjoy its protections.

[6] The class was closed and the students distributed to other classes during the first week in November until February 25, 2008 when the class was reopened and Ms. Nelson was hired as a substitute teacher to teach for the rest of the school year, which at the RITS ends in August.
[7] The Inter-Department Agreement between RIDE and DCYF placed in evidence is dated February 5, 1996
[8] The record does not indicate how this classroom was staffed during the 2008-2009 school year.

The Appellants cite a number of decisions of the Commissioner and the Board of Regents which give effect to these provisions of Title 16. It is well established that "true vacancies" must be filled by properly certified teachers employed under an annual teaching contract. To do otherwise undermines the teacher tenure law and fails to ensure that students are taught by teachers who hold the appropriate certification for the class they are assigned to teach. In the case at hand, the evidence shows that DCYF failed to fill a number of vacancies from 2005-2006 through the 2007-2008 school year[9] and instead utilized per diem and in other cases long-term substitute teachers. The union responded specifically to DCYF's contentions that not all of the positions under scrutiny were "vacant" or that "extenuating circumstances" existed that excused the agency from any legal obligation to fill the position. The Appellants' position is that all of these positions were vacant and that the explanations provided for not filling what DCYF concedes were vacant positions lack merit.

DCYF has a history of not filling "true vacancies." This has been an ongoing issue between DCYF and RIDE and formally addressed as far back as 1996 when RIDE made approval of the educational program at RITS contingent upon agreement that "any true vacancy in a teaching position" be filled in a timely manner. An Inter-Department Agreement signed by RIDE and DCYF (Appellants' Ex.12) noted this as one of several conditions necessary for the approval eventually issued by RIDE for the 1996-1997 school year. The union submits that the provisions of the Inter-Department Agreement were incorporated into the RITS's approval in each succeeding year. The Appellants implicitly argue that the employment of the Appellants as substitute teachers violated the ongoing requirements imposed on DCYF by this Agreement.

The union submits that in the 2007 - 2008 school year, DCYF's use of substitutes to staff a self-contained classroom in the YCC gained the attention of then-Commissioner Peter McWalters. Mr. McWalters notified DCYF and RITS officials that their use of per diem substitutes to fill this vacancy in special education for a "second consecutive year"[10] raised issues of compliance with the 1996 Inter-Department Agreement and presented potential violations of state and federal law. Appellants' Exhibits 10 and 11 (letters from Commissioner Peter McWalters to Patricia Martinez, Director of DCYF) indicate that RIDE's monitoring of this situation caused Commissioner McWalters to conclude that "DCYF's current inability to appropriately staff a special education class and various other classes in which the assigned teacher may be absent on a short-term basis is adversely affecting the education which residents of the Training School are legally-entitled to receive." In his January 10, 2008 letter Mr. McWalters ordered that appropriate educational services be provided to the residents of the Training School. These communications confirm RIDE's finding at that time that DCYF continued to use substitute teachers in "true vacancies" despite the Inter-Department Agreement in which they agreed with RIDE that vacancies would be filled in a timely manner.

Laches, raised as a defense by DCYF, does not bar the Appellants' assertion of these claims because, for the most part, their service as substitute teachers was in the same year in which their appeals were filed. Also, the passage of time between the filing of appeals on behalf of the individual Appellants and initial hearing on March 4, 2010 occurred because the parties were actively engaged in settlement discussions. Counsel cited the cases of Berthiaume v. School Committee of the City of Woonsocket, 121 R.I. 243, 397 A.2d 889 (1979) and Gershon v. North Providence School

[9] Which in the case of the RITS is a year-round educational program.
[10] And, the union notes, this vacancy actually went unfilled for three (3) full years.

Committee[11] for the proposition that the mere passage of time does not bar the Appellants' claims. There is no prejudice to DCYF occasioned by delay in proceeding to a hearing because the Appellants do not seek interest on their monetary claims (Tr.Vol.II p.11).

The Appellants request as a remedy that they be paid retroactive salary adjustments and be appointed as regular teachers at the RITS.

DCYF

At the outset, DCYF takes the position[12] that these claims are time-barred. After an amended letter of appeal was submitted on May 23, 2008, and the names of each of the Appellants were provided to DCYF, it became evident that a period of time had passed between the hiring of these substitute teachers and the assertion of specific claims for relief on their behalf. Counsel for DCYF argued that the initial request for hearing filed by the Howard Union of Teachers on February 28, 2008 had been dismissed and that an appeal letter that identified each of the Appellants by name was not filed until May 23, 2008. He moved to dismiss the claims of all of the Appellants under the doctrine of laches, arguing that the May 23, 2008 filing was not timely, especially for the claims of two of the Appellants who had served as substitutes at the RITS during the 2005-2006 school year.

As to the merits of these claims, counsel for DCYF argues that no violations of the cited provisions of Title 16 have been proven on this record. At all times, the administration of the RITS has acted in compliance with the Teacher Tenure Act. The principal of the school during this period of time, Dr. Arlene Chorney, made staffing decisions in good faith, with the need to deal responsibly with an ongoing financial crisis and a moving "target date" for occupancy of a new school facility. The projected move, with its effect on the total number of FTE's[13] and impact on certain positions slated to be abolished, was a fact of life with which Dr. Chorney had to contend as best she could. Her primary responsibility was to ensure that the educational needs of residents at the school were met and during this period of time she worked cooperatively with officials at RIDE to ensure that the educational program was in full compliance with applicable laws.

Within this context, there were special circumstances that explain, in every one of the Appellants' situations, why substitute teachers were employed. With respect to Appellants Maraziti and Martufi, who served at different times as substitutes filling a vacancy in a part-time history position, the circumstances were that when the RITS moved to its new facility, this position was slated to be abolished. Especially at the time Ms. Martufi was hired as a substitute in February of 2008 when the teacher of this class[14] left, Dr. Chorney determined that it was prudent to use a substitute because the position would likely exist for just a short period of time. Similarly, with respect to the vacancy in physical education that arose in September of 2007 when the regularly-employed teacher retired, the process was initiated to abolish this position and all indications from RIDE were that a waiver of the requirement to conduct physical education classes at the RITS would be granted. Therefore, she

[11] Decision of the Commissioner dated October 23, 2006.
[12] DCYF raised the issue of timeliness at the initial hearing on May 7, 2008. Counsel for DCYF moved to dismiss the appeals based on the doctrine of laches on March 4, 2010. A ruling on the motion to dismiss has been consolidated with this ruling on the merits of the claims.
[13] full-time equivalent positions.
[14] Who was regularly employed under the provisions of the collective bargaining agreement

utilized Appellants Jackvony and Panzarella as substitutes to fill this position until she received formal approval from RIDE.

DCYF's argument with respect to the two other positions in dispute is that they were not "true vacancies." The English position that was filled by Appellant Tinaro was not vacant because during the time she was employed as a substitute, Sheila DiRaimo, who was serving in an acting capacity as Vice Principal, had the right to return to that position at any time. Similarly, Appellants Martin, Mountain and Nelson did not fill a vacant position in special education at the YCC. The person who held this position had been reassigned temporarily and retained rights to this position. Again, the move to the new facility would affect the duration of this situation, because upon taking occupancy of the new facility, the temporary position that had been created for the regular teacher would be abolished and she would thereupon return to her own position.

It is true that the use of substitute teachers in this special education class became a concern to RIDE and was cited in letters from Commissioner McWalters to DCYF Director Patricia Martinez on September 14, 2007 and January 10, 2008. However, RIDE and DCYF worked cooperatively over the course of this school year to resolve this issue, as well as others, and make sure that appropriate special education services were provided to students. Counsel notes that both departments worked to ensure that services were provided by teachers who held proper certification. In addition, counsel points out that Appellant Mountain, who served in this position as a substitute for a few months at the beginning of the 2007-2008 school year, did not hold certification in special education and so was not eligible to be placed in this position even if it were a "true vacancy."

For the foregoing reasons, DCYF requests that the Appellants' appeals to the Commissioner be denied and dismissed.

DECISION

There is no need to cite authority for the long-established rule, based on R.I.G.L. 16-13-2, requiring that school districts fill teaching vacancies with regular, properly-certified teachers employed on the basis of an annual contract. To date, there has existed a strong policy in favor of continuing teaching service and avoidance of the creation of a "class of temporary teachers" by the utilization of substitutes.[15] According to the Board of Regents, a substitute is one who is engaged to replace a regular teacher who is expected to return.[16]

The mandate of R.I.G.L. 16-13-2 remains in place, but its strictures have been modified somewhat over the years. The Board of Regents has validated the hiring of a substitute when a reasonable period of time is required in which to permit the process for filling vacancies to take

[15] See the discussion in the Board of Regents decision in Patricia Freeman v. School Committee of the City of Pawtucket, December 11, 1980; See also Anna M. Autieri v. Warwick School Committee, decision of the Commissioner dated June 28, 1989; Cherie Martin v. Barrington School Committee, decision of the Commissioner dated June 29, 1992.

[16] Freeman, supra; Riccitelli v. School Committee of the Town of North Providence; Uttley v. School Committee of the Town of North Providence; Daley v. School Committee of the Town of North Providence, decisions of the Commissioner dated December 15, 1977.

place.[17] The Commissioner and the Board of Regents have also indicated that a substitute may fill a vacancy when "unusual circumstances" exist or only a relatively small part of the school year remains to be completed.[18] The Board of Regents has rejected the use of a substitute based upon administrative concern over possible overstaffing.[19]

It is within this legal context that the facts of this case are placed. Although the vigilance of the Howard Union of Teachers is evident in the vigorous arguments advanced on the Appellants' behalf, for the most part, the factual situations that are in the record here simply do not demonstrate that DCYF violated R.I.G.L. 16-13-2 or 16-7-29. With the exception of Appellants Maraziti and Martin, the Appellants have not established that their employment as substitute teachers violated the provisions of Title 16.

The record indicates that Ms. Maraziti was hired as a substitute and worked as a history teacher during the entire 2005-2006 school year (September of 2005-August of 2006). When the principal testified concerning this part-time position, she clearly identified it as a "vacant position" but explained that she had a good reason for not filling it with a regularly-employed teacher. She explained that discussions had occurred regarding the total number of full-time positions - FTE's - that would be allocated for staff at the new school and that this position was to be abolished when the RITS moved to a new facility. She testified, however, that her uncertainty with respect to the continuation of this position did not cause her to fill it with a substitute until after a regularly-employed teacher had left in February of the 2007-2008 school year at which time a move to the newly-constructed building was anticipated to be soon. Thus, while the situation she described provides "unusual circumstances" for Appellant Martufi's employment as a substitute in February of 2008, it does not substantiate DCYF's use of a substitute some two years prior to that time when Ms. Maraziti served in this same position.

DCYF has also demonstrated the presence of "unusual circumstances" justifying its employment of Appellants Jackvony and Panzarella in a substitute capacity to fill a "true vacancy" in physical education when the regularly-employed teacher of that class retired in late September of 2007. It is true that both of the Appellants were "substitutes" for almost an entire school year; however, Dr. Chorney testified credibly and convincingly that she awaited final word from RIDE on her waiver request during this entire period with a reasonable understanding that it would be approved. Under these circumstances, she exercised sound administrative judgment in not filling this vacancy. Although the mere possibility that RIDE would grant a waiver and enable DCYF to eliminate this position would not legitimize the use of a substitute, Dr. Chorney's clear understanding that it would be granted after meeting with RIDE officials does establish justification for not hiring a regularly-employed teacher for this position in 2007-2008.

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[17] Joseph Torrealday v. Providence School Committee decision of the Board of Regents dated January 24, 1980.

[18] Torrealday, supra; decision of the Commissioner dated July 30, 1979 at page 5 footnote 13.

[19] In Freeman v. Pawtucket School Committee the Superintendent testified that the Appellant was hired as a substitute because he was not sure at that time that the school system needed the Appellant as a full time teacher in view of the possibility that a class would be eliminated. The Commissioner found that the concern with respect to possible overstaffing legitimized the Appellant's employment as a substitute. The Commissioner's decision was overruled by the Board of Regents on December 11, 1980.

We find on this record that the English position in which Appellant Tinaro substituted from February through August of 2008 was not a "true vacancy" during that time. The person who held the position was not "absent" but she was serving as Vice Principal at the RITS on an acting basis only. Evidently, Ms. DiRaimo retained a right[20] to return to this specific position at any time during the period Ms. Tinaro taught the class as a substitute. The absence of a time limit on Ms. DiRaimo's entitlement to return to her position teaching English is not explained in this record, but this fact sufficiently explains Dr. Chorney's conclusion that she would be acting imprudently, and in violation of Ms. DiRaimo's contractual rights, if she filled this position.

As the findings of fact indicate, three of the Appellants (Martin, Mountain and Nelson) were hired for various periods from September of 2005 through August of 2008 to fill a special education position in the YCC. Dr. Chorney testified credibly that throughout this period, she was of the opinion that the position was not vacant because as soon as the RITS moved to a new facility, the regular teacher who had been placed in a temporary, newly-created special education position in another section of the school would be returning to her position. Although it is a very close call, we find that this special education position was a "true vacancy" during the period from September of 2005 until February of 2008 when the entitlement of another teacher to the position became a concrete reason to use a substitute. This finding is based primarily on Dr. Chorney's testimony that she held a reasonable belief that a move to the new building was imminent[21]only as of February of 2008 and that the teacher who held a contractual entitlement to that position would be exercising her right to return to the position when the move actually occurred. Stated another way, the reason for filling the YCC special education position with a substitute from 2005 until February of 2008 is not persuasive because the regular teacher was not "expected to return"[22] during this entire period. Therefore, the employment of Appellants Martin and Mountain as substitute teachers, but not that of Appellant Nelson, violated R.I.G.L. 16-13-2.

Our finding that DCYF's use of substitutes (Appellants Martin and Mountain) in this position prior to February of 2008 violated the Teacher Tenure Act and that Appellant Nelson's substitute service after February 2008 was in compliance with applicable law is supported by two letters from RIDE submitted into evidence (Commissioner McWalters' letters to Patricia Martinez dated September 14, 2007 and January 10, 2008). This special education "vacancy" was clearly on RIDE's "radar screen" during 2007-2008, and monitoring by RIDE staff evidently resulted in concerns with respect to compliance[23] up to January 10, 2008. There is absolutely no evidence that this special education vacancy continued to be an issue after January of 2008; nor is there any evidence that RIDE objected when another substitute teacher (Appellant Nelson) was hired in February of 2008 and continued to fill this position for the balance of the school year. We infer that utilization of Ms. Nelson as a substitute did not present the serious issue of statutory violation that RIDE had previously raised.

[20] This was apparently a contractual right

[21] Dr. Chorney used the words "soon" and "short window" to describe her understanding of when the move would occur, and that this understanding existed after a certain teacher had left a position teaching history in February of 2008.

[22] The Board of Regents' definition of a substitute is "one who is engaged to replace a regular teacher who is expected to return" according to the Board's decision in the Freeman case, supra at page 2.

[23] Compliance not just with the Teacher Tenure Act, but with several other federal and state requirements applicable to the educational program provided to residents of the RITS as to which Commissioner McWalters expressed his concern.

We must add, however, that case precedent establishing the right of a person hired as a substitute to receive additional compensation or appointment to the position has required the claimant to establish that he or she was certified for the position. In this instance, Appellant Mountain was not certified in special education and is therefore not eligible to assert that he should have been hired as a regularly-employed teacher for this class.

Based on the foregoing, it is our finding that the monetary claims of Appellants Maraziti and Martin have merit and their appeals are sustained. Their claims to additional compensation are not barred under the doctrine of laches, but their request that the remedy include an order that DCYF employ them as regular teachers in the positions in which they substituted is denied. In Ms. Maraziti's case the position has been abolished, and in Mr. Martin's case the regular teacher returned to the position that she previously held. Although it is true that these claims to additional compensation were not raised until almost two years after their substitute service, the mere passage of time does not constitute laches. The defense of laches requires that unexplained and unreasonable delay be accompanied by prejudice to the party against whom the claim is made. See the discussion of case precedent on laches in Gorman v. Jamestown School Committee.[24] The Appellants have waived any claim they may have to statutory interest; and DCYF has not documented or argued that if it were required to adjust the Appellants' compensation, that these expenditures would have been lessened if relief had been sought more promptly. The parties entered into evidence Appellants' Exhibit 9, a document that indicates that Appellant Maraziti is entitled to an additional $7,035.45 and Appellant Martin is entitled to an additional $20,835.62. This additional compensation, with no statutory interest, must be paid to them forthwith.

The claims and appeals of the remaining Appellants are denied and dismissed.

For the Commissioner,

_____
Kathleen S. Murray

_____ _____
Deborah A. Gist, Commissioner Date

[24] At pages 6-7; decision of the Commissioner dated April 16, 2007.