

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

TIDY-UP, INC.	:
	:
v.	:
	:
SOUTH KINGSTOWN SCHOOL COMMITTEE	:
	:

DECISION

Held: Commissioner lacks jurisdiction to decide appeal involving School Committee's awarding of grounds maintenance contract.

April 6, 1992

Introduction

This matter concerns an appeal to the Commissioner of Education by Tidy-Up, Inc., "an unsuccessful bidder for the grounds maintenance contract with the South Kingstown School Department." [Joint Exhibit 1]. The appeal, taken pursuant to R.I.G.L. 16-39-2, involves the South Kingstown School Committee's June 18, 1991 award of the school grounds maintenance work to a bidder other than Appellant. [Joint Exhibit 1; Appellant's Exhibit 1].¹

For the reasons set forth below, we deny the appeal based on the Commissioner's lack of jurisdiction to decide this dispute.

Background

The issue of the Commissioner's jurisdiction to decide this appeal was raised at the outset of the hearing. Pursuant to the agreement of the parties, evidence was presented with regard to the jurisdictional issue, and the hearing was adjourned for the purpose of filing legal memoranda on the issues of the Commissioner's jurisdiction and remedial authority. [Transcript, pp. 62-64].

The following evidence was received at the hearing:

Pursuant to the School Committee's purchasing policies, all purchases of \$4,000.00 or greater are to be submitted for competitive bid. [Appellant's Exhibit 5]. On two occasions the South Kingstown School Department issued an invitation to bid on its

1 This matter was heard on November 5, 1991. The record in this proceeding closed on December 13, 1991.

school grounds maintenance work.² [Appellant's Exhibits 2 and 3]. The School Department also issued instructions to bidders. [Appellant's Exhibit 4].

Bids for the grounds maintenance work were due on April 10 and May 24, 1991. Appellant submitted bids on both occasions. [Appellant's Exhibits 9(j) and 10(h)]. A total of 11 companies responded to the first invitation to bid, and 9 responded to the second invitation to bid. [Appellant's Exhibits 9(a)-(k) and 10(a)-(i)].

At its meeting of June 18, 1991, the School Committee awarded the bid for the grounds maintenance work to a company other than Appellant.

Positions of the Parties

Appellant asserts that the School Committee violated its bidding policies in making the June 18, 1991 award. It contends that it has satisfied all of the requirements set forth in School Committee of the City of Providence v. Board of Regents for Education, 429 A.2d 1297 (1981), for the Commissioner to exercise jurisdiction over this appeal under R.I.G.L. 16-39-2. In particular, Appellant argues that the School Committee's action "arises under" a law relating to schools or education in view of the School Committee's responsibility for "the entire care, control and management of all the public school interests" [R.I.G.L. 16-2-9 and 16-2-18], and the Committee's power "to enter into contracts." [R.I.G.L. 16-2-9(18)].

2 The invitations to bid described the grounds maintenance contract as covering the "maintenance of 12 different school ground locations for mowing, raking, edging, fertilizing."

Appellant also points out that the School Committee document³ "Instructions To Bidders" expressly refers to R.I.G.L. 16-2-18. In view of this reference, according to Appellant, any alleged violation or irregularity in the awarding of bids under School Committee policies must "arise under" a law relating to schools or education. Appellant further argues that under the Commissioner's recent decision in In Re: Foster-Glocester Regional School District Financial Meeting, November 18, 1991, the School Committee's action in awarding the grounds maintenance contract has a sufficient nexus to school law and therefore establishes the Commissioner's jurisdiction over this appeal.

The School Committee disputes Appellant's contentions that it is "aggrieved" by a School Committee decision "arising under" a law relating to schools or education as those terms were construed in the Providence v. Board of Regents case. The School Committee also contends that the Foster-Glocester⁴ decision is distinguishable in that it involved R.I.G.L. 16-39-1 and it concerned a dispute over the legality of the process by which the school district adopted its budget, truly a dispute arising under a law

3 Section 10 of the Instructions states that "The South Kingstown School Committee reserves the right to accept this bid by items or as a whole, or, in its discretion, reject all bids and re-advertise (chapter 16-2-18, Title 16 of the General Laws)."

4 R.I.G.L. 16-39-1 states as follows:
Parties having any matter of dispute between them arising under any law relating to schools or education may appeal to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the same without cost to the parties involved.

relating to schools or education.

Decision

The Rhode Island Supreme Court addressed the issue of the Commissioner's jurisdiction in the Providence v. Board of Regents case. That matter involved an appeal to the Commissioner under R.I.G.L. 16-39-2⁵ by a per diem substitute teacher who had been instructed not to report to work at a time when he was one day short of the 135-day total needed to become "regularly employed" under R.I.G.L. 16-16-1(2).

Analyzing R.I.G.L. 16-39-2, the Court stated that several requirements must be met before the Commissioner can exercise jurisdiction over an appeal. Those requirements are: (1) the appellant must be "aggrieved" within the meaning of the statute; (2) the appeal must involve a "decision" or "doing" of a school committee; and (3) the school committee's decision must arise under a law relating to schools or education. Ibid., at 1300-1301.

The Court found that the teacher's appeal satisfied all three requirements. In addressing the third requirement, the Court noted that R.I.G.L. 16-2-8 vests the "selection of teachers * * * and the entire care, control, and management of all the public school interests" in the school committee. As a result, the Court found that the policy of the school committee to prevent per diem

5 R.I.G.L. 16-39-2 states as follows:

Any person aggrieved by any decision or doings of any school committee or in any other matter arising under any law relating to schools or education may appeal to the commissioner of elementary and secondary education who, after notice to the parties interested of the time and place of hearing, shall examine and decide the same without cost to the parties involved.

substitute teachers from becoming "regularly employed" and the assistant superintendent's action in carrying out that policy arose under the laws relating to schools and education. Ibid. at 1301.

In Madden vs. Warwick School Committee, April 23, 1984, the Commissioner of Education held that he lacked jurisdiction to hear an appeal concerning the transfer of a nonteaching employee. In so finding the Commissioner stated:

It seems to us that this case is completely controlled by the collective bargaining agreement, and that no part of this case involves any question of school law. Thus, although the collective bargaining agreement here concerns a school district, no part of the present dispute arises under school law. The Commissioner of Education, therefore, lacks jurisdiction to decide this case. South Orange-Maplewood Ed. v. Board of Ed., ect., (sic), supra. Rhode Island law has long recognized that simply because a dispute relates to a school system this, in and of itself, does not mean that the Commissioner of Education automatically has jurisdiction to decide the question presented. Ibid. at 4.

In Lapierre vs. Cranston School Committee, May 11, 1989, the Board of Regents held that the Commissioner did not have jurisdiction under R.I.G.L. 16-39-2 to decide an appeal involving an individual's assertion of a right to reemployment as a teacher pursuant to a statute dealing with the reemployment rights of veterans.

The Board of Regents initially observed that the language "arising under any law relating to schools or education" qualifies "the decision or doings of any school committee" language in R.I.G.L. 16-39-2. Ibid. at 2. The Board further found that the veterans' reemployment rights statute is not a law relating to schools or education, and therefore can not serve as the basis for the Commissioner's exercise of jurisdiction over an appeal arising

under it. Ibid.

The Board observed in Lapierre:

Appeals to the Commissioner were established on the theory that he or she possessed a level of expertise in the educational field which should be brought to bear on educational issues. A Commissioner has no such expertise regarding veterans' issues. To deal with such noneducational matters brings no special insight to the subject and adds a distracting burden to the Commissioner's office. In our view there is no good reason to allow the Commissioner's office to become embroiled in every conceivable dispute involving a school committee's actions. Ibid.

The Commissioner's jurisdiction was most recently discussed in the Foster-Glocester Financial Meeting case. That case involved, in part, the regional school committee's adoption of procedural rules governing the conduct of the district financial meeting. The dispute raised by the appeal was found to concern the validity and legal effect of the committee's procedural rules. It was further found that the resolution of the dispute would require the construction and application of the public law establishing the regional school district in order to determine whether the committee had the power to adopt such rules.

Based on the foregoing, the Commissioner concluded in Foster-Glocester that, under R.I.G.L. 16-39-1, the appeal had a sufficient nexus to school law and therefore was within the Commissioner's jurisdiction. Ibid. at 4-5.

Turning to the instant matter, we find that Appellant is "aggrieved" by a "decision or doing" of the School Committee. The School Committee's award of the grounds maintenance contract on June 18, 1991 clearly deprived Appellant of a significant economic benefit and constituted direct action by the Committee.

However, in view of the decisions discussed above, we are unable to find that the Committee's action which is the subject of this appeal presents a controversy which arises under a law relating to schools or education.

In order to come within the Commissioner's jurisdiction under R.I.G.L. 16-39-2, an appeal must present an educational issue arising under a law relating to schools. Although the School Committee is responsible for the entire care, control, and management of the district's public school interests, and it possesses the power to enter into contracts, the particular dispute before us does not involve an educational issue. The controversy herein concerns the School Committee's application of its competitive bidding procedures with regard to the awarding of a contract to maintain school district grounds.⁶ The maintenance contract concerns the mowing, raking, edging, and fertilizing of various school grounds. While the dispute involves the School Committee, it does not involve a question of educational law.

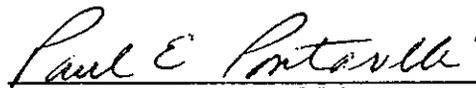
We further find the Foster-Glocester case inapposite here. That case raised the issue of the school committee's authority to adopt rules governing the process by which the school district's budget is determined. In this case, no one disputes the School Committee's authority to adopt bidding policies governing the awarding of contracts. To the contrary, it is the exercise of the School Committee's well-established authority that is the focus of

6 Although the School Committee included a citation to R.I.G.L. 16-2-18 in its "Instructions To Bidders," we do not find that this reference changes the commercial-contract nature of this dispute.

this dispute. Because that exercise concerns the awarding of a grounds maintenance contract, a matter which we find does not involve any educational issue as contemplated by R.I.G.L. 16-39-2, we are constrained to hold that the appeal in this matter does not raise a question of school law. As a result, the Commissioner does not have jurisdiction to entertain this appeal.

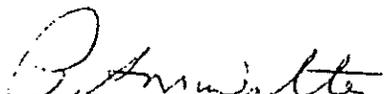
Conclusion

The appeal in this matter is denied for lack of jurisdiction.



Paul E. Pontarelli
Hearing Officer

Approved:



Peter McWalters
Commissioner of Education

April 6, 1992