

STATE OF RHODE ISLAND

COMMISSIONER OF EDUCATION

AND

PROVIDENCE PLANTATIONS

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 MICHAEL MCGUINN \*  
 V. \*  
 EAST PROVIDENCE SCHOOL COMMITTEE \*  
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DECISION

Held: The Commissioner lacks jurisdiction over this matter.

DATE: November 6, 1997

This case concerns the recall rights of Mr. Michael McGuinn, a teacher in the East Providence school system. The dispute before the Commissioner relates to the 1991-1992 school year. Mr. McGuinn contends that he should have been recalled to fill a “vocational assessor” position, which became available in November of 1991.

### Finding of Facts

The appellant, Mr. McGuinn, is a teacher in the East Providence school system. He was first hired by the school to teach computer literacy during the 1990-1991 school year. In February of the 1990 to 1991 school year he was given notice that his teaching contract would not be renewed. In exchange for waiving his right to appeal this non-renewal he was given a contractual right to recall if a teaching position were to open. Mr. McGuinn had no tenure rights at this time so he had no statutory right to recall. Mr. McGuinn was, in fact, recalled for the 1992-1993 school year to fill a seventh grade social studies position. He has been continuously employed by the East Providence school system since then.

We find from the record that a right to recall existed in this case. Its exact scope is disputed. In this particular case another teacher employed by the East Providence school system used his contractual seniority rights to leave whatever position he held in order to fill the newly created position of “vocational assessor”. No particular teaching certificate was required for this position. We presume that the vacancy thus created was in an area for which Mr. McGuinn lacked the appropriate certification. Mr. McGuinn argues that the contractual recall system in East Providence specified that other teachers with higher seniority would not be allowed to “bump” into a position if this would have the effect of defeating the recall rights of a teacher who had been placed on the recall list.

The East Providence School Committee agrees that this rule existed but it contends that the rule was confined to previously existing positions, which opened up. The rule, according to the school committee, had no application to newly created positions.

Based upon the language of the contractual provision cited to us we find that the school committee did not agree to submit the filling of new positions to the seniority system. Our reading of the contractual provision convinces us that the only positions subject to the seniority system were those opening prior to May 1<sup>st</sup> of any given school year which were the result of (1) resignations, (2) retirements or (3) vacancies resulting from leaves of absence. Based upon this construction we would be constrained to rule against Mr. McGuinn if we felt that we had jurisdiction over this matter.

#### Conclusion

The problem in this case is that it is well established that the jurisdiction of the Commissioner of Education does not extend to disputes, which are based exclusively on a collective bargaining agreement. Such controversies do not arise “under any law relating to schools or education”. (G.L. 16-39-1, G.L. 16-39-2). Hoag v. Providence School Board, Commissioner of Education, 27 June 1988. There is no education law, or regulation promulgated under an education law, involved in this dispute. It arises only under a collective bargaining agreement over which the Commissioner has no jurisdiction. We therefore must dismiss this matter. The findings of fact, which we have made in this case, are therefore included in this decision simply to facilitate any potential appellate review. In Re Michael C., 487 A.2d 495 (R.I. 1985)

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Forrest L. Avila, Hearing Officer

Approved:

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Peter McWalters, Commissioner

DATE: November 6, 1997