

STATE OF RHODE ISLAND
COMMISSIONER OF EDUCATION

THE PROVIDENCE TEACHERS UNION,
LOCAL 958, American Federation of
Teachers, AFL-CIO, on behalf of Fifty
Providence Teachers,
Petitioner,

vs.

ANGÉLICA INFANTE GREEN, as
Commissioner of Education and delegate
of the Council on Elementary and
Secondary Education under the Crowley Act
and DR. JAVIER MONTAÑEZ, as
Superintendent of the Providence Public
Schools,
Respondents

RIDE No. 24-042 A

INTERLOCUTORY DECISION AND ORDER

Held: Petitioner’s challenge to the Commissioner’s legal authority to vacate a vote of the Providence School Board rejecting the recommendation of the Providence Turnaround Superintendent not to renew the annual contracts of some fifty-six probationary teachers was rejected, and Petitioner’s motion for an order vacating the Commissioner’s order was denied, as the challenged order was within the broad powers enumerated under the Crowley Act that had been effectively delegated to the Commissioner by the Council on Elementary and Secondary Education.

October 21, 2024

I. INTRODUCTION

This Interlocutory Decision and Order concerns an appeal filed by the Providence Teachers Union, Local 958, American Federation of Teachers, AFL-CIO (the “PTU” or the “Union”), on behalf of some fifty probationary, i.e., non-tenured, teachers employed by the Providence Public School District (the “PPSD”) whose annual teaching contracts were not renewed for the 2024-2025 school year.¹ More specifically, the following addresses a legal challenge to the Commissioner’s authority under the Paul W. Crowley Rhode Island Student Investment Initiative (the “Crowley Act”), R.I. Gen. Laws § 16-7.1-5, with respect to an order entered by the Commissioner on May 29, 2024 in her capacity as the delegate of the Council on Elementary and Secondary Education’s (the “Council’s”) authority under the Act, which defines the contours of the State’s intervention in persistently failing school districts like the PPCSD.

The challenged Order vacated a vote taken by the Providence School Board (the “PSB” or the “Board”) on May 22, 2024 rejecting the recommendation of PPCSD Turnaround Superintendent Javier Montañez, Ed.D (the “Superintendent”) not to renew some fifty-six annual teaching contracts due to the fiscal exigency and necessary programmatic changes confronting the District.

By agreement of the parties, the legal basis surrounding the PTU’s challenge to the Commissioner’s authority was severed from the other potentially disputed legal and factual issues that may be relevant with respect to some of the pending appeals. Moreover, as per the stipulation of the parties and the approval of the Council, this Decision and Order will be immediately appealable to Superior Court as a “final order in a contested case” pursuant to the State’s Administrative Procedures Act, R.I. Gen. Laws § 42-35-15.

¹ The PTU’s appeal included fifty of the fifty-six teachers whose contracts were not renewed.

II. FACTUAL AND PROCEDURAL BACKGROUND²

A. The State Intervention in Providence

1. The Crowley Act provides, in pertinent part, that:

If after a three (3) year period of support there has not been improvement in the education of students as determined by objective criteria to be developed by the [Council], *then there shall be progressive levels of control by the department of elementary and secondary education over the school and/or district budget, program, and/or personnel. This control by [RIDE] may be exercised in collaboration with the school district and the municipality. If further needed, the school shall be reconstituted. Reconstitution responsibility is delegated to the [Council] and may range from restructuring the school's governance, budget, program, personnel, and/or may include decisions regarding the continued operation of the school.*

R.I. Gen. Laws § 16-7.1-5(a) (emphasis added).

2. On July 23, 2019, the Council delegated to the Commissioner its:

power and authority to take actions consistent with, and in furtherance of, RIDE's intervention in and support of the Providence Public School District, which would include, but not be limited to, assuming control of the District, the reconstitution of the Providence Public Schools and any other power (at law and in equity) available to the Council as may be authorized by law and as may be determined to be necessary and appropriate by the Commissioner.

See Minutes of the Council Meeting on July 23, 2019, at 6-7 (Exhibit 1).

3. The Council action followed decades of intervention by RIDE in persistently low-achieving schools throughout PPSD and was in immediate response to a report prepared by the Johns Hopkins Institute for Education Policy, which highlighted the need for greater State control over Providence schools.

4. On August 8, 2019, the Commissioner: (a) issued a *Proposal for Decision and Order Establishing Control Over PPSD and Reconstituting PPSD*, which set forth her intention to assume control and decision-making authority over the “programs, personnel, and budget” of

² All cited exhibits were entered into evidence by agreement.

PPSD pursuant to the Crowley Act (Exhibit 2); and (b) served the Providence Mayor, the Chair of the PSB, the President of the Providence City Council and the Superintendent (the “Show Cause Parties”) with an *Order to Show Cause* providing them with an opportunity to show cause why the Commissioner's *Proposal for Decision and Order* should not enter at an evidentiary hearing scheduled for September 13, 2019 (Exhibit 3).

5. Prior to the scheduled hearing, the Show Cause Parties all formally proclaimed that they did not object to the Commissioner’s assumption of control over the programs, personnel and budget of PPSD. *See* minutes of the PSB meeting on September 4, 2019, at 2 (Exhibit 4); Statements of Non-Opposition filed by the Mayor and Superintendent (Exhibit 5) and the City Council President (Exhibit 6).

6. Following the hearing on September 13, 2019, the Commissioner entered: (a) the *Decision Establishing Control Over the Providence Public School District and Reconstituting Providence Public Schools* (Exhibit 7); and (b) the October 15, 2019 *Order of Control and Reconstitution* (Exhibit 8), which provided, in pertinent part, that as of November 1, 2019:

The Commissioner shall control the budget, program, and personnel of PPSD and its schools and, if further needed, the Commissioner shall reconstitute PPSD schools, which may include restructuring the individual school’s governance, budget, program, personnel and/or decisions related to the continued operation of the school. The Commissioner shall exercise all the powers and authorities delegated by the Council to the Commissioner and all powers of RIDE over the budget, program and personnel of PPSD and over the individual school’s governance. The Commissioner shall also have all powers and authorities currently exercised by the Providence School Board and Superintendent (Acting, Interim or Permanent), as well as all powers and authorities of the Mayor of Providence, and the Providence City Council as it pertains to PPSD and its schools.

Id., ¶ 1 at 1-2 (emphasis added).

7. In addition, on November 1, 2019, the Commissioner and the Mayor of Providence entered into a *Collaboration Agreement* which recognized that “RIDE has assumed

full managerial and operational control and responsibility over PPSD’s budget, program and personnel.” *See id.*, § I(A) at 3 (Exhibit 9).

8. The Commissioner notified the PSB that during the pendency of the State intervention, the Board, while lacking authority over the PPSD’s “budget, program, and personnel” decisions, would maintain an important advisory role, and she delegated to the PSB “the power and authority to continue *in an advisory capacity* all those functions that the School Board has been performing prior to November 1, 2019, subject to her written approval.” *See the* November 1, 2019, letter to PSB President Nicholas Hemond from the Commissioner (emphasis added) (Exhibit 10).

9. The Commissioner also sent a letter to PTU President advising that:

It is my position that the PTU CBA does not bind me in exercising my powers and authorities over the PPSD. Yet, whether or not we agree on that or on any other related legal issues, it is my hope, and that of the Governor, that we can agree to now begin productive discussions concerning changes to the CBA — similar to those agreed to by the teachers' union in Lawrence, Massachusetts — which are necessary for the success of our Turnaround Plan. In the interim, i.e., until a Turnaround Plan is adopted, we will continue operating under the current version of the CBA, without waiving any legal or equitable argument we may have to the contrary.

See id. (Exhibit 11).

10. The PTU expressly recognized the decision-making authority of the Commissioner under the Crowley Act in collective bargaining agreements (“CBAs”), which provided that:

The term Commissioner shall mean the person to whom the Rhode Island Council on Elementary and Secondary Education delegated its power and authority to take action with, and in furtherance of, its intervention and in support of the district, which includes the powers of the Council under Rhode Island General Laws § 16-7.15. The term shall further mean the Rhode Island Commissioner of Education or the turn around superintendent appointed by the Commissioner.

See § 2.1 of the CBAs between the PTU and the Commissioner with expiration dates of August 31, 2023 (Exhibit 12) and August 31, 2024 (Exhibit 13).

B. The PSB Meeting on May 22, 2024

11. On May 17, 2024, PPSD Chief of Human Capital sent notices to some fifty-six probationary teachers advising that, due to fiscal exigency and programmatic changes, the Superintendent would be recommending the nonrenewal of their teaching contracts to the PSB at the Board's meeting on May 22. See sample Nonrenewal Notice dated May 17, 2024 (Exhibit 14).

12. At the PSB meeting on May 22, PPSD Deputy Superintendent of Operations informed the Board that the District was facing a \$16 million deficit for the upcoming fiscal year and that the Superintendent's recommendation not to renew the employment contracts of the fifty-six teachers was, in part, a financial decision designed to close approximately \$5 million of this anticipated budget deficit. (Exhibit 15). In addition, the Superintendent's legal counsel made clear that the Superintendent's recommendation was not related to performance concerns with any of the teachers. See the Superintendent's and PPSD's *Memorandum in Support of the Commissioner's Authority* (the "Supt.'s Mem.") at 5.

13. The Board nonetheless denied the recommendation of the Superintendent and failed to approve the non-renewal of the contracts by a vote of 5 to 4, which was taken in executive session at its May 22 meeting. See PSB meeting minutes at 3 (Exhibit 16).

14. On May 28, 2024, the Superintendent wrote the Commissioner and requested that she overturn the Board's action, noting:

I was shocked when the Providence School Board voted to not accept my recommendation to non-renew probationary teachers for the upcoming school year. While my recommendation to non-renew these teachers was not made lightly, it was necessary in order to balance the budget for the upcoming year and

was done after a school by school review of staffing needs. A failure to non-renew these teachers will result in an additional \$4.5M in unfunded expenses for the upcoming year. Given statutory and contractual limitations, offsetting reductions to account for these unfunded expenses would be extremely disruptive to students and would likely include layoffs of non-certified and school safety staff members (e.g., teacher assistants, crossing guards), elimination of sports and extracurricular activities, significant reductions in eligibility for yellow bus and RIPTA transportation, and continued hiring and spending freeze for all positions.

Id. (Exhibit 17).

15. On May 29, 2024, the Commissioner issued an Order: (a) vacating the vote of the PSB on May 22, 2024; (b) accepting the Superintendent's non-renewal recommendation and declaring that the identified teaching contracts would not be renewed for the 2024-2025 school year; and (c) ordering that copies of the Order were to be mailed to all members of the PSB and delivered by hand and electronic mail to all fifty-six teachers (Exhibit 18).

16. By statute, the service of probationary teachers

. . . shall be on the basis of an annual contract, except as hereinafter provided, and the contract shall be deemed to be continuous unless the governing body of the schools shall notify the teacher, in writing, on or before March 1, that the contract for the ensuing year will not be renewed. *If the dismissal or nonrenewal is based on fiscal exigency or program reorganization, the governing body shall notify the teacher on or before June 1 of the school year immediately preceding the school year in which the dismissal or nonrenewal is to become effective.* Provided, however, that a teacher, upon request, shall be furnished a statement of cause for dismissal or nonrenewal of his or her contract by the school committee; provided further, that *whenever any contract is not renewed, or the teacher is dismissed, the teacher shall be entitled to a hearing and appeal pursuant to the procedure set forth in § 16-13-4.*

R.I. Gen. Laws § 16-13-2 (emphasis added).

17. And R.I. Gen. Laws § 16-13-4(a) provides that:

The statement of cause for dismissal shall be given to the teacher, in writing, by the governing body of the schools. *The teacher may, within fifteen (15) days of the notification, request, in writing, a hearing before the school committee or school board. The hearing shall be public or private, in the discretion of the teacher.*

Both teacher and school board shall be entitled to be represented by counsel and to present witnesses. The board shall keep a complete record of the hearing and shall furnish the teacher with a copy. *Any teacher aggrieved by the decision of the school board shall have the right of appeal to the department of elementary and secondary education and shall have the right of further appeal to the superior court.* Any decisions rendered must be approved by a majority of the full board. Members voting on a decision must have been in attendance at the hearing.

Id.

18. On or about May 30, 2024, the fifty-six teachers were apprised of the Commissioner's May 29 Order and were notified in writing that their teaching contracts would not be renewed for the 2024-2025 school year. The teachers also were informed that they had:

the right to a hearing before a hearing officer to be appointed by the Commissioner, and a right to have counsel represent you at the hearing, provided that you exercise this right by notifying RIDE's Legal Office of your appeal by the close of business on June 14, 2024, by email, at legal@ride.ri.gov. See R.I. Gen. Laws §§ 16-13-2 and 16-13-4.

(Exhibit 19).

C. The PTU Appeal and Pre-Hearing Consent Order

19. On June 5, 2024, a Notice of Appeal was filed with the Commissioner by the PTU on behalf of fifty of the fifty-six teachers whose contracts were not to be renewed and requests were made on behalf of the teachers "for a full evidentiary hearing before a hearing officer appointed by the Commissioner or the Council on Elementary and Secondary Education pursuant to R.I. Gen. Laws §16-13-2 and §16-13-4," and further, "that the hearing be held in private session." (Exhibit 20).

20. Counsel for the teachers challenged the legal basis of the Commissioner's authority under the Crowley Act to vacate the vote of the PSB on May 22, and moved for an order to: (a) vacate the Commissioner's May 29, 2024 Order; (b) affirm the PSB's vote taken at

its meeting on May, 22, 2024, rejecting the recommendation of the Superintendent; and (c) renew the teachers' annual teaching contracts for the 2024-2025 school year.

21. Subsequently, the parties and the undersigned RIDE Hearing Officer agreed that it would be efficient to sever the legal issue concerning the authority of the Commissioner under the Crowley Act, the resolution of which did not involve any disputed factual issues, from the potentially disputed legal and factual issues that may be relevant in some of the pending appeals.

22. In addition, even though the procedural posture of the matter was unprecedented and not expressly contemplated by the statutory provision governing appeals from decisions not to renew the contracts of probationary teachers (R.I. Gen. Laws §§ 16-13-2 and 16-3-4, quoted at § II, ¶¶ 16-17, *supra* at 7-8), the parties agreed that the decision of the Commissioner relative to the severed legal issue would be immediately appealable as a "final order in a contested case" pursuant to the State's Administrative Procedures Act, R.I. Gen. Laws § 42-35-15.³

23. Thus, on July 2, 2024, a Consent Order entered in the above matter:

- (a) severing all legal issues related to the legal authority of the Commissioner to issue the May 29, 2024 Order;
- (b) declaring that this Decision and Order would be immediately appealable as a "final order in a contested case" pursuant to the State's Administrative Procedures Act, R.I. Gen. Laws § 42-35-15; and
- (c) expressly acknowledging that if the legal authority of the Commissioner is upheld on appeal, it would be without prejudice to any other argument either party may make concerning the scope and nature of the appealing teachers' right to a hearing or hearings pursuant to R.I. Gen. Laws § 16-13-2.

Id. (Exhibit 22).

24. The parties simultaneously filed legal memoranda addressing the severed legal issue on August 1, 2024, and filed reply memoranda on August 30.

³ This appellate route was approved by the Council at its meeting on July 30, 2024. *See* Council meeting minutes (Exhibit 21) at 9.

III. THE POSITIONS OF THE PARTIES

1. The Union

In the PTU's August 1, 2024 *Memorandum against the Commissioner of Education's Decision to Over-Turn the Providence School Board's Decision* (the "PTU Mem."), the Union claimed that the Commissioner's May 29 Order vacating the action of the PSB "exceed[s] [her] statutory authority and infringe[s] upon the exclusive rights of the local school board to manage personnel decisions pertaining to teachers." *See id.* at 1. To reach this conclusion, the PTU relied heavily upon language in recent legislation addressing the manner by which PPSD is eventually returned to local control, which provides that:

Effective March 1, 2023, and for the duration of the turnaround . . . [t]he Providence school board shall have, at a minimum, the following powers and duties:

- (1) To review and advise the commissioner on the appointment of senior school district administrators, provided that *the Providence school board shall not have the authority to appoint senior school district administrators so long as the turnaround plan is in effect . . .*

R.I. Gen. Laws § 16-7.1-5.1(b)(1) (emphasis added).

According to the PTU, "[t]his updated addition to the Rhode Island General Laws provides the intent of the legislature to empower RIDE with the appointment of senior administrators, not of teachers. State law is clear on what body has the authority over the termination of teachers." PTU Mem. at 3; *see also id.* at 3-4.⁴ And the Union made the point that "[t]here is no reference in [the Crowley Act] as to the [S]chool [B]oard of Providence not having any authority over termination of teachers which has been the long-standing law," *id.* at 6, adding that "the powers enumerated in the Crowley Act do not *de facto* provide RIDE with the authority to override long existing statutes and do not give RIDE the authority to terminate teachers." *Id.*

⁴ Citing R.I. Gen. Laws §§ 16-2-9, 16-13-4 and 16-12-6 (allegedly illustrating that "the school board is the sole body authorized to terminate a teacher").

Thus, the PTU concluded that “[g]iven th[e] extensive body of case law [] which emphasizes the school committees’ exclusive authority to terminate teachers, it would be a significant and unwarranted departure from established legal precedent to suddenly reassign this authority to RIDE.” *Id.* at 3-4.⁵

In its *Memorandum in Response to PPSD’s Memorandum on the Issue of the Commissioner’s Decision to Override the PSB* dated August 30, 2024 (the “PTU Reply Mem.”), the Union: (a) reiterated that the Act’s reference to “control [over] the budget, program, and/or personnel’ must be interpreted within the context of existing state law, which clearly delineates termination authority as an exclusive power of the School Board[;]” *id.* at 2; and (b) argued that neither the *Order of Control and Reconstitution* entered by the Commissioner on October 15, 2019 (Exhibit 8) nor the November 1, 2019, *Collaboration Agreement* between the Commissioner and the Mayor (Exhibit 9) “hold the authority of state law and thus cannot supersede existing state statutes regarding teacher employment.” PTU Reply Mem. at 2-3.

2. The Superintendent

The Superintendent argued that the PTU lacked standing, arguing that “[n]either the Union nor the individual teachers were injured as a result of the Commissioner’s assumption of this School Board authority” since “each retained the same rights to challenge the non-renewal determination of the Commissioner [they] had previously maintained with the Providence School Board.” *See* Supt.’s Mem. at 16. The Superintendent also made the point that during the intervention, the PTU “entered into two (2) [CBAs] which explicitly set forth this decision-making authority of the Commissioner.” *Id.* at 4; *see also* § II, ¶ 10, *supra* at 6 (quoting the CBAs between the PTU and the Commissioner). Thus, according to the Superintendent, the PTU

⁵ Citing *Town of Johnston v. Santilli*, 892 A.2d 123 (R.I. 2006).

has “waived the argument that the Commissioner did not possess the authority formerly held by the School Board to issue notice[s] of non-renewal pursuant to § 16-13-2.” *Id.* at 16-17.

As to the merits, the Superintendent argued that the reconstitution authority granted to the Council under the Crowley Act “vested the Commissioner with broad powers, including the ultimate decision-making authority over the ‘programs, personnel, and budget of PPSD.’” *See id.* at 6 (quoting R.I. Gen. Laws § 16-7.1-5).⁶ Furthermore, the Superintendent suggested that “[i]f the Legislature had intended to constrain the Council’s authority to reconstitute the District’s governance structure or over its programmatic, personnel, and budgetary decision-making authority it was certainly familiar with how to do so.” *See id.* at 7-8.⁷

Additionally, the Superintendent noted that: (a) “[t]he present record is replete with evidence that the Superintendent’s non-renewal recommendation to the Board was, at its core, a budgetary cost-savings decision . . . designed to save the District 4.8 million dollars[;]” *id.* at 13; and (b) “the determination of what programs and positions to cut in order for the District to achieve its budgetary savings . . . required the Commissioner and the District to make programmatic decisions, choosing to cut certain programs and while keeping others,” which are “precisely within the programmatic decision-making authority provided for under the Act and delegated to the Commissioner by the Final Order.” *Id.* at 14.

In his August 31 *Reply Memorandum on Commissioner’s Authority* (the “Supt.’s Reply Mem.”), the Superintendent challenged the PTU’s claim that school boards and committees

⁶ The Superintendent also opines, without objection, that the Council’s July 23, 2019, delegation of authority to the Commissioner was “a reasonable and logical exercise of its authority,” which was “expressly provided for and contemplated by both R.I. Gen. Laws § 16-60-6 and § 16-1-5, two different sections of Title 16, which both charge the Commissioner broadly with carrying out ‘any other additional duties’ designated to her by the Council.” *Id.* at 10.

⁷ Citing R.I. Gen. Laws § 42-17.1.-2 (restricting the enforcement authority of the Coastal Resources Management Council) and R.I. Gen. Law § 16-13-4(b) (restricting Commissioner’s jurisdiction when CBAs provide for the arbitration of teacher termination decisions).

“have exclusive authority to terminate teachers,” emphasizing that the statutory provision that confers this authority explicitly provides that this authority can be “otherwise delegated.” *See* Supt.’s Reply Mem. at 2-3 (quoting R.I. Gen. Laws § 16-2-9(a)). The Superintendent also made the point that the statutory provision governing the non-renewal of probationary teachers refers, not to a school board or committee, but rather to the “governing body” of the school. *See id.* at 3, (quoting R.I. Gen. Laws § 16-13-2(a)).

Responding to PTU’s argument that recent legislation expressly precluding the PSB from appointing senior school district administrators during the State intervention without mentioning its authority over teachers is evidence that the General Assembly intended that PSB should continue to have exclusive authority over the non-renewal of probationary teachers, the Superintendent made the point that subsection (c)(1) of the same statutory provision relied upon by the PTU (R.I. Gen. Laws § 16-7.1-5.1) affirms the October 15, 2019 *Order of Control and Reconstitution*, and according to the Superintendent:

[t]he statute’s reference to the October 15, 2019, Order establishes that the [L]egislature was keenly aware that: (1) the Commissioner had assumed decision making authority for personnel, programmatic and budgetary decisions (such as non-renewals) formerly held by the Board; (2) that this exercise of authority was consistent with the authority provided to the Council under the R.I. Gen. Laws § 16-7.1-5; and (3) that the Board’s authority as it related to such decisions following the Order of Reconstitution and Control was purely advisory.

See Supt.’s Reply Mem. at 6 (citing R.I. Gen. Laws § 16-7.1-5.1(c)(1)) (quoted *infra* at 19).

Finally, the Superintendent argued that even if one were to assume, for argument’s sake, that there was an actual conflict between the language cited by the PTU in § 16-7.1-5(b)(1) and §§ 16-2-9, 16-13-2, 16-13-4 or 16-12-6, the *specific*, more current reference to the respective authority of the Commissioner and the PSB under § 16-7.1-5(c)(1) would prevail over the more *general*, prior references in the other cited provisions since, as noted by the Superintendent, “the

general rule of statutory construction clearly provides that when a statute of general application conflicts with a statute that specifically deals with a special subject matter, and when the two statutes cannot be construed harmoniously together, the special statute prevails over the statute of general application.” *Id.* at 7-8 (quoting *Whitehouse v. Moran*, 808 A.2d 626, 629–30 (R.I. 2002)).

IV. DECISION

1. The Superintendent’s Standing and Waiver Arguments

The Superintendent correctly states that to satisfy the standing requirement, a plaintiff’s alleged injury must be a “legally cognizable and protected interest that is “concrete and particularized * * * and * * * actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Supt.’s Mem. at 16 (citing *McKenna v. Williams*, 874 A.2d 217, 226 (R.I. 2005) (quoting *Pontbriand v. Sundlun*, 699 A.2d 856, 862 (R.I.1997)). The Superintendent then argues that the teachers suffered no legally cognizable injury since their statutory right to a hearing to contest the non-renewal of their contracts under R.I. Gen. Laws § 16-13-2 (quoted at § II, ¶ 16, *supra* at 7) was being preserved. *See* Supt.’s Mem. at 16.

Yet, the Superintendent ignores the fact that but for the Commissioner’s May 29 Order, the Superintendent’s recommendation would not have been approved, the relevant teaching contracts for the 2024-2025 school year would have been renewed, and there would have been no need for the affected teachers to exercise their right to a hearing. And the Superintendent has not (and cannot) persuasively argue that the loss of an annual teaching contract does not constitute a legally cognizable injury.

The Superintendent’s waiver argument, *see* Supt.’s Mem. at 17, is no more persuasive. As has been frequently noted, “[w]aiver is the voluntary intentional relinquishment of a known

right,” and the party asserting waiver has the burden of proof, *see, e.g., 1800 Smith Street Associates, LP v. Gencarelli*, 888 A.2d 46, 55 n. 4 (2005), and as the Court noted in *Sturbridge Home Builders, Inc. v. Downing Seaport, Inc.*, 890 A.2d 58 (R.I.2005), the “[i]mplied waiver of a legal right must be proved by a clear, unequivocal, and decisive act of the party who is alleged to have committed waiver.” *Id.* at 65 (citation omitted). Moreover, as the Court observed in *Sturbridge Home Builders*, “[a]lthough a contract is to be construed with reference to the intent of the parties, ‘[t]he intention sought is only that expressed in the instrument and not some undisclosed intention that the parties may have had in mind.’” *Id.* at 66.⁸

Here, the Superintendent relies upon language in CBAs which merely repeats the undisputed fact that the Council delegated its authority under the Crowley Act to the Commissioner. *See* § II, ¶ 10, *supra* at 5-6 (quoting the CBAs between the PTU and the Commissioner). However, merely acknowledging the undisputed fact that the Commissioner is the Council’s Crowley Act delegate is not the same as admitting that the delegated powers include the power to overrule the PSB with respect to the renewal of teaching contracts, and the Superintendent has failed to point to any “clear, unequivocal, and decisive act” of the PTU that establishes that it has intentionally waived the argument that the delegation is not so inclusive.

2. Interpreting the Crowley Act

The General Assembly passed what is now referred to as the Crowley Act in 1997 as a step toward enacting comprehensive state education aid.⁹ Section 5 calls for the adoption of “a

⁸ Citing *Wayne Distributing Co. v. Schweppes U.S.A. Ltd.*, 116 R.I. 108, 111 n. 2, 352 A.2d 625, 627 n. 2 (1976) (quoting *Pawtucket Machinery & Supply Corp. v. Monroe*, 73 R.I. 162, 164–65, 54 A.2d 399, 400 (1947)).

⁹ P.L. 1997, ch. 30, art. 31, § 1. The Act was named after Paul W. Crowley, a Newport restaurateur and long-serving Democrat in the General Assembly. Throughout the 1980s and 1990s, Crowley led efforts for school reform in the General Assembly and succeeded in obtaining the enactment of legislation implementing school evaluations by RIDE and, in 1995, authorizing the establishment of charter schools. Yet, his obituary notes that “the proposal that probably will be most closely associated with Crowley is the Student Investment Initiative, more commonly referred to as Article 31 [and now, the Crowley Act]. While Crowley favored more state aid for education, he did not like

series of progressive support and intervention strategies” for failing schools and school districts. See R.I. Gen. Laws § 17-7.1-5(a) (quoted at § II, ¶ 1, *supra* at 3).

The PTU is correct that neither orders of the Commissioner nor agreements with City officials can, standing alone, create legal authority not sanctioned by the General Assembly. However, the PTU’s conclusion that the Crowley Act does not include the authority “to hire or terminate teaching staff,” see PTU’s Reply. Mem. at 5, simply ignores that: (a) the Act expressly delegates authority over the District’s “budget, program *and/or* personnel” to the Council, which the Council then delegated to the Commissioner, see § II, ¶¶ 1-2, *supra* at 3; and (b) the Act itself does not subject the Council’s control over a district or school’s “budget, program, and/or personnel” to any legislatively imposed limits. R.I. Gen. Laws § 17-7.1-5(a). Moreover, the General Assembly certainly knows how to constrain the authority of the Commissioner when it wishes to do so. See, e.g., R.I. Gen. Laws § 16-13-4 (conferring authority on the Commissioner to hear appeals from termination decisions, but not if a collective bargaining agreement provides for arbitration). Nonetheless, the General Assembly chose not to do so in the Crowley Act.

The Crowley Act does not define its key terms. Yet, the Act’s reference to “progressive levels of control,” *id.*, that control “*may* be exercised in collaboration with the school district and the municipality,” *id.* (emphasis added), and the Act’s description of the delegated “[r]econstitution responsibility” as “rang[ing] from restructuring the school’s governance, budget, program [and] personnel,” which “may include decisions regarding the continued operation of the school,” *id.*, all demonstrate that the Legislature intended to limit the broad grant of authority and delegation of responsibility to school boards and committees under R.I. Gen. Laws § 16-2-9.

issuing a blank check. He was a strong believer in accountability.” Joe Baker, *Paul Crowley: He never backed down*, Newport Daily News (September 25, 2007).

“It is well settled that the plain statutory language is the best indicator of the General Assembly’s intent,” *Twenty Eleven, LLC v. Botelho*, 127 A.23d 897, 900 (R.I. 2015), and as was noted by the Superintendent, if only a narrow scope of control were intended, the Legislature would have identified a more circumscribed range of control, rather than referring broadly to a school or district’s “budget, program, and/or personnel.”

Moreover, as addressed below: (a) the General Assembly expressly re-affirmed the authority of the Commissioner set forth in the October 15, 2019 *Order of Control and Reconstitution*, see § 16-7.1-5.1(c)(1) (quoted *infra* at 19), and Exhibit 8 (quoted at § II, ¶ 6, *supra* at 4); and (b) neither the Council nor the Commissioner ever delegated to the PSB the authority to hire or terminate teaching staff, which delegation would have been required pursuant to § 16-7.1-5.1(b)(6) (quoted *infra* at 19), to authorize the PSB to do so.

a. The PTU’s Reliance upon § 16-7.1-5.1(b)(1)

As noted, the PTU argues that since recent amendments to the Act provide that the PSB “shall not have the authority to appoint senior school district administrators so long as the turnaround plan is in effect,” while making no mention of the authority to appoint teachers, it can somehow be inferred that the Legislature intended for the Board to retain the authority over the non-renewal of probationary teachers reflected in: (a) R.I. Gen. Laws § 16-2-9(a)(6), which provides that school committees and/or boards have “overall policy responsibility for the employment . . . of school personnel[;]” (b) §§ 16-13-2 and 16-13-4 (quoted at § II, ¶¶ 16-17, *supra*, at 7-8); and (c) § 16-12-6, which provides that “school committees” may dismiss teachers for “refusal to conform to the regulations made by the committee, or for other just cause.” See PTU Mem. at 3-4.

Yet, the Rhode Island Supreme Court has noted that “statutes on the same subject * * * are, when enacted by the same jurisdiction, to be read in relation to each other.” *Horn v. Southern Union Co.*, 927 A.2d 292, 295 and note 5 (R.I. 2007) (citing Reed Dickerson, *The Interpretation and Application of Statutes* 233 (1975)). And the Court has made clear that:

[i]t is an especially well-settled principle of statutory construction that when, as here, ‘we are faced with statutory provisions that are *in pari materia*, we construe them in a manner that attempts to harmonize them and that is consistent with their general objective scope.’ *State v. Dearmas*, 841 A.2d 659, 666 (R.I.2004); *see also Kells v. Town of Lincoln*, 874 A.2d 204, 212 (R.I.2005); *Folan v. State, Department of Children, Youth, and Families*, 723 A.2d 289-90 (R.I. 1999); *In re Doe*, 717 A.2d 1129, 1132 (R.I.1998); *Kaya v. Partington*, 681 A.2d 256, 261 (R.I.1996); *State v. Ahmadjian*, 438 A.2d 1070, 1081 (R.I.1981). *This is true even when ‘the statutes in question contain no reference to each other and are passed at different times.’ Ahmadjian*, 438 A.2d at 1081; *see also Folan*, 723 A.2d at 289–90; *Blanchette v. Stone*, 591 A.2d 785, 786 (R.I.1991).

Id. at 296 (emphasis added); *see also Brennan v. Kirby*, 529 A.2d 633, 637 (R.I. 1987) (citation omitted) (“when apparently inconsistent statutory provisions are questioned, attempt should be made to construe and apply them so as to avoid inconsistency and should not be applied literally if to do so would produce patently absurd or unreasonable results”); *Ahmadjian, supra*, 438 A.2d at 1081 (“[w]hen the legislative intent behind a statute is clear, we are obliged to interpret statutes consistently with such intent.”).

The PTU not only ignores the above-cited rule of statutory interpretation, it takes the relied-upon language in § 16-7.1-5.1(b)(1) out of context. In its entirety, § 16-7.1-5.1(b) provides as follows:

- (b) Effective March 1, 2023, and for the duration of the turnaround, the Providence school board shall meet at least monthly, and more frequently if necessary, to provide public input of district performance and implementation of turnaround strategies. The Providence school board shall have, at a minimum, the following powers and duties:
 - (1) To review and advise the commissioner on the appointment of senior school district administrators, *provided that the Providence school*

board shall not have the authority to appoint senior school district administrators so long as the turnaround plan is in effect;

- (2) To advise the commissioner on districtwide policy, provided that the Providence school board shall not have the authority to establish districtwide policy so long as the turnaround plan is in effect;
- (3) To review progress toward annual performance measures;
- (4) To receive feedback from stakeholders on the implementation of the turnaround plan;
- (5) To establish appropriate advisory committees as needed to provide guidance on the implementation of the turnaround plan; and
- (6) *Any other duties delegated to the Providence school board by the commissioner or the council on elementary and secondary education (the “council”).*

Id. (emphasis added). And § 16-7.1-5.1(c)(1) provides that:

The order of reconstitution and control, issued October 15, 2019, shall be authorized for a period of not more than five (5) years from issuance. The commissioner and turnaround superintendent may jointly develop additional components of the turnaround plan and shall jointly develop annual goals for each component of the plan in a manner consistent with this section. The superintendent shall be responsible for meeting the goals of the turnaround plan.

Id. (emphasis added).

Contrary to the argument of the PTU, the statement in subsection (b)(1) that the Board “shall not have the authority to appoint senior school district administrators so long as the turnaround plan is in effect,” merely clarifies that the Board’s authority “[t]o review and advise the commissioner on the appointment of senior school district administrators” is purely advisory, and does not create any power to appoint these administrators. Indeed, when read in its entirety, it is clear that other than the *advisory* authority specifically referenced in subsections (b)(1) through (b)(5), *any* Board authority must be specifically delegated by the Commissioner or the

Council for as long as the PPSD Turnaround Plan (the “TAP”) remains in effect. *See id.* at (b)(6) (quoted *supra*).

Moreover, subsection (c)(1) expressly recognizes the October 15, 2019 *Order of Control and Reconstitution*. Thus, as noted by the Superintendent, “[t]he statute’s reference to the October 15, 2019, Order establishes that the [L]egislature was keenly aware that . . . the Commissioner had assumed decision making authority for personnel, programmatic and budgetary decisions (such as non-renewals) formerly held by the Board.” *See* Supt.’s Reply Mem. at 6.

Finally, the single case cited by the PTU does not support its interpretation of § 16-7.1-5.1(b)(1). The Court’s statement in *Town of Johnston v. Santilli*, 892 A.2d 123 (R.I. 2006), that the General Assembly “vests school committees with the ‘entire care, control, and management’ of local schools,” *id.* at 128 (citing R.I. Gen. Laws § 16-2-9(a)), had nothing to do with the Crowley Act as the Town of Johnston was not at the time the subject of any State intervention under the Act. Thus, the language in § 16-2-9(a) making clear that the enumerated powers would not be conferred if “the responsibility is otherwise delegated,” *id.*, was not applicable to the facts of this case, and the Court’s actual holding that Johnston’s Town Charter could require its school committee to be represented by the Town’s solicitor, *see id.* at 129, is simply not relevant to this case.

In short, the PTU’s bald claim that § 16-7.1-5.1(b)(1) somehow justifies an inference that the Legislature intended that the PSB should retain authority and control over the contracts of probationary teachers is not persuasive.

b. The Teachers' Statutory and Due Process Rights

Although the Crowley Act shifted control over the non-renewal of probationary teachers from the PSB to the Council, no language in the Act fairly suggests that the Legislature intended to eliminate or modify the procedural rights provided to probationary teachers whose contracts are not being renewed.

The service of probationary teachers in Rhode Island is based on an annual contract, and if their dismissal or nonrenewal “is based on fiscal exigency or program reorganization, the governing body shall notify the teacher on or before June 1 of the school year immediately preceding the school year in which the dismissal or nonrenewal is to become effective,” and the teacher, “upon request, shall be furnished a statement of cause for dismissal or nonrenewal” and “shall be entitled to a hearing and appeal pursuant to the procedure set forth in § 16-13-4.” See R.I. Gen. Laws § 16-13-2(a) (quoted more fully at § II, ¶ 16, *supra*, at 7; see also *id.*, ¶ 17, *supra*, at 7-8 (quoting § 16-13-4(a)).

Unlike a contractual right, the command from the General Assembly in §§ 16-13-2 and 16-13-4 applies to “the governing body of the schools,” which would include the Council (and the Commissioner as its Crowley Act delegate) for as long as the TAP remains in effect.¹⁰ Thus here, the appealing teachers were timely provided with the requisite notice and are (and will be) provided with the hearing or hearings mandated under § 16-13-2.

Finally, assuming (without deciding) that probationary teachers subject to non-renewal have a constitutional right to due process under *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S.

¹⁰ The same cannot be said with respect to § 16-12-6, which also was cited by the PTU and which refers to the authority of school committees to dismiss teachers. However, as discussed above, the language of the Crowley Act transferring control over a district’s “budget, program and/or personnel,” as well as the Legislature’s express recognition of the October 15, 2019 *Order of Control and Reconstitution*, makes clear that the authority in § 16-12-6 is transferred to the Council during the State intervention in the PPSD.


532, 546 (1985), the notice and hearing that is (and will be) provided under § 16-13-2 satisfies that right. *See Loudermill*, 470 U.S. at 546 (“The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present his side of the story.”); *Kenyon v. Town of Westerly*, 694 A.2d 1196, 1200 (R.I. 1997) (“hearing before the town council constituted a pretermination hearing that went beyond the minimal requirements of *Loudermill*, and substantially complied with the standards governing an administrative hearing.”); *see generally* Henry J. Friendly, “*Some Kind of Hearing*,” 123 U.Pa.L.Rev. 1267 (1975).

V. CONCLUSION AND ORDER

For all of the above reasons Petitioner’s motion for an order: (a) vacating the Commissioner’s May 29, 2024 Order; (b) affirming the PSB’s vote taken at its meeting on May 22, 2024, failing to approve the recommendation of the Superintendent; and (c) renewing the contracts of the appealing teachers based upon the Commissioner’s lack of legal authority, is hereby denied.



ANTHONY F. COTTONE, ESQ.,
as Hearing Officer for the Commissioner



ANGÉLICA INFANTE-GREEN,
as Commissioner of Education
and Crowley Act Delegate

Dated: 10/22/24