THE CITY OF PROVIDENCE

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 234

Approved April 9, 1998

RESOLVED, That the President of the City Council is requested to create a study committee of the City Council to deal with City employee misconduct.

IN CITY COUNCIL
APR 2 1998
READ AND PASSED
Evelyn V. Fargnoli
PRES.
Jean M. Angelone
Deputy CLERK

APPROVED
APR 9 1998
Vincent A. Cianci
MAYOR

IN CITY COUNCIL
MAY 1 1997
READ:
LAY ON TABLE
Michael K. Clement CLERK

IN CITY COUNCIL
MAY 15 1997
FIRST READING
REFERRED TO COMMITTEE ON
CITY PROPERTY
CLERK

THE COMMITTEE ON
City Property
Recommends be continued
OCT 16 1997 Clerk

THE COMMITTEE ON
CITY PROPERTY
Approves Passage of
The Within Resolution
Clare Bottorff
March 24, 1998 Clerk

Councilmen De Luca (By request)

Employee Conduct Committee

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SAMPLE ISSUE

Public Employee
DISMISSALS
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How cities and towns overcome legal challenges

VOL. 24, NO. 4 APRIL 1998

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Discrimination

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Tenure

Supreme Court Decision

Local government officials claim immunity for legislative activity

Bogan v. Scott-Harris, U.S. Supreme Court, No. 96-1569 (1998)

In a recent decision, the U.S. Supreme Court gave absolute immunity to city officials who passed an ordinance eliminating the position of a city administrator. The decision, written by Justice Clarence Thomas, extended to local legislators the same immunity held by federal, state, and regional legislators. It also represented the Supreme Court's stamp of approval for a view held by practically all courts in the country.

Facts

The case, *Bogan v. Scott-Harris*, originated in Fall River, Mass. Scott-Harris was administrator for the city's Department of Health and Human Services. She received a complaint that an employee temporarily working under her had made racial and ethnic slurs about coworkers. She prepared to fire the employee, but the employee used her political connections to get a hearing before the city council. Among those she contacted was Roderick, the city council vice president. After the hearing, the city council reached a settlement with the employee under which it suspended her for 60 days without pay. Bogan, the mayor, later reduced the suspension significantly.

Before the charges against the employee had been resolved, Bogan prepared his budget for the upcoming year. The proposed budget eliminated 135 positions and froze salaries. Bogan also suggested eliminating the Department of Health and Human Services. Scott-Harris was the department's only employee.

A city council committee that Roderick chaired approved an ordinance eliminating the department. The city council later passed the ordinance, and Bogan signed it.

Scott-Harris sued the city, Bogan, Roderick, and other city officials. She claimed they eliminated her position because of racial discrimination and in retaliation for her exercising her free speech rights by starting termination proceedings against the employee.

Bogan and Roderick both asked the court for legislative immunity. The court denied these requests. After a trial, a jury found there was no racial discrimination against Scott-Harris. The jury, however, ruled against the city, Bogan, and Roderick on Scott-Harris' free speech claim.

Bogan and Roderick asked the court

Public Employee Dismissals Bulletin

Published by
Quinlan Publishing Co.

Agent for
Pioneer Publishing, Ltd.
23 Drydock Ave.
Boston, MA 02210-2387
(617) 542-0048
fax: (617) 345-9646
e-mail: info@quinlan.com
http://www.quinlan.com
(ISSN 0893-8172)

to overturn the verdict, but the court refused. It said the ordinance was not a neutral, legislative act, but instead an administrative act targeted at Scott-Harris. Bogan and Roderick appealed.

The federal appeals court reversed the verdict against the city, but affirmed the verdicts against Bogan and Roderick for the same reason the trial court gave. Bogan and Roderick appealed to the Supreme Court.

The Decision

The Supreme Court reversed in favor of Bogan and Roderick, granting them legislative immunity. Citing legal precedents and treatises dating back to the 19th century, Justice Thomas said other courts had extended immunity to local government officials for their legislative activities. Justice Thomas also noted that the Supreme Court itself had extended legislative immunity to federal, state, and regional legislators, and there was no reason to distinguish local government legislators from these other types of lawmakers.

Justice Thomas explained there were many reasons for giving legislators immunity for their legislative acts. Court interference and the fear of personal liability could affect a legislator's ability to exercise his or her discretion. Also, the time and effort it took to defend against lawsuits could seriously impede the local legislative process because local legislators were often part time. Furthermore, the threat of enormous liability compared to the often minuscule pay offered to local legislators would deter many people from participating in local government.

Justice Thomas went on to say that the argument for legislative immunity could be even greater at the local level. Unlike states and the federal government, which often had sovereign immunity, local governments could be held liable for constitutional violations. In addition, local legislators who used their legislative power to commit constitutional abuses were more likely than their federal and state counterparts to feel the effects of those abuses because their constituents had greater influence over them.

With regard to Bogan's and Roderick's actions, Justice Thomas said the appeals court had erred in deciding the immunity issue when it looked first at Bogan and Roderick's intent — whether they passed this ordinance with Scott-Harris in mind — when it should have first determined whether Bogan's and Roderick's actions were legislative.

Justice Thomas said Bogan's and Roderick's actions were clearly legislative and so they deserved immunity. Even though Bogan, as mayor, was an executive, his budget proposal and his signing the ordinance into law "were legislative because they were integral steps in the legislative process."

While the Court found the passage of the ordinance to be legislative in *form*, it also found passage to be legislative in *substance* as well. According to Justice Thomas, "The ordinance reflected a discretionary, policymaking decision implicating the budgetary priorities of the city and the services the city provides its constituents." Also important was the fact the ordinance eliminated a position, and not simply Scott-Harris herself. Therefore, the ordinance's effects extended beyond Scott-Harris.

see also: Tenney v. Brandhove, 341 U.S. 367 (1951).

see also: Lake Country Estates Inc. v. Tahoe Regional Planning Agency, 440 U.S. 391 (1979).

see also: Supreme Court of Virginia v. Consumers Union of United States Inc., 446 U.S. 719 (1980).

see also: Spallone v. Unites States, 493 U.S. 265 (1990).

Discrimination

Public employee uses Title II of the ADA to fight firing

Bledsoe v. Palm Beach County Soil And Water Conservation District, 11th U.S. Circuit Court of Appeals, No. 96-5375 (1998)

The 11th U.S. Circuit Court of Appeals has jurisdiction over Alabama, Florida, and Georgia.

Bledsoe was a technician for the Palm Beach County (Fla.) Soil And Water Conservation District. His job involved much walking and manual labor.

During work in 1990, Bledsoe hurt his knee. He requested workers' compensation benefits. Because his doctor recommended he not walk excessively, Bledsoe asked his supervisor for an accommodation. The district offered him another position, but he refused it. The district fired him in 1992.

After the firing, Bledsoe settled his workers' comp claim with the county. As part of the settlement, he signed a release stating he wouldn't sue the county. The waiver stated that:

> as further consideration for the aforementioned payment, [Bledsoe] agrees and does hereby release, discharge, and surrender any and all claims, whether or not asserted, against the Employer/Carrier ... and any other person or entity so connected to the Employer/Carrier ... of any nature whatsoever.

Bledsoe sued the district, claiming it discriminated against him in violation of the Americans with Disabilities Act. He sued under Title I of the ADA, which prohibited employment discrimination.

Title I applied only to employers with 15 or more employees. Because the district had fewer than 15 employees, Bledsoe amended his lawsuit and sued under Title II instead. Title II stated that no "qualified individual with a disability" could, by reason of his or her disability, be excluded from participating in or be denied the benefits of the "services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

The district asked for judgment without a trial. It argued Bledsoe's release of all claims against the county also applied to it and that Title II of the ADA didn't apply to employment discrimination.

The court granted judgment to the district. Bledsoe appealed, arguing it was questionable whether he voluntarily and knowingly released his ADA claims. He contended that Title II did prohibit employment discrimination.

DECISION: Reversed.

A jury needed to determine whether Bledsoe's release was voluntary and knowing. If it wasn't, he could bring his ADA claim, because Title II applied to employment discrimination.

In analyzing Bledsoe's claim that he didn't voluntarily and knowingly waive his ADA claim, the court should have looked at several factors: Bledsoe's education and business experience; the amount of time Bledsoe considered the agreement before signing it; the agreement's clarity; Bledsoe's opportunity to consult with an attorney; whether the employer encouraged or discouraged consultation with an attorney; and what Bledsoe gave in exchange for the waiver compared with the benefits to which Bledsoe was already entitled.

Based on the above factors, there was a question whether Bledsoe gave a voluntary and knowing release. The release's language seemed to refer only to his workers' comp claim. Bledsoe also didn't appear to receive anything in exchange for a waiver of his ADA rights. Bledsoe deserved a trial on the voluntariness of his release.

Bledsoe could sue if he didn't waive his ADA claim against the district because Title II applied to employment discrimination. The language of Title II, including the statement "...or be subjected to discrimination by any such entity," was broad enough to include employment discrimination. Furthermore, legislative commentary and federal regulations interpreting Title II both mentioned its application to employment. In addition, other federal courts had interpreted Title II to prohibit employment discrimination.

see also: Puentes v. United Parcel Service Inc., 86 F.3d 196 (1996).

see also: Innovative Health Systems Inc. v. City of White Plains, 117 F.3d 37 (1997).

CASE NOTE:

The court also noted that, in addition to the lack of a 15-employee threshold, Title II of the ADA differed from Title I in another important respect. The court found that, unlike Title I, Title II didn't require public employees to exhaust their administrative remedies before suing.

Transit officer loses gun on subway

Brennan v. New York City Police Department, 2nd U.S. Circuit Court of Appeals, No. 97-7779 (1998)

Brennan was a probationary officer with the New York City Transit Police Department.

Late one evening after work, Brennan went to two bars, where he had four beers. During his outing, he removed his gun and put it in his bag. He took the subway home. On the ride, he fell asleep. He said he awoke confused and left the subway car without his gun. It was not clear whether the gun was stolen while he was asleep or whether Brennan simply left it on the subway.

Following a hearing, the department suspended him for three days. Department rules required officers to carry their guns in holsters and to exercise "extreme care ... in the use of a firearm, especially in the subway." Brennan said alcohol wasn't a factor in the loss of his gun; he blamed the incident on his being tired from working late that night and from working six hours of overtime the previous night.

Several months later, police investigating a report of a suspicious armed man found Brennan slouched against a mailbox. He had six cigarettes in his mouth and appeared drunk. His gun had two fewer rounds than required. Brennan told the officers he had dreamt he shot two girls. He later failed a fitness-for-duty test.

Brennan entered the department's Employee Assistance Program. He was placed in an alcohol detoxification and rehabilitation hospital.

Brennan later returned to work, but was put on restricted duty. The department kept his gun.

The department's disciplinary committee reviewed Brennan's record. It voted to fire him. Brennan resigned a few weeks later. He claimed he was told to resign or be fired.

Brennan sued the department and his supervisors under the Americans with Disabilities Act, claiming it forced him to resign because he was an alcoholic even though he was now sober and otherwise qualified for his job. He argued he could perform the essential functions of his job with an accommodation of continued EAP monitoring.

The court dismissed Brennan's lawsuit against the city and the supervisors. It ruled that he hadn't shown he was qualified to be a police officer. Brennan appealed.

DECISION: Affirmed.

The court properly dismissed Brennan's lawsuit because he wasn't otherwise qualified to be an officer.

Brennan's alcoholism was a recognized disability under the ADA. However, he wasn't otherwise qualified to be an officer because he was very careless with his gun. Someone so careless with a weapon was not qualified to be an officer. As Brennan himself admitted, this carelessness had nothing to do with his alcoholism.

Brennan's claim that he could perform the essential functions of his job with the accommodation of continued EAP monitoring failed as well. While such an accommodation might help his alcoholism, it did nothing to correct his carelessness with his weapons.

see also: Borkowski v. Valley Central School District, 63 F.3d 131 (1995).

see also: Stone v. City of Mount Vernon, 118 F.3d 92 (1997).

CASE NOTE:
As the court noted, the department regulations concerning an officer's care of his or her weapons complied with the ADA. The ADA allows employers to place requirements on employees that keep them from "pos[ing] a direct threat to the health or safety of other individuals in the workplace."

Disabled police officer demands reassignment

Lang v. City of Maplewood, Court of Appeals of Minnesota, No. C5-97-1315 (1998)

The city of Maplewood, Minn., hired Lang as a police officer in 1972. In 1988, Lang was diagnosed with depression and a mixed personality disorder and received psychiatric treatment. In 1995, Lang's doctor determined Lang's condition permanently prevented him from performing a police officer's duties. Lang later had brain surgery, but still wasn't able to return to his job.

The city notified Lang it was terminating him because of his permanent disability. Lang requested a hearing. Meanwhile, he applied to the Public Employee's Retirement Association for total disability benefits. He started receiving benefits in June 1996. In October, the hearing board found Lang was properly dismissed because he was incapable of performing a police officer's duties. Lang didn't appeal the decision.

Lang sued the city under the Minnesota Human Rights Act, claiming the city discriminated against him based on his

disability. Admitting he was totally disabled and could not perform a police officer's duties, Lang argued the city should have accommodated his disability by offering him a different position.

The court granted the city's request for judgment without a trial. It found Lang wasn't a "qualified disabled person" under the Act because he claimed in his benefits application to be totally disabled from performing a police officer's duties.

Lang appealed. He said another court had found that a social security disability determination didn't define whether an individual was a qualified disabled person under antidiscrimination law. Lang also argued the city forced him to apply for benefits when it failed to reassign him to another position. He admitted he couldn't work as a police officer but claimed the city was obligated under the Act to offer him a position for which he *was* qualified.

DECISION: Affirmed.

The city was entitled to judgment without a trial because it was undisputed Lang wasn't a "qualified disabled person" under the Act.

Lang admitted he was totally disabled as a police officer when he applied for benefits. Even if this application didn't define his status as a qualified disabled person, Lang admitted he could no longer work as a *police officer*, with or without reasonable accommodations. The Act required the city to accommodate individuals qualified "for the job in question." It didn't require the city to find employees a completely different job when they couldn't perform the job for which they were hired.

see also: August v. Offices Unlimited Inc., 981 F.2d 576 (1992).

CASE NOTE:

Federal agencies do consider reassignment to be a possible accommodation option. The court in *Hurley-Bardige v. Brown, 900 F.Supp. 567 (1995)* said that federal policy manuals include reassignment among the possible choices for federal employers dealing with disabled workers. For example, "the Federal Personnel Manual provides that agencies 'must exhaust all reasonable efforts to alleviate any service deficiencies through accommodation and/or reassignment' prior to suggesting that employees seek retirement or disability leave." However, the court said it was unclear whether federal law *required* agencies to reassign disabled employees.

see also: Reiff v. Interim Personnel Inc., 906 F.Supp. 1280 (1995)

City fires legal secretary for absenteeism and poor performance

Brown v. City of New York, U.S. District Court for the Southern District of New York, No. 94 Civ. 7090 (AGS) (1998)

Brown, a black woman, was a part-time secretary for the New York City Law Department. She reportedly had attendance and performance problems.

In 1989, Brown received an official memo about her use of undocumented sick leave and another about arriving late for work. That year, her overall performance rating was "good plus," but her supervisor noted she needed to take initiative and apply herself more consistently. The evaluation also noted Brown's attendance problems.

Two months after receiving the memo about tardiness, Brown again arrived late to work. She received another lateness memo, which was sent to the Inspector General's office. Brown wrote a response to the memo accepting responsibility for being late and promising to change her behavior.

Brown's 1990 performance evaluation earned her an overall rating of "good." The evaluation noted, however, that Brown had not improved in the areas indicated in her last review. Her supervisors showed Brown production charts showing she compared poorly with her coworkers. Brown questioned the statistics' relevance and validity.

Brown refused to discuss the evaluation, stating her performance problems were not her fault but instead resulted from an "inadequate work station or ineffective supervision." Brown also said she needed to meet only the basic job requirements.

After the evaluation, Brown's supervisors, two white men, recommended the department fire her. The department sent Brown a termination letter and hired another black woman to replace her.

CASE NOTE:

Brown also filed a grievance through her union. The city's office of labor relations dismissed the grievance, ruling she couldn't appeal through the grievance procedure in the collective bargaining agreement because she was a "part-time provisional employee."

Brown sued the city under federal and state anti-discrimination law. She claimed the department fired her because of her race.

To bring a case of race discrimination, Brown had to show she belonged to a protected minority group, she was qualified for the job, she was fired, and she was replaced by a nonminority. The city asked for judgment without a trial, arguing Brown couldn't meet that test.

DECISION: Judgment for the city.

Brown failed to bring a proper case of race discrimination.

Brown belonged to a protected minority class, was arguably qualified for her job, and was fired. However, the city replaced her with another black woman, so Brown couldn't bring a proper race discrimination claim.

Even if Brown had met that threshold, the city could have won the case. The city showed a well-documented history of attendance and performance problems that were the real reasons for her termination. Brown based her entire lawsuit on her unsupported assertions that the two white supervisors resented her challenge to their authority and that they unfairly compared her to nonminority employees.

see also: St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993).

see also: Fisher v. Vassar College, 114 F.3d 1332 (1997).

Administrative Proceedings

Airport employees accuse coworker of involvement in illegal scheme

Chavez v. City of Albuquerque, Court of Appeals of New Mexico, No. 17587 (1997)

Chavez was an airfield maintenance operator at Albuquerque (N.M.) City Airport.

Police uncovered an illegal parking-ticket-selling scheme at the airport. They questioned two of Chavez's coworkers. Both men initially denied any involvement in the scheme, but both later confessed to participating. In their confessions, both men implicated Chavez. Chavez and the others avoided criminal prosecution in exchange for alternative sentencing.

The city fired Chavez. He appealed to the city's personnel board, which held a grievance hearing.

The only evidence the city presented to justify Chavez's firing was the coworkers' statements, which were not made under oath. The coworkers were unavailable to testify themselves. Chavez objected to the use of the statements, but the hearing officer accepted them. The board upheld the firing.

Chavez appealed. He argued the coworkers' statements were hearsay and so not admissible at the hearing. Hearsay was an out-of-court statement used to prove the truth of the matter asserted in the statement. A court would prohibit the use of hearsay in court unless it met certain exceptions.

Under state law, administrative bodies could consider evidence not admissible in a court. However, such inadmissible evidence could not be the sole basis for the body's decision.

The city argued the coworkers' statements, because they implicated the coworkers as well, fell under an exception to the hearsay rule that permitted statements made against the interest of the person making the statement. According to the city, the statements were therefore admissible in court and so could be the sole basis of the board's decision.

DECISION: Reversed.

The coworkers' statements were inadmissible hearsay and so could not be the sole basis of the board's decision. As a result, the hearing officer's decision approving the firing couldn't stand.

Though statements against interest were exceptions to the hearsay rule, and the coworkers' statements implicated themselves in the scheme, the statements didn't qualify as exceptions to the hearsay rule because they weren't completely reliable. The coworkers' statements could be viewed as an attempt to shift the blame to Chavez.

see also: Williamson v. United States, 512 U.S. 594, 114 S.Ct. 2431, 129 L.Ed.2d 476 (1994).

see also: Young v. Board of Pharmacy, 462 P.2d 139 (1969).

CASE NOTE:

Courts place strict limits on the admissibility of hearsay because of its suspect reliability. When an out-of-court statement is offered as evidence, the other side cannot question the person who made the statement (because, by definition, the person who made the statement isn't there). Therefore, there is no way to test the accuracy of hearsay. However, courts will admit hearsay in certain circumstances when those circumstances make it highly likely the statement made is true. *Chavez* provides an example of one of those circumstances. Courts will often admit statements where what was said goes against the interest of the person making the statement. Such testimony is reliable because most people wouldn't say something against their own interest unless it was true. However, in this case, the court's fear that the statements were also made to shift the blame to Chavez led it to disregard whatever reliability the statements may have had and exclude them from evidence.

Officer is involved in altercation at coworker's party

Eng v. New York City Police Department, No. 95 Civ. 5845 (JSR) (New York) 1997

Eng was a New York City police detective assigned to the internal affairs division. He went to a party for a neighbor who was a fellow police officer just promoted to detective. Several people at the party supposedly ridiculed Eng for his ancestry and his assignment to IAD.

Eng got up to leave and allegedly heard sounds behind him while he was leaving. He supposedly put his hand on his holstered off-duty gun and turned around to see what was happening. As he did so, he was purportedly pushed from behind, lost his balance, and accidentally discharged his gun.

Eng left the party but was supposedly followed by the men, who caught and assaulted him. Eng reached his house and allegedly fired a shotgun through the front screen door to keep the men from entering his house.

The department charged Eng with five counts of conduct unbecoming an officer. It held a hearing on the allegations. The department fired Eng after finding him guilty on four counts.

Eng appealed, claiming his dismissal was arbitrary, capricious, and made in violation of lawful procedure. The state appeals court upheld two of the charges. It held that Eng's dismissal was a "miscarriage of justice" that "shock[ed] the Court's sense of fairness." The court set aside Eng's termination and sent the case back to the department for a new penalty.

The police commissioner ordered Eng's pay forfeited from the day of the incident. He also put him on probation pending the results of a psychological evaluation to see if he could return to full duty.

Eng appealed the redetermined penalty, again claiming the department abused its discretion and discriminated against him. A department psychologist determined Eng was psychologically unsuitable for police work. The department fired Eng based on the psychological evaluation.

After being fired, Eng added to his state appeal the claim that his dismissal violated his right to procedural due process. Eng also filed a claim in federal court concerning his due process claim. A state judge upheld the redetermined penalty, but omitted any reference to Eng's due process claim.

Eng appealed again. The state court upheld the redetermination penalty, finding that basing Eng's *reinstatement* to duty on a psychological evaluation was within the department's discretion. It later clarified its order by stating that this condition concerned his "restoration to duty," not his "reinstatement," because the commissioner hadn't fired him when he decided the redetermined penalty. Only Eng's federal lawsuit remained.

The department asked the federal court for judgment without a trial. It argued that Eng's federal claim was based upon the same conduct and events that were the subject of the state court proceedings. The department also claimed Eng no longer had a protected property interest in his job once the commissioner placed him on probation.

DECISION: Judgment granted in part to the department.

The issues underlying all of Eng's claims except for his procedural due process claim had already been decided in state court.

Except for his procedural due process claim, the other issues Eng raised in his federal claim already had been fully litigated and decided against him in the state court proceedings. Eng therefore couldn't relitigate those issues in his federal case.

CASE NOTE:
The department had asked the federal court for judgment on the grounds of *collateral estoppel.* Collateral estoppel is a doctrine that prohibits the retrial of matters that were previously decided in an earlier proceeding. The court dismissed most of Eng's claims because they had already been resolved in state court. Eng's due process claim survived because it had "not been litigated in any material respect."

A new employee hired on a probationary basis had no property right in his or her employment. Eng wasn't a probationary employee in that sense. He was a fully tenured officer with the right to full reinstatement to that position once his termination was reversed on his first appeal. The commissioner's placement of Eng on "probation" by suspending him pending a psychological evaluation didn't change his reinstatement as a police officer or his right to due process. The court even clarified its ruling to show that the redetermined penalty concerned Eng's "restoration to duty," not his "reinstatement." Eng had a protected property right in his job and was entitled to procedural due process before being fired.

Factual disputes existed about what and how much notice the department gave Eng before his post-evaluation dismissal, and what, if any, opportunity the department gave Eng to be heard before it fired him. The case therefore had to go to trial.

see also: Acevedo v. Brown 606 N.Y.S.2d 691 (1994).

see also: Davidson v. Capuano, 792 F.2d 275 (1986).

Tenure

Teacher says third contract gave her tenure

Scheer v. Independent School District No. I-26 of Ottawa County, Oklahoma, Supreme Court of Oklahoma, No. 87773 (1997)

Scheer was a probationary teacher with the Afton (Okla.) School District. Under state law, she couldn't receive tenure until she completed three years of service. During her evaluations, the district asked her to improve her performance in several areas.

On April 1 of Scheer's third year of teaching, the district offered her a temporary contract for the next year. If the district hadn't made a decision by April 10, Scheer would have automatically become entitled to tenure. The district offered her a temporary contract because it still had concerns about her teaching. It described the temporary contract as giving Scheer a "last chance" to improve.

Scheer signed the contract. The contract contained a clause that expressly waived her right to continuing employment after the fourth year.

After Scheer worked the fourth year under the temporary contract, the district elected not to continue her employment. She sued the district, claiming she had tenure because she had worked under three one-year contracts. She also argued that she gained tenure by working the fourth year under the temporary contract. State law exempted teachers under temporary contracts from tenure laws.

The court granted judgment to the district. An appeals court reversed that decision and reinstated Scheer. The district appealed.

DECISION: Reversed.

Scheer did not have tenure. For her to have tenure, she had to have *successfully* completed her third year.

At the time Scheer signed the temporary contract, she had not completed her third year. Therefore, she had no tenure rights at that time. She also did not gain tenure by finishing out that third year. The district had to tell her its decision for the fourth year by April 10. It could have chosen not to renew her contract, but instead it offered her a fourth year to improve.

Scheer's fourth year did not give her tenure either. State law exempted teachers under temporary contracts from the tenure laws.

see also: Cipu v. North Haven Board of Education, 351 A.2d 76 (1974).

see also: Spiewak v. Board of Education, 447 A.2d 140 (1982).

CASE NOTE:

The court ruled that merely signing a contract for a third year was not enough to give Scheer tenure — she had to successfully complete that third year to earn tenure. Because the contracts for the third year had to be signed by April 10 of a teacher's second year, the court's ruling otherwise would give the district only two years to evaluate a probationary teacher and the teacher only two years to improve. The court found the purpose of the tenure law was to give both the district and the teacher three years before a decision had to be made on tenured employment.

THE CITY OF PROVIDENCE

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

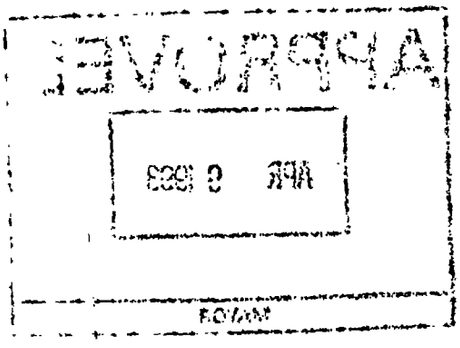
*No.*235

Approved April 9, 1998

RESOLVED, That the sincere best wishes of the Members of the City Council are extended to Harvey "Skippy" Erwin, for a complete and speedy recovery from his recent surgery.

IN CITY COUNCIL
APR 2 1998
READ AND PASSED
Evelyn V. Fargnoli
PRES.
Jean M. Angelone
Deputy CLERK

APPROVED
APR 9 1998
Vincent A. Cianci
MAYOR


APPROVED