

STATE OF RHODE ISLAND

SUPERIOR COURT

KENT, SC )

WARWICK SCHOOL COMMITTEE,

Plaintiff, )

vs. )

C.A. No. KC 92-622

RHODE ISLAND STATE LABOR  
RELATIONS BOARD, ET AL., )

Defendant. )

JUDGMENT

This action came before the Court, Mrs. Justice Famiglietti, presiding, on August 18, 1992, for a decision of the Court on plaintiff-appellant, the Warwick School Committee's, appeal of the State Labor Relations Board's Decision and Order in Case No. ULP-4518 dated May 18, 1992, a copy of which is attached to plaintiff's complaint. After consideration of the briefs of the parties and a review of the record made before the State Labor Relations Board, it is Ordered and Adjudged as follows:

The Decision and Order of the State Labor Relations Board in Case No. ULP-4518 dated May 18, 1992 is reversed.

Entered as a Judgment of this Court this \_\_\_\_\_ day of \_\_\_\_\_, 1992.

Per Order:


\_\_\_\_\_  
Clark of Court

ENTER:

\_\_\_\_\_  
Melanie Famiglietti  
Justice of the Superior Court

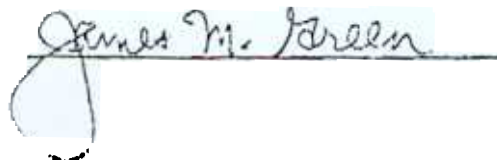
)

Form of Judgment  
Submitted By:

  
JAMES M. GREEN, Esq.  
Powers, Kinder & Keeney  
1400 Turks Head Building  
Providence, RI 02903  
(401) 454-2000  
RI Bar #3590

CERTIFICATION

I hereby certify that on the 28th day of August, 1992, a true and correct copy of the foregoing was sent by U.S. first class mail, postage prepaid, to: Richard Skolnik, Esq., 321 South Main Street, Providence, RI 02903; and Attorney Hogan 201 Waterman Avenue, East Providence, RI 02914.



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, Sc.

SUPERIOR COURT

WARWICK SCHOOL COMMITTEE )

Vs. )

KC/92-0622

RHODE ISLAND STATE LABOR )

RELATIONS BOARD and )

WARWICK TEACHERS' UNION )

DISTRICT COUNCIL, ET AL )

DECISION RENDERED BY MRS. JUSTICE FAMIGLIETTI

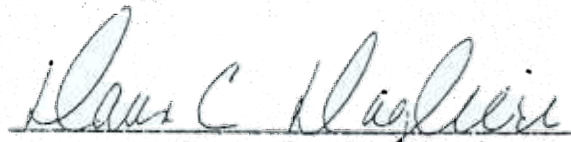
AUGUST 18, 1992

APPEARANCES NOT GIVEN ON THE RECORD

DAWN C. DAGLIERI  
COURT REPORTER

C E R T I F I C A T I O N

I, Dawn C. Daglieri, hereby certify that the  
succeeding pages, 1 through 13 inclusive, are  
a true and accurate transcript of my  
stenographic notes.

  
Dawn C. Daglieri  
Court Reporter

AUGUST 18, 1992, MORNING SESSION

THE CLERK: Daily calendar for August 18, 1992.  
KC/92-0622, Warwick Teachers' Union versus Warwick  
School Committee.

MR. SKOLNIK: Ready, Your Honor.

THE COURT: That matter is here for decision today.  
This matter is before the Court on the Plaintiff's  
appeal of a final agency decision rendered by the Rhode  
Island State Labor Relations Board ordering the  
plaintiff to enter into and execute the collective  
bargaining agreement orally agreed upon by the plaintiff  
and the Warwick Teachers' Union.

The plaintiff is seeking reversal of the State  
Labor Relations Board decision. Jurisdiction is in this  
court pursuant to Rhode Island General Laws 42-35-15 and  
Rhode Island State Labor Relations Act, Rhode Island  
General Laws 28-7-1, et seq.

On March 19th of 1991, representatives of the  
Warwick Teachers' Union, Local 915, met with  
representatives of the Warwick School Committee for the  
express purpose of negotiating a new teachers' contract.  
The Union was represented by Edward J. McElroy, Jr.,  
chief negotiator; and the School Committee was  
represented by a negotiating team of committee members,  
Jane Austin, Robert Quinlan, and Chief Negotiator Robert



1 Watt, Esquire.

2 Ground rules were agreed to by the parties and  
3 officially acknowledged by both Mr. McElroy and Mr. Watt  
4 on March 19th of 1991. In particular, Ground Rule No. 6  
5 states, "When tentative agreement is reached on any  
6 material, it will be so initiated by the respective  
7 spokesmen. Agreement reached on individual items shall  
8 be tentative and contingent upon total agreement."

9 Pursuant to the ground rules, numerous negotiating  
10 sessions were held commencing in March of 1991 and  
11 continuing through September 10th of 1991. The final  
12 oral agreement was purportedly reached on September  
13 10th, 1991.

14 On October 2nd of 1989, the Warwick Teachers'  
15 Union, Local 915, filed an unfair labor practice charge  
16 against the Warwick School Committee because the  
17 committee refused to execute a written collective  
18 bargaining agreement encompassing the terms of the  
19 September 10th, 1991 oral agreement.

20 On October 29th, 1991, the Rhode Island State Labor  
21 Relations Board issued a complaint against the Warwick  
22 School Committee. The complaint alleged that the  
23 Warwick School Committee had engaged in an unfair labor  
24 practice by refusing to sign a contract in the form and  
25 content agreed to by its representatives and had

1 therefore violated the policies and provisions of the  
2 Rhode Island State Labor Relations Act, Title 28,  
3 Chapter 7, Section 13 of the Rhode Island General Laws.

4 The Warwick School Committee denied the violation,  
5 and a formal hearing was convened on November 21st,  
6 1991. Subsequent hearings were held on December 9th,  
7 1991, January 6th, 1992, and January 24th, 1992. The  
8 State Labor Relations Board rendered its decision on May  
9 18th, 1992.

10 In that May 18th decision, the State Labor  
11 Relations Board made the following order: "Order.  
12 Paragraph 1, the respondent, Warwick School Committee,  
13 shall cease and desist from refusing to enter into and  
14 execute a written collective bargaining agreement  
15 including the terms and conditions orally agreed upon  
16 during the negotiating period of March 19th, 1991 up to  
17 and including September 10th, 1991." And Paragraph 2 of  
18 that Order, "The respondent shall, within thirty days of  
19 the date hereof, enter into and execute a written  
20 collective bargaining agreement in accordance with the  
21 terms and conditions as set forth in Union Exhibit No.  
22 5, which terms and conditions were orally agreed upon  
23 during the negotiating period of March 19th, 1991 up to  
24 and including September 10th, 1991." Paragraph 3, I'm  
25 reading from the same Order, "The respondent is ordered



1 and directed to pay to the members of Local 915 all  
2 benefits they would have received had the respondent  
3 executed and implemented a written collective bargaining  
4 agreement including all changes as provided for and set  
5 forth in Union Exhibit No. 5 including reimbursement for  
6 the third personal day.

7 Thereafter, the School Committee appealed to this  
8 Court claiming there was no binding agreement due to the  
9 lack of authority in its negotiating committee.

10 The Superior Court review of an administrative  
11 decision is controlled by Rhode Island General Laws  
12 42-35-15, Subsection G, which provides as follows:

13 "Judicial review of contested cases, Subsection G, the  
14 Court shall not substitute its judgment for that of the  
15 agency as to the weight of the evidence on questions of  
16 fact. The Court may affirm the decision of the agency  
17 or remand the case for further proceedings, or it may  
18 reverse or modify the decision if substantial rights of  
19 the appellant have been prejudiced because the  
20 administrative findings, inferences, conclusions, or  
21 decisions are; one, in violation of constitutional or  
22 statutory provisions; two, in excess of the statutory  
23 authority of the agency; three, made upon unlawful  
24 procedure; four, affected by other error of law; five,  
25 clearly erroneous in view of the reliable, probative,



1 and substantial evidence on the whole record; or six,  
2 arbitrary or capricious or characterized by abuse of  
3 discretion or clearly unwarranted exercise of  
4 discretion."

5 Essentially, when reviewing an agency decision, the  
6 Court must not substitute its judgment for that of the  
7 agency in regard to the credibility of witnesses or in  
8 regard to the weight of the evidence concerning  
9 questions of fact. This principle is set forth in Costa  
10 v. Registry of Motor Vehicles, 543 A.2d. page 1307.  
11 Even in cases where the Court, after reviewing the  
12 certified record and evidence, might be inclined to view  
13 the evidence differently than did the agency, it must  
14 uphold the agency decision if it finds any competent  
15 evidence upon which the agency decision rests. E.  
16 Grossman and Sons v. Rocha, 118 R.I. page 276, and  
17 Cahoone v. Board of Review, 104 R.I. page 503.  
18 Alternatively, the Court may vacate the agency decision  
19 if it is clearly erroneous in view of the reliable,  
20 probative, and substantial evidence contained in the  
21 whole record. Thus, the Court will reverse factual  
22 findings of an administrative agency only when they're  
23 devoid of competent evidentiary support. Milardo v.  
24 Coastal Resources Management Counsel, 434 A.2d. page  
25 266.

1           At issue before this Court is whether the  
2           three-member negotiating committee for the Warwick  
3           School Committee had authority to bind the School  
4           Committee to an oral agreement reached with the Warwick  
5           Teachers' Union. The School Committee argues that the  
6           negotiating team was expressly forbidden by the  
7           Committee to agree to certain terms and therefore the  
8           Committee cannot be bound by agreements containing those  
9           forbidden terms.

10           The authority of a public agent to bind a  
11           municipality must be actual. This discussion is set  
12           forth in the second volume of Williston on Contracts,  
13           Section 305, pages 414-423. The apparent authority  
14           doctrine does not apply to the agents of states and  
15           municipalities, even when the agent is unaware of the  
16           limit of his or her authority.

17           The law, as it has evolved in this area, means that  
18           persons dealing with municipal agents do so at their  
19           peril and have a duty to accurately ascertain the bounds  
20           of the agent's authority. These principles are also set  
21           forth in that discussion by Professor Williston. Any  
22           representations made by an agent who lacks actual  
23           authority are not binding on the municipality or its  
24           delegated school committee. That concept is also set  
25           forth in School Committee of the City of Providence v.

1        The Board of Regents, 429 A.2d. page 1297.

2                The Warwick Teachers' Union is arguing that the  
3        School Committee was statutorily empowered to designate  
4        persons to negotiate in its behalf and statutorily  
5        obligated to sign a written contract formalizing any  
6        prior oral agreement reached by such designated persons  
7        at the bargaining table. I would reference Rhode Island  
8        General Laws 28-9.3-3 and 4 and also reference Warren  
9        Education Association v. Lapan, 103 R.I. page 163.

10       Despite the accuracy of these contentions, they're  
11       theoretically misplaced in this case, in my opinion.

12               It's uncontroverted that the School Committee  
13       designated a negotiating committee to bargain with  
14       representatives of the Warwick Teachers' Union. The  
15       Teachers' Union arguing that this designation was  
16       equivalent to a delegation of authority to bind the  
17       School Committee because the School Committee was  
18       enabled by statute to vest such authority in its agents.  
19       However, there's ample evidence to suggest that the  
20       School Committee, in fact, made no such delegation of  
21       authority as to these terms.

22               The School Committee called three witnesses to  
23       establish the boundaries of the negotiating committee's  
24       authority, Jane Austin, Harold Knickie, and Walter  
25       Constantine. Austin, a member of both the School



1 Committee and the negotiating committee, testified that  
2 the negotiating team was authorized to only reach  
3 tentative agreements with the Teachers' Union. In  
4 addition, Ground Rule 6 expressly stated, " ...  
5 agreement reached on individual items shall be tentative  
6 and contingent on total agreement." Austin further  
7 testified that the negotiating committee was expressly  
8 directed by the School Committee as a whole to agree to  
9 no more than one additional personal day and that Robert  
10 Watt, the chief negotiator, had been expressly told that  
11 he could not agree to pay for the twenty-sixth student  
12 in a class.

13 Harold Knickle, Chairman of the School Committee,  
14 during the negotiations at issue, testified that the  
15 negotiating committee had been directed by the School  
16 Committee to agree to no more than one additional  
17 personal day. Mr. Knickle also testified that Mr. Watt  
18 had been expressly told that he could not agree to pay  
19 for the twenty-sixth student in a class.

20 Finally, the School Committee called Walter  
21 Constantine, the senior member of the School Committee,  
22 who testified that the Committee had directed its  
23 negotiator to agree to no more than one additional  
24 personal day. Here, the testimony was reiterated that  
25 the Committee never authorized payment for the



1 twenty-sixth student in a class.

2 Edward McElroy testified for the Teachers' Union  
3 that Robert Quinlan, a member of the school negotiating  
4 committee, stated that he had the "votes on the School  
5 Committee to make agreements." Mr. McElroy also  
6 testified that he and Mr. Watt had, during a one-on-one  
7 conversation, agreed to a third personal day and payment  
8 as well for the twenty-sixth student. Even if such an  
9 agreement occurred, Mr. Watt, in my opinion, did not  
10 possess the actual authority, which is required to enter  
11 into such an agreement. Therefore, the School Committee  
12 cannot be bound by the agreement because the authority  
13 to enter into that agreement was lacking. Furthermore,  
14 any representation by Quinlan that he had authority to  
15 bind the School Committee creates only a question of  
16 apparent authority and in no way controverts the  
17 evidence of no actual authority.

18 The Teachers' Union argues that if the School  
19 Committee designates persons to negotiate or bargain in  
20 its behalf pursuant to Rhode Island General Laws  
21 28-9.3-3, the School Committee has made an unequivocal  
22 delegation of actual authority of. In essence, the  
23 Teachers' Union is contending that if the entire School  
24 Committee chooses not to attend negotiating sessions and  
25 thereby designates a select few to attend such sessions,

1 the School Committee has automatically vested these  
2 select few with authority to bind the entire School  
3 Committee. This Court cannot accept this contention.

4 Rhode Island General Laws, same section 28-9.3-3,  
5 states specifically, "The School Committee may designate  
6 any person or persons to negotiate or bargain in its  
7 behalf." The statute allows the School Committee to  
8 designate certain persons to attend bargaining sessions.  
9 In no way does the statute state that these persons are  
10 automatically authorized to make a final binding  
11 decision for the entire School Committee.

12 Rhode Island General Laws 28-9.3-4 states, "This  
13 obligation to meet and confer in good faith shall  
14 include the duty to cause any agreement resulting from  
15 negotiations or bargaining to be reduced to a written  
16 contract." This section clearly distinguishes reaching  
17 an agreement from negotiating or bargaining for an  
18 agreement. Taken together, the two statutes elucidate  
19 the legislature's intent to separate the acts of  
20 negotiating or bargaining in the School Committee's  
21 behalf and the act of actually reaching a binding  
22 agreement.

23 In this Court's estimation, the delegation of  
24 authority by the School Committee to the negotiating  
25 committee to reach agreements must be actual. That's



1        what the law requires. The Teachers' Union makes two  
2        additional arguments: one, that the Teachers' Union was  
3        not on notice that any agreement reached at the table  
4        had to be ratified by the School Committee as a  
5        condition precedent to the agreement becoming final and  
6        binding and, therefore, the School Committee does not  
7        have the right to reject the agreement; and two, that  
8        the Teachers' Union relied on the negotiating  
9        committee's authority to reach an agreement and,  
10       therefore, the School Committee should be estopped from  
11       denying any agreements reached. However, these  
12       arguments are not persuasive because Ground Rule 6  
13       notified the Teachers' Union of the negotiating  
14       committee's limited authority.

15       After reading the transcript of the hearing, I have  
16       determined that the evidence clearly suggests that the  
17       designated negotiating team for the School Committee did  
18       not have actual authority to enter into binding  
19       agreements. The Court need not reach the issue of  
20       whether its view of the evidence differs from the  
21       Board's view of the evidence. It's clear from the  
22       Board's decision that it found actual authority in the  
23       negotiating committee based on 28-9.3-3 and 4.

24       In my opinion, the Board's conclusion in this  
25       respect is erroneous as a matter of law. In it's

1 decision, the Board states, " ... McElroy had no  
2 knowledge that Watt had no such authority. McElroy  
3 testified that he was led to believe by both Watt and  
4 Quinlan that they had the authority and with respect to  
5 Quinlan that he had the votes on the School Committee to  
6 support him in any decision he made. It's the Board's  
7 conclusion that the negotiating committee did have  
8 authority to bind the School Committee." The Board's  
9 conclusion was partially based upon a finding of  
10 apparent authority in the negotiating committee. As  
11 stated previously, the apparent authority doctrine is  
12 inapplicable to the agents of states and municipalities.

13 Therefore, the Board's finding in this respect is  
14 also erroneous as a matter of law, in my opinion. No  
15 agreement was reached on September 10th, 1991 with  
16 regard to the third personal day and payment for the  
17 twenty-sixth student because the negotiating committee  
18 had no actual authority to reach such agreement. It's  
19 equally clear that the two sides never worked out the  
20 language on the managed health care, department head  
21 pay, a seven-subject/six-period day, and agreement on  
22 class size. In the absence of agreement between the  
23 School Committee and the Teachers' Union, the School  
24 Committee cannot be ordered to enter into a written  
25 contract with the Teachers' Union.



1           So for all of the foregoing reasons and based upon  
2 my reading of the transcript of all of the proceedings,  
3 the Court is going to reverse the decision of the State  
4 Labor Relations Board, and the Teachers' Union has its  
5 objection to my ruling.

6  
7           \* \* \* \* \*