

Portsmouth vs Portsmouth

Voting for the fruitless...kickoff in courtroom 8...program audits must be in the past tense...digging and spinning...triumph of the retired part-timers

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Portsmouth Town Council votes for a "fruitless," 200K trial on Caruolo

Monday, Feb. 26, 2007

With a 3-3 tie vote (Huck Little absent) a motion at tonight's Town Council meeting to enter a stipulated agreement failed, and Peter McIntyre, Karen Gleason, and Dennis Canario committed the citizens of Portsmouth to pursuing Caruolo litigation in the "most protracted and inefficient way possible." (Okay, those were Solicitor Kevin Gavin's exasperated words when a motion to pursue the litigation expeditiously also went down in flames.)

And, you know, I'm not altogether convinced this is a bad thing, given how divided the town is. Perhaps the only way to satisfy the PCC is to give them their day in court and let them get pounded like veal scallopini on Portsmouth's dime. I admit the wisdom (and, yes, even a measure of grim satisfaction) in this, and perhaps Council President Canario really does see it better than I do. But that doesn't mean I'm at all sanguine about the necessity of such a trial.

This morning, I had already arranged my work schedule to get to Providence for the preliminary hearing, but the one-hour snow delay had me standing with Jack, waiting for the Hathaway bus, when I needed to be on the way to Superior Court. It wouldn't have helped, but from the meeting tonight, I know that Gleason and Fitzmorris were there, and they therefore got to spin what Judge Indeglia said.

How the hell did we get to this juncture? The evening started out with a straight-talking presentation by John Parmelee, the accountant hired by the Town Council to review the Portsmouth School books. With many pages of backup, and a clear indication that there might be future savings realizable through a program audit, the Town's accountant stated that there exists a school deficit of \$1,130, 877.

"These expenditures," said Parmelee, "Are based on contractual obligations. They are reasonable. Cuts cannot be made. There is no possible way the town would have a case against the school. I highly recommend it be settled. To challenge it would be a totally fruitless effort."

Okay, fair enough. But how about the opposing accountant, the School Committee's Walter Edge. He reviewed number changes since they last presented their findings – additional special ed costs, and less aid from the Feds for Navy kids, offset by some unspent lines – and came in with a slightly lower number, \$988,851, which took into account an amortized chunk of Medicaid reimbursables. He also supported a negotiated agreement: "It will save the town a couple of hundred K. The best thing for the town is stipulation."

(Is there anybody else who thinks it's a bad sign for your case when your OWN expert has a higher number than the opposition? Never mind...)

But the fun was just starting. Karen Gleason had a question. Oh, not just any old question. A Question that Demanded Asking. A Question that the Citizens of Portsmouth Deserved an Answer To. A Question For The Ages. And she set out to ask that question of Walter Edge, but was stopped by School Committee attorney Stephen Robinson. "I'm advising Mr. Edge not to answer any questions until we decide not to pursue litigation."

But Tailgunner Gleason was not to be put off. For the rest of the meeting, she brought up "my question" every chance she got, reminding everyone that she hadn't been answered. When an audience member asked her if she could just ask the question of the Town accountant, she coyly said no, he couldn't answer it. And she waved those questions for the rest of the night, proffering them up as a *res ipso loquitur* example

of the School Committee's bad faith. "I have here in my hand..."

I did try to find out. After the meeting I asked her, "Oh, c'mon. Can you tell me what the question is?" "I shouldn't tell you," she said, shuffling papers. Then she looked up. "You're not going to put me in a difficult spot, are you?"

Me? Fuck no. I am a responsible member of the fourth estate. But as a blogger who knows a thing or two about filling in ellipses, I can take a pretty good guess about what her question is. Ready? "Wenn ist das Nunstuck git und Slotermeyer?"

There were sensible voices on the council. Jim Seveny was eminently reasonable. "It's gonna cost us 200K to continue something where both experts have advised us not to take this to court. I want to end this. It's done. Everything else is posturing and politics and nonsense."

And William West, as always, was calm and rational. "We've heard from both firms. I believe that the deficit is what it is. It's time to move on. We have to educate the children of this town – they are the people who are going to be sitting here in 10 or 20 years, and it behooves us to educate them."

Len Katzman concurred: "The responsible action is clear."

But not to the PCC. Loudy Factmangler took up half of the time allotted for audience comment with his two Very Important Questions: Did the School Committee have sufficient funds at the beginning of the year, and did the School Committee fail to modify their budget to fully implement the cuts of the Tent Meeting.

The Town's own auditor, John Parmelee responded that it really didn't matter much how you got there, "32 million is what it costs to operate the school this year. It is what it is."

Canario cut Larry off there, so some other PCC sock puppets lobbed the usual tirades: "What are you going to say to the voters when you ask for more money for this school system which doesn't rank so high." "Does the School Committee have the right to draft a vision for the schools without the taxpayers having their say?" "The Tiverton school board works for the taxpayers – I don't get the same feeling here in Portsmouth."

On the other side, Mark Katzman made an impassioned plea for giving a performance audit a chance, and urged civility: "You don't heal wounds with venom." Jack Callahan stuck up for both Edge and Parmelee, "You're not going to get better than those two in this state." And SOS leader Matt Daly pointed out that the initial compromise offer at the tent meeting, 300K off the school budget, was essentially substantiated by the accountants. "I feel pretty good about that."

But that was all preamble. Dennis Canario was the decider, and he laid it out. "Is there a number that the school department needs? I believe there is, and that it lies between the two reports. My opinion is that legally we cannot agree to a stipulated agreement. The figure is going to have to come from a judge."

There was some PCC applause, though what they were applauding was unclear. (Yay! We get to pay more money to lawyers! And go to court!) Let me just say this: **Only someone who has never been to court applauds a decision to go there.**

Do I find in the PCC's attitude and actions a reflection of the worst chickenhawk wingnuttery of the national Republican Party? Sadly, yes. We see in Portsmouth the crisis of the nation writ small, with ideologue zealots pushing us into ill-advised and expensive actions whose ultimate victims are, sadly, our children. It must stop.

Oh, but it wasn't stopping yet. Once you decide to go to court, you have to decide how aggressively to proceed. Jim Seveny moved to, at the very least, do it efficiently. Oh, but Tailgunner Gleason wasn't satisfied with Town Solicitor Kevin Gavin. She slammed him for not robustly defending her vision of the Town's best interests, and complained, "If we had a litigator, he would agree with me."

Larry Fitzmorris agreed. "If you don't hire a lawyer, you're minimizing our chances," he said, explaining to the Council that they were, well, stupid. "I'm a little bit closer to the case," he said.

Man, I will have to post their amicus brief and the way Robinson totally shredded it. If that's close to the case, I want to be in the parking lot. In Seekonk.

MaryAnn Raymo was incredulous. "You hire an expert, and you don't like their numbers, so you're going to go to court? You're going to

spend 200K to get the same answer? You can't just lay off 15 special ed teachers."

"I'm outraged," said Jodi Redlich. "This is a wedge that has been shoved right up..." (She paused, and Matt Daly offered, helpfully, "Our East Main Road.") "But now," she continued, "My outrage turns to embarrassment – we're taking this town's inability to make decisions to a judge, asking a justice to give us counseling on issues that we should have worked out: 'Our accountants say that this costs \$100. Does this cost \$100?' I look to you people to move on."

With Len Katzman, for his first time on the Council, abstaining in order to prevent another deadlock, the vote to try to settle the matter quickly went down, 3-2, with Seveney and West holding out.

"We have driven ourselves right down a blind alley," lamented Seveney. "We're looking for something miraculous. I think we're fooling ourselves." But after some procedural wrangling, they managed a majority vote to hire outside counsel and contract Parmelee to do the additional work necessary to prepare for the trial, which begins next Monday, March 5. Yes, as Kevin Gavin said, "It's almost Monday now."

Parmelee, appropriately, had the last word. "I've been listening carefully. If your real goal is to have the judge [not the Town Council] say that this is the number, then you will accomplish that."

And you know what really gets me? After all this kerfuffle, two-and-a-half hours of fighting over how much the schools really cost, the council finally got to the actual agenda for the evening, giving a citation to the volunteer firefighters of Prudence Island for their excellent work in the two difficult and sad January search and rescue efforts (standing ovations for all; great work from both Portsmouth FD and everyone involved!), and then, Town Administrator Bob Driscoll dropped what in any sane meeting would have been a bombshell: Target will be coming to the council with a proposal for a store at West Main and Union.

Here is a genuine challenge and opportunity, a meaty question for our Council. Here is a bald, look-you-in-the-face question about the future of Portsmouth, about our definition as a community. Are we really about a Turnpike Ave Town Center, or are we well, heck, time to admit it to ourselves, just another strip mall. Once the

Fall River T-station goes in, hell, we'll be a suburb of Boston, and we need to have all the upscale amenities. Target is just the first mover. Those folks at Carnegie Abbey will want the usual American retail outlets. Will we rise to the occasion, find ways to engage more than just the Usual Suspects with free time who show up to every meeting? Or will we have yet another summer of the Tax Crisis Tango to distract us from the questions that go to our community's very soul.

In case you're wondering, Judge Indeglia's courtroom is at 250 Benefit Street, and the case number is PC06-6249. You can call his clerk at 222-3250 to find out more schedule specifics, but if you're reading this blog, I'm assuming that I'll see you there next Monday. And if you can't, check in Monday night. This is going to be one *seriously* interesting ride.

(BTW, here's the answer to the Big Question that the School Committee and their lawyer don't want you to know: "Ja! Beiherhund das Oder die Flipperwaldt gerhsput!" There. Me and Tailgunner Gleason, we stuck it to the man. Don't we all feel better? That will be \$200K. Thank you, come again.)

Portsmouth SC v TC underway

Monday, March 5, 2007

The Portsmouth School Committee (SC) suit against the Town Council (TC) kicked off at 11:35 this morning in courtroom 8 of Superior Court in Providence, Judge Gilbert Indeglia presiding. There were no motions or opening statements, so Superintendent Dr. Susan Lusi took the stand for the School Committee, and was still testifying when court broke for lunch.

In addition to Kevin Gavin, attorney Denise Lombardo Myers was present to represent the TC. The trial opened as SC Attorney Stephen Robinson led Lusi through her credentials and experience, then began laying the foundations of the case.

Lusi testified that she began work on July 5, 2005, as the books for the 2004 school year were being closed, and that it was at that time a deficit of 514K was discovered. She alerted the Town Council in August 2005 that she had reason to believe that the already approved budget for 05/06 would result in a deficit as well, due to underfunding in the Special Ed and

substitute areas. With major cuts and help from the TC, the schools were able to end the year with an \$18K surplus.

As Lusi told the town then, it was as if they had a house, which looked good on the outside, for whom they had just hired a new caretaker. The caretaker takes one look in the basement and realizes that there's an enormous, expensive leak. The SC and TC had, for several years, been underfunding the schools, and it was now time to decide whether to fund what they really cost, or to make a decision to downsize.

At the TC's encouragement, the SC brought forth this year's initial budget of \$33,483,163, which was an increase of 11.84%. After discussions, the TC reduced the budget to 32 million, an increase of 8.4%, for which they successfully applied to the state for a tax cap exception.

In order to make that 1M reduction, the SC cut 8.3 full time employees (on top of the 4.5 who had been cut in the initial budget), and cut transportation by busing elementary students across schools to maximize class sizes.

Then came the Special Financial Town Meeting on August 19th, which cut the adopted budget to \$31,359,015. Robinson asked: "Can you meet the requirements of law, regulation, and contract with the budget you've been given?" "I can't," Lusi replied.

The remainder of the morning testimony was getting exhibits in which documented Portsmouth relative wealth (6th highest in state) per-pupil spending (4th from bottom) and documentation of the budgets and actions by the school committee over the summer and fall.

A half-dozen PCC supporters and a handful of pro-school folks were there, as well as reporters from all three papers. Interestingly, although the Town Council sat with their attorneys, Huck Little was still nowhere to be seen, a week after he failed to show up for the Council meeting at which the Caruolo vote was taken.

Update, courtesy of a regular reader:

After lunch, education expert Thomas Sweeney answered questions under direct examination by Robinson. Part of the examination was talking to the facts and part of it, like with Lusi, was to get exhibits in. Like with Lusi, the judge asked several questions throughout, including the "if you had to cut 1% from the budget where would you look" question. Like

Lusi, Sweeney said all the places to look have already been examined and cuts have been in fact made.

That took until about 4:00 at which time attorney Denise Myers began her cross examination. She asked several interesting questions, all answered with solid responses. She had not finished when at 4:20 the Judge called it a wrap for the day.

Thanks! (I had to leave early to meet Jack's bus.)

SC v TC Day Two: Indeglia questions program audit

Tuesday, March 6, 2007

School Committee accountants B&E took the stand today as the Caruolo action between the Portsmouth School Committee (SC) and Town Council (TC) entered its second day. B&E principals Thomas Sweeney and Walter Edge were questioned by attorneys Stephen Robinson (SC) and Denise Lombardo Myers (TC). Superior Court Judge Gilbert Indeglia joined in, firing sharp questions at the witnesses and evincing open skepticism about the necessity of a future program audit.

Court convened at 2:10 with Myers picking up yesterday's cross-examination of Sweeney. After complaining about the difficulty both she and the TC expert had in reading the school budget numbers, she asked, "So the people of the town should look at this and blame the software?"

Sweeney clearly identified the 12-year-old computer system as the root cause. "It doesn't meet the requirements [of the new State accounting standards]. Money has not been available to upgrade the administration software." Nor was the money likely to be available; it is outside of the scope of Caruolo, and "Admin is the toughest money."

Myers then picked at other key numbers: the salary for the unfilled Finance Director position, the cost of retirees, and the Little Compton tuition. In all the cases, she seemed to be leading in the direction of caution. Although no one suggested that Little Compton would renege on their contract, she asked, pointedly, "Isn't it true that the Town Council would be required to come up with this shortfall – up to 200K – if this doesn't come in?"

On redirect, Robinson asked Sweeney to clarify the difference between the work B&E had done and a program audit. "When we do Caruolo,"

said Sweeney, "Our job is to testify that they need this kind of money [to finish the year]. In a program audit, we look for efficiencies over time."

Judge Indeglia voiced some skepticism about the need for a program audit. "There's a question if it's required subsequent to this hearing. The purpose is to assist this court – if not done prior, it's not necessary."

Walter Edge then took the stand for the School Committee, and after establishing his credentials as an expert witness, Robinson got right to the point, asking what B&E had determined relative to the School Department being able to complete the year with the Tent Meeting budget. "Impossible," said Edge.

Robinson questioned Edge about the process they had used to analyze the school accounts, how they got to the number, presented at the workshop on 10/27, of a 770K deficit, and the slightly lower number in January, based on use of some Medicaid cash reserves. But Indeglia wanted to get back to the program audit.

"We know what Caruolo says," said Indeglia. "The Town Council has to appoint an auditor. Is that different from your role?"

"Well," Edge explained, "There's been an evolution." In the first Caruolo actions, he had done work that combined some program auditing with financial review.

Indeglia didn't sound like he was buying it. "That's my problem," he said. "If Caruolo is a 1-year issue, why would the legislature not want the system audit to be used? The Legislature wanted this audit to be a 3rd-party tool for the judge. At the time of hearing, or not necessary."

This put both Robinson and Myers in the apparently peculiar position of both defending a program audit. "This is strong public policy," argued Myers, saying that since the court was only ruling on one year, the legislature wanted to ensure the system was reviewed going forward. Robinson concurred, interpreting the Legislature's intent as saying, "If you're going to put a town through Caruolo, we want a post-facto analysis as to whether the school system is efficient."

"I think that's reading a lot into the legislation," said Indeglia.

After further questioning to bring in exhibits detailing analysis, with some special attention to the validity of amortizing Medicaid cash over three years instead of throwing it all at this year's deficit, the final number came out.

"Do you have an opinion on the number the Portsmouth School Department needs to finish the year," asked Robinson.

"Yes," said Edge, "\$787,051."

With the position of the SOS supporters at the Tent Meeting validated under oath (300K off the budget was the first compromise position; if the PCC had accepted it, we would have saved months of time and at least \$100K) court adjourned until 10:30 tomorrow.

BTW – Today, the half-dozen PCC folks in the gallery (At one point, Forest ~~Farm~~ Golden slid up to the bar to pass a paper to Karen Gleason) were joined by what looked like their lawyer, Thomas Wigand. If I were a PCC contributor, I would be concerned about the wisdom of paying an attorney to sit through the proceedings, even if they are planning to mount some kind of Hail-Mary legal appeal. I mean, he can just review the transcripts, no? This couldn't be cost-effective. Unless he's a *really* slow reader.

SC v TC Day 3: Indeglia digs, PCC spins

Wednesday, March 7, 2007

As the Portsmouth Caruolo action entered its third day in Superior Court, testimony from the expert accountants began to converge on a deficit number around \$900K, Judge Indeglia showed an increasing interest in finding dollars to close the gap, and the PCC spin machine started cranking up in anticipation of a stinging defeat.

"The Town has failed to make a vigorous defense," PCC President Larry Fitzmorris told several reporters at the end of today's session. See how this works? You're supposed to try to get to a quote in the second graf, and he's got 'em. And they sound like sentences, except that they don't jibe with the actual facts we spent the rest of the day hearing about.

The PCC has consistently refused to face reality. They slashed blindly at the budget with no plan. They didn't believe the School Committee. They didn't believe the auditors. They didn't trust

Kevin Gavin. They got their outside attorney, who seems to have taken one look at the numbers and decided that the best strategy was to ensure that the judge doesn't shortchange the schools and force the financially strapped town to try to make up the difference.

At least they had a cheap lunch. But more about that later.

Court convened at 11:21 with B&E accountant Walter Edge on the stand, explaining Medicaid reimbursements under cross examination by Town Council attorney Denise Myers. According to an estimate by the medicare billing company, Portsmouth should be getting 200K through June, but Edge defended using a more conservative figure of half that. "This process doesn't turn around that quickly," he said, "You'll see that money next year."

Judge Indeglia came back to the question he's been asking all week, with added emphasis. "Assume you are about to have your qualifications reevaluated by the state. How would you go about cutting 1% of this budget. Your certification depends on it."

Cutting 1% of the total budget of 32M, \$320K, Edge said, was not possible. "We have progressed through 3/4 of the year, so that only leaves us \$8 million, the rest is spent. We know that 80% of the budget is salaries [and other contractual items] which leaves us 20% of 8M, or \$1.6M. One percent of that is \$16,000. I believe there are no material areas to cut, and no \$320K. You could close a school, but then you would be sued. There's just no money here, judge. At \$32M, yes, but not 3/4 of the way through the year."

At Judge Indeglia's request, B&E's Thomas Sweeney retook the stand to explain the line items for the approximately 5 anticipated Individual Education Plan (IEP) and students tuitioned out of district (ODP), at a cost of \$17K each.

"This wouldn't even happen until April 1," said Indeglia. "What real educational value could be given to these kids until June? Shouldn't they begin in September?" Sweeney responded that Portsmouth would have no latitude due to state and Federal regulations.

Myers lobbed a hypothetical. "Assume – you contemplated only two [students] as ODP.

There's nothing that says *no more than* two. What happens if there are more?"

"The money is not there for additional students," Sweeney replied.

"That would lead to another Caruolo action," suggested Myers. But Judge Indeglia stepped in, indicating that this was not in the cards. "I intend to monitor this situation very carefully," he said. I could see some very subtle WTF glances being exchanged around the room.

The School Committee rested, and the Town Council began their case by recalling Superintendent Lusi to the stand, and picked up the question of Little Compton tuition. The per-pupil charge of \$7,315.97 had been calculated on 157.5 full-time students, and Myers wanted to know how solid those numbers were for the fourth quarter.

"For the purposes of litigation," asked Myers, "I'm trying to figure out if there's a crystal ball." "Absolutely not," Lusi replied. "If they leave after the 3rd quarter, we lose the revenue." All this would seem to be academic, except that the numbers were calculated in October, and Little Compton has yet to make ANY payment, so there is some uncertainty.

Myers questioned uncollected Blue Cross fees from retirees, and Indeglia probed on how much could be saved by not replacing the current part-time finance director until the end of the year (Answer: about 12K, if I did the math right.)

Then John Parmelee of Parmelee, Poirier & Associates, the CPA hired by the Town Council took the stand. He reviewed his credentials, was accepted as an expert, talked about the deficit (projected as of February 21 at \$1.1M) and began to review his firm's audit methodology.

Myers got in one question, "Did you find any inaccuracies in the [B&E] reporting methods?" To which Parmelee replied, "No." Then the judge called the attorneys up for a lengthy discussion at the bench. A VERY lengthy discussion, after which court broke for lunch, and the two sides went off to huddle.

So did the PCC contingent, down to just 3 folks today, plus their attorney. All of whom, you will be happy to know, dined most frugally at the Coffee Plus Snack Bar in the first floor of the courthouse. You can get a hot dog for a dollar, or go large and try the chicken salad grinder for

four bucks. While I didn't sit and watch them eat (I mean, really, that would be tacky) I did check the trash just after they left. Even with an extra bag of chips, they probably all got out for under twenty dollars. So all you PCC folks, if they're attending on your dime, you can rest easy. Except, of course, for the continued presence of their attorney, Thomas "Doesn't know the difference between it's and its" Wigand. (See: Page 19, *Amicus Curiae Brief of Portsmouth Concerned Citizens*, 2/6/07)

Testimony resumed after lunch, and Parmelee was reviewing the progress his firm had made in refining the deficit number when he mentioned warrant items. Now, anybody who has been following this story realizes that these are capital expenditure monies which have been moved from the operating budget into a revolving 5-year bond. But Judge Indeglia hadn't been at all the meetings, and he hit the roof. "This is the first time I'm hearing about this," he said. "Somebody better bring me up to speed."

So Walter Edge was recalled to the stand to explain why this money was not available to move into the operational budget to lower the deficit. "Warrant money maintains capital items," he said. "Because of how warrants work, and the partial reimbursement from the state, [the town] would lose 30% of state funds. We concluded that use of warrant money would be unproductive."

After reviewing documentation, Indeglia was still not satisfied. "Instructional materials? That's not a capital item. What you're suggesting is the town and school committee are placing items in warrants that in other places would be part of the budget. It's not a bombshell, but it would make it hard for me to render a decision."

Finally, we got back to Parmelee, and got the total number from the Town accountant: the amount required to finish the year is \$889,617. Judge Indeglia asked the inevitable question: "Where would you cut 1%?" Usually, said Parmelee, you'd look at discretionary items like supplies, but given cuts by the Town Council, and the prior work of B&E, "This budget accounts for this 1% cut. In fact, the cuts were pretty close to 1%."

By about this point in the afternoon, I suspect the PCC's cheap lunch might have been churning violently in their stomachs.

Myers called the final Town witness, Finance Director Dave Faucher. He reviewed the history of the past two years, when the Town Council had to cover school committee deficits out of their fund balance, and explained why that would not be possible this year. "The Tent Meeting reduced the town budget by \$632,797," he said, putting the town's fund balance (their assets compared to liabilities; essentially, their equity) below the critical accepted threshold of 8% of the budget.

In fact, Faucher noted, things got so bad in February that he contacted the town's bond counsel because he was concerned about making payroll. "That's a big valley before March 1," he said, referring to the quarterly property tax date. Fortunately, a lot of people paid early and the crisis was averted. But there is nothing available in the fund balance.

Myers went hypothetical. "Assume a ruling of 800K," she said. "Would the town have capacity?" No, Faucher replied. The town would have to issue a supplemental tax bill.

Nonetheless, Judge Indeglia was pursuing every option. "Are there any areas you could cut?" "No," Faucher replied. "Not after we sustained that \$600K cut. I've lost all flexibility."

On cross examination, Robinson picked up the question of warrant items. These were created, said Faucher, "At the advice of auditors, for items so substantial that they should be capitalized to reflect our asset position." The five-year serial notes, used for items costing more than 5K or with a greater than 1-year lifespan, are actually part of the operating budget of the town, rather than the school department.

"So could these warrant items be converted to cover salary?" Robinson asked. "That's not possible," said Faucher. "We'd have to report to the state, and give money back."

Judge Indeglia, still looking for any possible dollar, asked the auditors and Faucher to assemble documents by 2 pm tomorrow with the actual dollar amounts for all warrant lines, budgeted, spent, and encumbered.

With that, the Town rested, and another prolonged discussion ensued at the bench before adjournment. Like a shot, Loudy was up and working the reporters; when I left, he and

Wigand were still bending their ears at the elevator bank.

I'm still wondering about just what kind of "monitoring" Judge Indeglia is thinking about. Maybe we'll hear more tomorrow, but the general consensus from chatting with the auditors is that decisions in Caruolo cases tend to be written, and may not be delivered for a week or more.

SC v TC: Indeglia rules (PCC drools)

Thursday, March 8, 2007

After hearing only a few minutes of testimony today, Judge Gilbert Indeglia ruled in favor of the Portsmouth School Committee, but reduced the number their accountants recommended by \$200K. While not a complete victory for the schools (that would have been never having *gotten* this far) it was a "trial on the merits of the controversy," and the decision, once and for all, validated everyone who believed that the PCC had been unreasonable at the Tent Meeting.

Judge Indeglia took the bench at 2:24, and wrapped up the case with about five minutes of questions for David Faucher about warrant items. But first, he went out of his way to reassure Dr. Lusi about his comments from yesterday's session, in which he talked about "monitoring" Portsmouth. This was not, he said, judicial intervention, but was "only in the event of the need for a second Caruolo," and "It was never my intent that I was going to take over your job."

With Faucher on the stand, Indeglia queried him about the dollar amounts in the warrant items, some \$140K for IT and \$577 for building projects. "If I determine there's a need for more money," said Indeglia, "and suggested the technology account, what would be the process?" Faucher said he'd run it past the Town Council, then move the money to the school budget.

Indeglia had clearly heard enough. He called the attorneys to the bench, conferred, and then court recessed. In a move that seemed surprising to those familiar with Caruolo proceedings, he was going to deliver his ruling immediately.

There was a tense buzz in the room. The PCC contingent, swelled to 5 members and two

attorneys for today's session, caucused in the hallway. Marge Levesque from the school committee chatted with two folks from town who had stopped by to offer support.

Then, Indeglia came back. He thanked all the participants, and noted that "there is no more difficult job than being a member of a municipal council or board. It's a thankless job, but somebody's gotta do it."

He then recited a synopsis of all the testimony from the past three days, with particular emphasis on the numbers from the accounting firms of B&E and Parmelee. "The court has had a chance to listen, and was impressed by the professionalism of all who appeared. The decision in no way reflects negatively on any experts. B&E was for the most part closer to the situation...they were involved going back to last spring. Seems to me that the court should give greater weight to their testimony."

That sounded like good news. "I am for the most part satisfied; it seems to me that to find 1% was not possible." You could hear the 'however' coming, and the next sentence brought it. "The court feels adjustments can be made to the \$787-thousand, the base figure which it accepts."

Ah, hell, I thought, there goes the program audit. But I was wrong. What followed was a list of "suggestions only" of areas in which Indeglia felt adjustments were possible: "100K in Medicaid reimbursements." (In direct contradiction of Walter Edge's analysis which suggested that number was unrealistic.)

"The performance audit. \$84K" Yeah, that one didn't surprise me, given his line of questioning on Monday and Tuesday. "The court has reviewed the statue, and we have a difference of opinion, but the statue says 'upon bringing.' If the legislature wanted something that went beyond the present year, they would have expressed that. [A program audit now] would be like paying an expert witness in a medical malpractice trial after the jury has decided."

But then, as judges are wont to do, he turned on the good cop. "If anything, one of the things I've learned from this process is how much local education is controlled by Federal and state regulations. I understand how school committees can feel frustrated." Gee, thanks, your honor.

One bed from the fund covering anticipated expenses from Boys & Girls town. \$17K.

No full time finance director for you, Dr. Lusi. Stick with a part timer to save another \$17K. Oh, and by way of explanation, "I wish school departments would use some of the many talented retired business people to assist in the running of school departments to bring their expertise – and they would work for less money." Can you imagine a judge in, say, a bankruptcy case of a \$32M business making a similar suggestion? Or any other municipal agency? Why is it that even intelligent, well-intentioned people think that running a school is something to be done by amateurs and part-timers?

And those warrant items – well, he wasn't going to touch the ones subject to state reimbursement, but he figured you could take \$25K from the IT warrant.

The bottom line? "\$544, 051. The school committee can use any areas they want to go to for cuts, for the Town Council, it will now be necessary to raise that. I'm not going to tell them how, I believe they have the sovereign right. They can use their surplus, cuts in their municipal budget, or go to the taxpayers. I'll continue to retain jurisdiction. These figures are now fixed."

Denise Myers rose with a question, "About the program audit. We've not addressed the interpretation of the statute..."

"I've interpreted it," Indeglia said, cutting off discussion.

And that was it. If the accountants are right – and Judge Indeglia said there was no reason to doubt them – the schools still had less than enough money to finish the year.

Gina Macris of the *ProJo* cornered Dr. Lusi, who said, "I respect the judge's fairness," she demurred. ;) "But while he says that what he offered were only suggestions, there was ample evidence that there were no other areas to cut."

Meghan Wims from *Newport Daily News* was talking with Len Katzman. "Is it enough?" she asked. "No facts were presented that this was the right number," Katzman replied.

Town Council attorney Denise Myers said much the same to Wims. "The PCC used a

discretionary number, the judge used a discretionary number. Why are we using experts?"

Why indeed? If there's one thing that I, as a layman, have learned from all this, it is just how deeply ingrained antipathy to education is in the American psyche. You routinely hear PCC yammerheads get up and meetings and talk about how the school board should consult the populace directly on the vision for the schools, as if these people had ever heard of Dewey, or Gardner, or Illich. (Man, now THERE'S an infield for you. Dewey to Gardner to Illich. Double play. Oh... wait. Illich is refusing to step on the bag. But fortunately, the first base umpire is Jacques Derrida, who doesn't notice. Hey you PCC readers – yes I mean *you* – did you get that? No? Then shut the fuck up.)

Where was I. Oh yeah.

It's one thing for the casual taxpayer to ignore the fact that education is a profession. But it's quite another to see a Superior Court judge, *from the bench*, opine that schools don't need professional management. Oh, sure. Retired executives from toilet companies could probably knock this off in two days a week and save the taxpayers a bundle.

If you treat management as a cost center, rather than a source of strategic vision, you are ignoring the evidence of the last fifty years of management theory and practice. When was the last time some retired, 40% duffer turned around a major corporation?

But I digress.