

SUPREME COURT OF RHODE ISLAND

North Kingstown School Committee v. Ken Wagner

176 A.3d 1097 (R.I. 2018) · No. 2016-241-Appeal · Decided January 19, 2018

SUMMARY

The Rhode Island Supreme Court reviewed a Superior Court judgment concerning subpoenas issued in an administrative employment appeal involving a North Kingstown High School teacher. The court held that the school committee's attorneys could not be categorically shielded from testimony based on attorney-client privilege; instead, privilege claims had to be evaluated on a question-by-question basis. The court vacated the judgment in part, affirmed it in all other respects, and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Chief Justice Paul A. Suttell; Chief Justice Suttell; Justice Goldberg; Justice Flaherty; Justice Robinson; Justice Indeglia
JURISDICTION	Rhode Island
DECIDED	January 19, 2018
DOCKET	2016-241-Appeal
DISPOSITION	vacated
PROCEDURAL POSTURE	James Viner appealed a Superior Court judgment that granted in part and denied in part the North Kingstown School Committee's petition to quash subpoenas issued in an administrative employment proceeding.
STANDARD OF REVIEW	Issues concerning privilege receive a three-part standard of review: factual determinations are reviewed for clear error, legal determinations de novo, and evidentiary determinations for abuse of discretion. The scope of the attorney-client privilege is a question of law reviewed de novo; application of the properly formulated privilege doctrine to the facts is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion; precedential
PARTIES	James Viner v. North Kingstown School Committee

TOPICS

attorney client privilege

administrative law

judicial review of agency action

interlocutory appeal

writ of certiorari

PRACTICE AREAS

administrative law

employment law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the Superior Court improperly quashed subpoenas requiring the school committee's attorneys to testify based on an overbroad application of the attorney-client privilege.
2. Whether the attorneys' anticipated testimony had to be assessed on a question-by-question basis rather than excluded categorically because other sources of information had already been produced.

HOLDINGS

1. The Superior Court erred by broadly ruling that the school committee's attorneys could not be compelled to testify merely because other sources might already have provided the information sought. The attorneys must testify in person or by deposition, and the school committee must assert privilege on a question-by-question basis.

KEY QUOTATIONS

“We have held that the attorney-client privilege ‘must be narrowly construed because it limits the full disclosure of the truth.’” (-5-)

“Rather, to ensure that the privilege remains strictly confined, the attorneys should testify either in person or by deposition and the school committee can assert a claim of privilege on a question-by-question basis.” (-5-)

“The hearing justice may then make an attorney-client privilege determination on a question-by-question basis, bearing in mind that the burden of persuasion rests upon the party seeking to assert the privilege.” (-6-)

FACTUAL BACKGROUND

James Viner was a North Kingstown High School chemistry teacher whose female student reported alleged inappropriate behavior after the 2014-2015 school year. Counsel for the school committee investigated the allegations, including interviewing five students and preparing a report for school administrators. Following pre-deprivation and pre-suspension proceedings, the school committee suspended Viner without pay and voted to terminate him at the end of the school year. During Viner's administrative appeal, the RIDE hearing officer subpoenaed the two investigating attorneys to testify, prompting the petition to quash.

PROCEDURAL HISTORY

After the North Kingstown School Committee suspended and terminated Viner following an evidentiary hearing, Viner appealed to the commissioner of elementary and secondary education within RIDE. The RIDE hearing officer issued subpoenas to two school-committee attorneys and a subpoena duces tecum to the school department. The Superior Court granted in part and denied in part the committee's petition to quash the

subpoenas. While the appeal was pending, the RIDE hearing officer upheld the suspension and termination, and Viner appealed that decision to the Council on Elementary and Secondary Education. The Supreme Court vacated the judgment as to the attorneys' subpoenas, affirmed it in all other respects, and remanded.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The Superior Court must require the two attorneys to testify at a hearing or by deposition. The school committee may assert attorney-client privilege on a question-by-question basis, and the hearing justice must make a separate determination for each claim, with the burden of persuasion on the party asserting the privilege. The Council on Elementary and Secondary Education should refrain from further proceedings until the privilege issue is resolved. After the privilege determination, any party in interest may ask the RIDE hearing officer to reopen the evidence to receive testimony deemed nonprivileged.

CASES CITED

- United States v. Bisanti, 414 F.3d 168, 170, 170-71 (1st Cir. 2005)
- State v. Lead Industries Association, Inc., 64 A.3d 1183, 1191 (R.I. 2013)
- United States v. Mejia, 655 F.3d 126, 131 (2d Cir. 2011)
- United States v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, 119 F.3d 210, 214 (2d Cir. 1997)
- United States v. Ruehle, 583 F.3d 600, 606 (9th Cir. 2009)
- Massachusetts Eye and Ear Infirmary v. QLT Phototherapeutics, Inc., 412 F.3d 215, 225 (1st Cir. 2005)
- Pastore v. Samson, 900 A.2d 1067, 1084 (R.I. 2006)
- Callahan v. Nystedt, 641 A.2d 58, 61 (R.I. 1994)
- In re Grand Jury Subpoena (Mr. S.), 662 F.3d 65, 71 (1st Cir. 2011)
- United States v. Lawless, 709 F.2d 485, 487 (7th Cir. 1983)
- State v. von Bulow, 475 A.2d 995, 1005 (R.I. 1984)
- La Petite Auberge, Inc. v. Rhode Island Commission for Human Rights, 419 A.2d 274, 279 n.5 (R.I. 1980)
- Grady v. Narragansett Electric Co., 962 A.2d 34, 42 n.4 (R.I. 2009)