

STATE OF MAINE
WASHINGTON, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-00-012
NM- WAS- 10/5/2000
DONALD L. GARBAECHT
LAW LIBRARY

LARRY CASEY,

Petitioner

OCT 13 2000

vs.

DECISION AND ORDER

SCHOOL UNION #106 and
CALAIS SUPERINTENDENT
OF SCHOOLS,

Respondents

The respondents have filed a motion to dismiss and argue that the court has no subject matter jurisdiction to review the action of a school superintendent in deciding not to nominate a probationary teacher for a continuing contract and not to proceed to arbitration. See M.R. Civ. P. 12(b)(1). A review of the Rule 80C Petition reveals that the petitioner was a probationary teacher. See, e.g., Petition at 2, 3, 4, 6. The petitioner has filed no request for joinder with independent claims. See M.R. Civ. P. 80C(i).

The law in Maine "deliberately leaves the decision whether to review a probationary teaching contract to the unfettered discretion of the school board." Marxsen v. Board of Directors, M.S.A.D. # 5, 591 A.2d 867, 869 n.4 (Me. 1991) overruled in part by Underwood v. City of Presque Isle, 1998 ME 166, ¶ 22, 715 A.2d 148, 155; see also 20-A M.R.S.A. § 13201 (1993). This court has no authority to

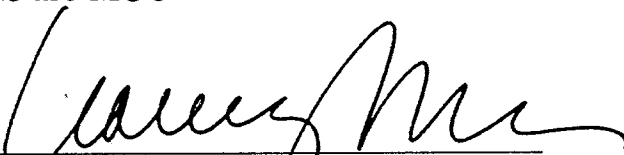
compel the defendants to take action they are not legally bound to take. See Annable v. Board of Env'tl. Protection, 507 A.2d 592, 594 (Me. 1986).

The entry is

The Respondents' Motion to Dismiss is GRANTED.

The Respondents' second Motion to Dismiss, the Petitioner's Motion for Default Judgment, the Respondents' Motion to Amend Pleadings, and the Respondents' Motion to Strike are MOOT.

Dated: October 5, 2000



Nancy Mills
Justice, Superior Court

WASH-AP-00-012

FILED AND ENTERED

ATTEST OCT 11 2000

MARILYN E. BRALEY Clerk

Date Filed 7/26/00

Washington

Docket No. AP-00-012

County

Action 80C Appeal

DONALD L. GARDRECHT
LAW LIBRARY

OCT 12 2000

Larry M. Casey

vs. Dr. May Bouchard and Calais School Board 10

Plaintiff's Attorney

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Date of
Entry