You are viewing an archived copy from the New Jersey State Library.

State of New Jersey
Department of Education
225 West State Street
Trenton, N.J. 08625

NEW JERSEY
SCHOOL LAW DECISIONS
Indexed

January 1, 1977 to December 31, 1977

vol. 1

You are viewing an archived copy from the New Jersey State Library.

State of New Jersey
Department of Education
Trenton

NEW JERSEY
SCHOOL LAW DECISIONS
Indexed

January 1, 1977 to December 31, 1977

vol. 1

FRED G. BURKE
COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

SCHOOL LAW DECISIONS 1977

Albert, Paul v. Board of Education of the Freehold Regional High School, Monmouth County 594

Asbury Park, Board of Education of the City of v. Board of School Estimate and Mayor and City Council of the City of Asbury Park, Monmouth County 251

Asbury Park, Board of Education of the City of v. City Council of the City of Asbury Park, Monmouth County 1192

Asbury Park, Monmouth County, Board of Education of the City of, and Board of Education of the Township of Neptune; Board of Education of the Borough of Bradley Beach v. 1192

Asbury Park, Monmouth County, Board of School Estimate and Mayor and City Council of the City of; Board of Education of the City of Asbury Park v. . . . 251

Asbury Park, Monmouth County, City Council of the City of; Board of Education of the City of Asbury Park v. 1192

Axler, M. Herbert v. Philip Unger 809

Barber, Arthur v. Board of Education of the Town of Kearny, Hudson County 125

Barnarr, Joseph v. Board of Education of the Borough of West Long Branch, Monmouth County 518

Bass River, Board of Education of the Township of v. Board of Commissioners of the Township of Bass River, Burlington County 17

Bass River, Burlington County, Board of Commissioners of the Township of; Board of Education of the Township of Bass River v. 17

Bates, Richard v. Board of Education of the Township of Parsippany-Troy Hills, Morris County 241

Bayonne, Hudson County, Board of Education of the City of; William S. Humen v. . 795

Bellmawr, Camden County, Borough Councils of the Boroughs of, Runnemede and the Township Committee of the Township of Gloucester; Board of Education of the Black Horse Pike Regional School District v. 34

Bellmawr, Camden County, Borough Councils of the Boroughs of, Runnemede and the Township Committee of the Township of Gloucester; Board of Education of the Black Horse Pike Regional School District v. 1195

Berkeley, Ocean County, Board of Education of the Township of; Berkeley Township Teachers Association and James Dinella v. 851

Berkeley Township Teachers Association and James Dinella v. Board of Education of the Township of Berkeley, Ocean County 851

Bicanich, John, School District of the Township of Jackson, Ocean County; In the Matter of the Tenure Hearing of 1077

Black Horse Pike Regional School District, Board of Education of the v. Borough Councils of the Boroughs of Runnemede and Bellmawr and the Township Committee of the Township of Gloucester, Camden County 34

Black Horse Pike Regional School District, Board of Education of the v. Borough Councils of the Boroughs of Runnemede and Bellmawr and the Township Committee of the Township of Gloucester, Camden County 1195

Bradley Beach, Board of Education of the Borough of v. Board of Education of the City of Asbury Park and Board of Education of the Township of Neptune, Monmouth County 959

Bradshaw, Raymond, School District of the Township of Piscataway, Middlesex County; In the Matter of the Tenure Hearing of 1178

You are viewing an archived copy from the New Jersey State Library.

Branch, George, and Vickie Donaldson v. Board of Education of the City of Newark, Essex County 926

Branchburg, Board of Education of the Township of, for the Termination of the Sending-Receiving Relationship with the Board of Education of the Borough of Somerville, Somerset County; In the Matter of the Application of the 662

Brennan, Anna v. Board of Education of the City of Pleasantville, Atlantic County . 1059

Brick, Ocean County, Board of Education of the Township of; Brick Township Education Association v. 129

Brick, Ocean County, for a Declaratory Judgment Concerning the Payment of Salaries; In the Matter of the Request of the Board of Education of the Township of 704

Brick, Ocean County; In the Matter of the Tenure Hearing of Carmine Stephen Raciti, School District of the Township of 685

Brick Township Education Association v. Board of Education of the Township of Brick, Ocean County 129

Bridgeton, Cumberland County; In the Matter of the Tenure Hearing of Robert Felmey, School District of the City of 50

Buch, Harry I., School District of the Township of Delanco, Burlington County; In the Matter of the Tenure Hearing of 95

Bureau of Facility Planning, Division of Field Services, New Jersey Department of Education; Board of Education of the City of South Amboy, Middlesex County v. 777

Burke, Fred *et al.*; Marjorie Silverman v. 724

Burlington, Burlington County; In the Matter of the Tenure Hearing of John I. Gavlick, School District of the City of 524

Burlington County Vocational Technical High School, Burlington County, Board of Education; Marianne H. Polaski v. 346

Caldwell-West Caldwell, Essex County, Board of Education of; George Hillman v. . . 218

Callam, Dr. James, and Board of Education of the Borough of Point Pleasant Beach, Ocean County; Point Pleasant Beach Teachers Association *et al.* v. 1204

Camden, Camden County; In the Matter of the Annual School Election Held in the School District of the City of 927

Camden County Vocational and Technical School District, Camden County, Board of Education of the; John Gregg v. 120

Camden County Vocational Technical High School, Camden County, Board of Education of; Benjamin Mrozowski v. 740

Camden County Vocational and Technical Schools, Camden County, Board of Education of; Jacquelyn Previti v. 820

Camp, Ann *et al.* v. Board of Education of the Borough of Glen Rock, Bergen County 706

Cardman, Alice W., and Millburn Education Association v. Board of Education of the Township of Millburn, Essex County 746

Central Regional Education Association *et al.* v. Board of Education of the Central Regional High School District, Ocean County 543

Central Regional High School District, Ocean County, Board of Education of the; Central Regional Education Association *et al.* v. 543

Central Regional High School District, Ocean County; In the Matter of the Petition of the Boroughs of Seaside Heights and Seaside Park and the Township of Lacey for the Withdrawal from the 632

Cieri, Angela, and Maria Rosa v. Board of Education of the City of Union, Hudson County 393

You are viewing an archived copy from the New Jersey State Library.

Cinnaminson, Burlington County, Board of Education of the Township of; Joseph Van Os v. 1040
Clark, Union County, Board of Education of the Township of v. Henry T. Karamus . 259
Colozzi, Charles C. v. Board of Education of the Borough of Merchantville, Camden County 288
Cranbury, Middlesex County; In the Matter of the Application of the East Windsor Regional School District for the Termination of the Sending-Receiving Relationship with the School Districts of the Borough of Roosevelt, Monmouth County, and the Township of 304
Crawford, Patricia v. Board of Education of the Township of Voorhees *et al.*, Camden County 364
"D.W." *et al.* v. Board of Education of Pompton Lakes *et al.*, Passaic County 1240
Deal Education Association, Kathleen Chokov and Sandra Layton v. Board of Education of the Borough of Deal, Monmouth County 919
Deal, Monmouth County, Board of Education of the Borough of; Deal Education Association *et al.* v. 919
Debold, Deborah v. Board of Education of the East Windsor Regional School District, Mercer County 1118
Dedrick, David v. Board of Education of the Town of Hammonton, Atlantic County . 1043
Delanco, Burlington County; In the Matter of the Tenure Hearing of Harry I. Buch, School District of the Township of 95
Delli Santi, George v. Board of Education of the City of Newark, Essex County . . . 1211
Dennis, Larry and Arline, on behalf of Scott Dennis v. Board of Education of the Township of Holmdel, Monmouth County 388
DeOld, Alan, and Verona Education Association v. Board of Education of the Borough of Verona, Essex County 1096
DiNunzio, Dominick v. Board of Education of the Township of Pemberton, Burlington County 24
Donaldson, Vickie, and George Branch v. Board of Education of the City of Newark, Essex County 926
Dover, Board of Education of the Town of v. Mayor and Board of Aldermen of the Town of Dover, Morris County 631
Dover, Morris County, Mayor and Board of Aldermen of the Town of; Board of Education of the Town of Dover v. 631
Dumont, Bergen County, Board of Education of the Borough of; "J.B." and "B.B.," as guardians and natural parents of "P.B." and "J.B." v. 1134
Dunellen, *et al.*, Boards of Education of the Borough of; Board of Education of the City of Plainfield v. 808
East Orange, Board of Education of the City of v. Mayor and Council of the City of East Orange and Board of School Estimate of the City of East Orange, Essex County 246
East Orange, Essex County, Mayor and Council of the City of, and Board of School Estimate of the City of East Orange; Board of Education of the City of East Orange v. 246
East Orange *et al.*, Essex County, Board of Education of the City of; Holly Goore, a minor by her natural parent and guardian, Joyce Goore v. 622
East Windsor, Mercer County, Board of Education of the Regional School District of; Deborah Debold v. 1118
East Windsor, Council of the Township of, and Common Council of the Borough of Hightstown v. Board of Education of East Windsor Regional School District, Mercer County 105

You are viewing an archived copy from the New Jersey State Library.

East Windsor Regional School District, Mercer County, Board of Education of the; Council of the Township of East Windsor and Common Council of the Borough of Hightstown v. 105

East Windsor Regional School District *et al.*, Mercer County; Mary Ann Mesics v. . . 153

East Windsor Regional School District for the Termination of the Sending-Receiving Relationship with the School Districts of the Borough of Roosevelt, Monmouth County and the Township of Cranbury, Middlesex County; In the Matter of the Application of the 304

Eastern Camden County Regional School District, Camden County; In the Matter of the Annual School Election Held in the Constituent District of Voorhees Township 585

Edison *et al.*, Middlesex County, Board of Education of the Township of; Henry Talarsky *et al.* v. 862

Edison, Middlesex County, Board of Education of the Township of; Lorraine E. Laing v. 422

Egg Harbor, Bergen County; In the Matter of the Tenure Hearing of Matilda Grabert, School District of the Township of 163

Elizabeth, Board of Education of the City of v. City Council of the City of Elizabeth, Union County 42

Elizabeth, Union County, City Council of the City of; Board of Education of the City of Elizabeth v. 42

Elms, Robert *et al.* v. Mount Olive Township Board of Education, Morris County . . 715

Evesham, Board of Education of the Township of v. Township Committee of the Township of Evesham, Burlington County 44

Evesham, Burlington County, Township Committee of the Township of; Board of Education of the Township of Evesham v. 44

Ewing, Board of Education of the Township of v. Township Committee of the Township of Ewing, Mercer County 305

Ewing, Mercer County, Township Committee of the Township of; Board of Education of the Township of Ewing v. 305

Fair Haven, Monmouth County, Mayors and Councils of the Boroughs of Rumson and; Board of Education of the Rumson-Fair Haven Regional High School District v. 1193

Fair Lawn, Bergen County; In the Matter of the Annual School Election Held in the School District of the Borough of 648

Fair Lawn, Bergen County; In the Matter of the Election Inquiry in the School District of the Borough of 1156

Fairfield, Board of Education of the Township of v. Township Committee of the Township of Fairfield, Cumberland County 428

Fairfield, Cumberland County, Township Committee of the Township of; Board of Education of the Township of Fairfield v. 428

Fairview, Bergen County; In the Matter of the Annual School Election Held in the School District of the Borough of 591

Fanella, Peter J. v. Board of Education of the School District of Washington Township *et al.*, Morris County 383

Farmingdale, Board of Education of the Borough of v. Mayor and Council of the Borough of Farmingdale, Monmouth County 437

Farmingdale, Monmouth County, Mayor and Council of the Borough of; Board of Education of the Borough of Farmingdale v. 437

Fattell, Basil, School District of the City of Paterson, Passaic County; In the Matter of the Tenure Hearing of 941

You are viewing an archived copy from the New Jersey State Library.

Feitel, Marilyn, School District of the City of Newark, Essex County; In the Matter of the Tenure Hearing of 451

Felmey, Robert, School District of the City of Bridgeton, Cumberland County; In the Matter of the Tenure Hearing of 50

Ferrara, Paul *et al.* v. Board of Education of the Scotch Plains-Fanwood Regional School District, Union County 997

Fitzgibbon, William and Genevieve v. Board of Education of the Township of Jefferson, Morris County 990

Florham Park, Morris County, Board of Education of the Borough of; Elsie Wilson v. 823

Foote, Robert and Barbara v. Board of Education of the Township of Wall *et al.*, Monmouth County 462

Fox, Kathryn R. v. Board of Education of the Watchung Hills Regional High School District, Somerset County 1107

Franklin, Sussex County; In the Matter of the Application of the Borough of Ogdensburg for the Termination of its Sending-Receiving Relationship with the Board of Education of 610

Freehold Regional High School District, Monmouth County, Board of Education of the; Paul Albert v. 594

Freehold Regional High School District, Monmouth County, Board of Education of the; Freehold Regional High School Education Association and Walter Holcombe v. 1057

Freehold Regional High School Education Association and Walter Holcombe v. Board of Education of the Freehold Regional High School District, Monmouth County 1057

Frick, Donna v. Board of Education of the City of Newark, Essex County 1091

Galloway, Atlantic County, Board of Education of the Township of; Joan White v. . 900

Garfield, Bergen County, Board of Education of the City of; Peter Nicastro, t/a Nicastro Studio v. 213

Garfield, Bergen County; In the Matter of the Annual School Election Held in the School District of the City of 658

Garfield, Bergen County; In the Matter of the Election Inquiry in the School District of the City of 771

Garfield, Bergen County; In the Matter of the Tenure Hearing of James Ryan, School District of the City of 1117

Garfield, Bergen County; In the Matter of the Tenure Hearing of Thomas Sciarrillo, School District of the City of 197

Garfield, Bergen County, Mayor and City Council of the City of; Board of Education of the City of Garfield v. 372

Garfield, Board of Education of the City of v. Mayor and City Council of the City of Garfield, Bergen County 372

Garibaldi, Louis A., Jr. v. Board of Education of the Toms River Regional School District, Ocean County 192

Gavlick, John I., School District of the City of Burlington, Burlington County; In the Matter of the Tenure Hearing of 524

Gearing, Richard R. v. Board of Education of the Borough of Manasquan, Monmouth County 751

Gilbert, Ernest E. v. New Jersey State Board of Examiners, Bureau of Teacher Education and Academic Credentials, Division of Field Services, New Jersey Department of Education 908

You are viewing an archived copy from the New Jersey State Library.

Glassmith, Linda v. Board of Education of the Township of Hanover, Essex County . 1124
Glen Gardner, Hunterdon County, Board of Education of the Borough of; Deborah Strauss v. 841
Glen Ridge *et al.*, Essex County, Board of Education of the Borough of; Luther McLean v. 311
Glen Rock, Bergen County, Board of Education of the Borough of; Ann Camp *et al.* v. 706
Gloucester, Board of Education of the City of v. Mayor and Common Council of the City of Gloucester, Camden County 1029
Gloucester, Board of Education of the Township of v. Mayor and Council of the Township of Gloucester, Camden County 41
Gloucester, Camden County, Mayor and Common Council of the City of; Board of Education of the City of Gloucester v. 1029
Gloucester, Camden County, Mayor and Council of the Township of; Board of Education of the Township of Gloucester v. 41
Gloucester, Camden County, Township Committee of the Township of, and Borough Councils of the Boroughs of Runnemede and Bellmawr; Board of Education of the Black Horse Pike Regional School District v. 34
Gloucester, Camden County, Township Committee of the Township of, and Borough Councils of the Boroughs of Runnemede and Bellmawr; Board of Education of the Black Horse Regional School District v. 1195
Goldsworthy, Wanda v. Board of Education of the Borough of Somerville, Somerset County 743
Goore, Holly, a minor by her natural parent and guardian, Joyce Goore v. Board of Education of the City of East Orange *et al.*, Essex County 622
Grabert, Matilda, School District of the Township of Egg Harbor, Atlantic County; In the Matter of the Tenure Hearing of 163
Greenberg, Norman J. v. Board of Education of the Township of Howell, Monmouth County 1174
Greenwich, Board of Education of the Township of v. Township Committee of the Township of Greenwich, Gloucester County 1197
Greenwich, Gloucester County, Township Committee of the Township of; Board of Education of the Township of Greenwich v. 1197
Gregg, John v. Board of Education of the Camden County Vocational and Technical School District, Camden County 120
Guasconi, Emil F., School District of the Town of West New York, Hudson County; In the Matter of the Tenure Hearing of 513
Guttenburg, Hudson County; In the Matter of the Tenure Hearing of Juanita Zielenski, School District of the Town of 786
"H.D." and "M.D.," on behalf of "H.D." v. Board of Education of the Township of Roxbury, Morris County 760
Hackensack, Bergen County, Board of School Estimate of the City of and Mayor and Council of the City of Hackensack; Board of Education of the City of Hackensack v. 58
Hackensack, Board of Education of the City of v. Board of School Estimate of the City of Hackensack and Mayor and Council of the City of Hackensack, Bergen County 58
Hamilton, Board of Education of the Township of v. Township Council of the Township of Hamilton, Mercer County 248

You are viewing an archived copy from the New Jersey State Library.

Hamilton, Mercer County, In the Matter of the Annual School Election Held in the Township of 618
Hamilton, Mercer County, Township Council of the Township of; Board of Education of the Township of Hamilton v. 248
Hammonton, Atlantic County, Board of Education of the Town of; David Dedrick v. 1043
Hanover, Essex County, Board of Education of the Township of; Linda Glassmith v. 1124
Harbor Hall School, William L. Hess, Executive Director v. Board of Education of the Township of Weehawken, Hudson County 342
Harding, Morris County, Board of Education of the Township of; Thomas B. Price v. 1030
Harrison, Hudson County, Board of Education of the Town of; John Makulinski v. . 1114
Hawthorne, Board of Education of the Borough of v. Mayor and Commissioners of the Borough of Hawthorne, Passaic County 337
Hawthorne, Passaic County, Mayor and Commissioners of the Borough of; Board of Education of the Borough of Hawthorne v. 337
Healy, Thomas, School District of the Borough of Paulsboro, Gloucester County; In the Matter of the Tenure Hearing of 876
Helmetta, Middlesex County; In the Matter of the Annual School Election Held in the School District of the Borough of 695
Highland Park *et al.*, Middlesex County, Board of Education of the Borough of; Ava Salowe and Highland Park Education Association v. 832
Highlands, Monmouth County; In the Matter of the Annual School Election Held in the School District of the Borough of 660
Hightstown, Common Council of the Borough of, and Council of the Township of East Windsor v. Board of Education of East Windsor Regional School District, Mercer County 105
Hillman, George v. Board of Education of Caldwell-West Caldwell, Essex County . . . 218
Hillside, Union County, Board of Education of the Township of; Joseph Silver v. . . 366
Hoboken, Board of Education of the City of v. Mayor and Council of the City of Hoboken, Hudson County 493
Hoboken, Hudson County, Mayor and Council of the City of; Board of Education of the City of Hoboken v. 493
Hochman, David v. Board of Education of the City of Newark *et al.*, Essex County . 11
Holmdel, Monmouth County, Board of Education of the Township of; Larry and Arline Dennis, on behalf of Scott Dennis v. 388
Howell, Board of Education of the Township of v. Township Committee of the Township of Howell, Monmouth County 398
Howell, Monmouth County, Board of Education of the Township of; Norman J. Greenberg v. 1174
Howell, Monmouth County, Township Committee of the Township of; Board of Education of the Township of Howell v. 398
Humen, William S. v. Board of Education of the City of Bayonne, Hudson County . 795
Hutzley, John v. Board of Education of the Manalapan-Englishtown Regional School District, Monmouth County 904
Island Heights, Board of Education of the Borough of v. Mayor and Council of the Borough of Island Heights 114
Island Heights, Ocean County, Mayor and Council of the Borough of; Board of Education of the Borough of Island Heights v. 114

You are viewing an archived copy from the New Jersey State Library.

Ivens, Samuel, School District of Toms River Regional, Ocean County; In the Matter of the Tenure Hearing of 960

"J.B." and "B.B.," as guardians and natural parents of "P.B." and "J.B." v. Board of Education of the Borough of Dumont, Bergen County 1134

Jackson, Ocean County; In the Matter of the Tenure Hearing of John Bicanich, School District of the Township of 1077

Jacobus, Lewis v. Board of Education of Ramsey, Bergen County 521

Jefferson, Morris County, Board of Education of the Township of; William and Genevieve Fitzgibbon v. 990

Jersey City Education Association v. Board of Education of the City of Jersey City, Hudson County 1032

Jersey City, Hudson County, Board of Education of the City of; Jersey City Education Association v. 1032

Jersey City, Hudson County; Board of Education of the City of; John A. Smith III v. 1186

Jersey City, Hudson County; In the Matter of the Tenure Hearing of Catherine Reilly, School District of 403

Johnson, Joanne v. Board of Education of the Township of Monroe *et al.*, Gloucester County 508

Kaplan, Arthur, School District of the Township of Weehawken, Hudson County; In the Matter of the Tenure Hearing of 435

Karamus, Henry T.; Board of Education of the Township of Clark, Union County v. . 259

Karamus, Henry T.; Board of Education of the Union County Regional High School District No. 1, Union County v. 162

Kearny, Hudson County, Board of Education of the Town of; Arthur Barber v. 125

Keyport, Monmouth County, Board of Education of the Borough of; Charles Martin v. 1244

Keystone Roofing Company, Inc. v. Board of Education of the Borough of Merchantville *et al.*, Camden County 817

Kinnelon, Morris County, Board of Education of the Township of; Katherine Selfridge v. 522

Lacey for the Withdrawal from the Central Regional High School District, Ocean County; In the Matter of the Petition of the Boroughs of Seaside Heights and Seaside Park and the Township of 632

Laing, Lorraine E. v. Board of Education of the Township of Edison, Middlesex County 422

Lambertville, Board of Education of the City of v. Mayor and Commission, City of Lambertville, Hunterdon County 35

Lambertville, Hunterdon County, Mayor and Commission, City of; Board of Education of Lambertville v. 35

Lane, Lila v. Board of Education of the City of Newark, Essex County 812

Laurel Springs, Board of Education of the Borough of v. Mayor and Council of the Borough of Laurel Springs, Camden County 227

Laurel Springs, Camden County, Mayor and Council of the Borough of; Board of Education of the Borough of Laurel Springs v. 227

Lavallette, Board of Education of the Borough of v. Borough Council of the Borough of Lavallette, Ocean County 1191

Lavallette, Ocean County, Borough Council of the Borough of; Board of Education of the Borough of Lavallette v. 1191

You are viewing an archived copy from the New Jersey State Library.

Lawnside, Board of Education of the Borough of v. Mayor and Council of the Borough of Lawnside, Camden County 118

Lawnside, Camden County, Mayor and Council of the Borough of; Board of Education of the Borough of Lawnside v. 118

Learning Disabilities Association of Scotch Plains-Fanwood *et al.* v. Board of Education of the Scotch Plains-Fanwood Regional School District, Union County 478

Levine, Lillian H., School District of the City of Paterson, Passaic County; In the Matter of the Tenure Hearing of 1129

Levitt, Ruth, and Esther Sasloe v. Board of Education of the City of Newark, Essex County 1063

Levitt, Stephen, School District of the City of Newark, Essex County; In the Matter of the Tenure Hearing of 976

Lilenfield, Barton v. Board of Education of the Borough of Watchung, Somerset County 315

Lincoln Park, Morris County, Board of Education of the Borough of; Christine O'Biso v. 892

Little Ferry, Bergen County; In the Matter of the Tenure Hearing of Joseph Mamatz, School District of the Borough of 603

Little Silver, Monmouth County, Borough Councils of the Boroughs of, Red Bank and Shrewsbury; Board of Education of the Red Bank Regional High School District v. 195

Lodi, Bergen County, Mayor and Council of the Borough of; Board of Education of the Borough of Lodi v. 131

Lodi, Board of Education of the Borough of v. Mayor and Council of the Borough of Lodi, Bergen County v. 131

Long Branch, Board of Education of the City of v. Board of School Estimate and Mayor and Council of the City of Long Branch, Monmouth County 136

Long Branch, Monmouth County, Board of Education of the City of; Susan Welch and Long Branch Education Association v. 88

Long Branch, Monmouth County, Board of School Estimate and Mayor and Council of the City of; Board of Education of the City of Long Branch v. 136

Lower Camden County Regional High School District #1, Camden County, Board of Education of; "T.M.," parent of "F.L.," a minor v. 284

Ludviksen, Kenneth v. Board of Education of North Arlington, Bergen County 115

McLean, Luther v. Board of Education of the Borough of Glen Ridge *et al.*, Essex County 311

McMillan, William and Lorraine *et al.* v. Board of Education of the South Orange-Maplewood School District, Essex County 137

McRae, Inez, School District of the City of Trenton, Mercer County; In the Matter of the Tenure Hearing of 570

Magnolia, Board of Education of the Borough of v. Mayor and Borough Council of the Borough of Magnolia, Camden County 43

Magnolia, Camden County, Borough Councils of the Boroughs of Stratford, and Somerdale; Board of Education of Sterling Regional High School District v. . 157

Magnolia, Camden County, Mayor and Borough Council of the Borough of; Board of Education of the Borough of Magnolia v. 43

Makulinski, John v. Board of Education of the Town of Harrison, Hudson County . . 1114

Mamatz, Joseph, School District of the Borough of Little Ferry, Bergen County; In the Matter of the Tenure Hearing of 603

You are viewing an archived copy from the New Jersey State Library.

Manalapan-Englishtown, Monmouth County, Board of Education of the Regional School District of; John Hutzley v. 904

Manasquan, Monmouth County, Board of Education of the Borough of; Richard R. Gearing v. 751

Marshall, Peter v. Board of Education of the Borough of North Arlington, Bergen County 1220

Martin, Charles v. Board of Education of the Borough of Keyport, Monmouth County 1244

Martin, James v. Board of Education of the Northern Highlands Regional High School District, Bergen County 886

Melone, John v. Board of Education of the Borough of Rutherford, Bergen County . 858

Mendham, Morris County, Board of Education of the Township of; Donald R. and Isabel M. Walters, Bruce J. and Rose Marie Nicholson v. 854

Merchantville, Camden County, Board of Education of the Borough of; Charles C. Colozzi v. 288

Merchantville, *et al.*, Camden County, Board of Education of the Borough of; Keystone Roofing Company, Inc. v. 817

Mesics, Mary Ann v. Board of Education of the East Windsor Regional School District and Edward Callahan, County Superintendent of Schools, Mercer County 153

Middlesex, Middlesex County, Board of Education of the Borough of v. Robert M. Sherr III 363

Middletown, Board of Education of the Township of v. Township Committee of the Township of Middletown, Monmouth County 281

Middletown, Monmouth County, Board of Education of the Township of; Edgar Van Houten v. 984

Middletown, Monmouth County, Township Committee of the Township of; Board of Education of the Township of Middletown v. 281

Midland Park, Bergen County, Board of Education of the Borough of; Margot Outslay v. 1033

Midland Park, Bergen County, Board of Education of the Borough of; Vivienne Pedersen v. 416

Mihatov, Mary C. v. Board of Education of the Borough of Woodcliff Lake, Bergen County 1

Millburn Education Association and Alice W. Cardman v. Board of Education of the Township of Millburn, Essex County 746

Millburn, Essex County, Board of Education of the Township of; Alice W. Cardman *et al.* v. 746

Milltown, Board of Education of the Borough of v. Mayor and Council of the Borough of Milltown, Middlesex County 69

Milltown, Middlesex County, Mayor and Council of the Borough of; Board of Education of the Borough of Milltown v. 69

Milltown to Establish a Sending-Receiving Relationship with the Board of Education of the Borough of Spotswood, Middlesex County; In the Matter of the Application of the Board of Education of the Borough of 207

Monroe *et al.*, Gloucester County, Board of Education of the Township of; Joanne Johnson v. 508

Montclair Concerned Citizens Association *et al.* v. Board of Education of the Town of Montclair, Essex County 1014

Montclair, Essex County, Board of Education of the Town of; Montclair Concerned Citizens Association *et al.* v. 1014

You are viewing an archived copy from the New Jersey State Library.

Montrose, Patrick F., and Robert Tirri v. Board of Education of the City of Paterson, Passaic County 1237

Morris, Board of Education of the School District of v. Town Council of the Town of Morristown and Township Committee of the Township of Morris, Morris County 15

Morris, Morris County, Township Committee of the Township of; and Town Council of the Town of Morristown; Board of Education of the School District of Morris v. 15

Morristown, Morris County, Town Council of the Town of, and Township Committee of the Township of Morris; Board of Education of the School District of Morris v. 15

Mountain View Residents Association *et al.* v. Board of Education of the Township of Wayne, Passaic County 59

Mount Olive for Withdrawal from the West Morris Regional School District, Morris County; In the Matter of the Petition of the Township of 1162

Mount Olive, Morris County, Board of Education of the Township of; Robert Elms *et al.* v. 715

Mrozowski, Benjamin v. Board of Education of the Camden County Vocational Technical High School, Camden County 740

National Park, Board of Education of the Borough of v. Borough Council of National Park and the Gloucester County Board of Taxation, Gloucester County 39

National Park, Board of Education of the Borough of v. Borough Council of the Borough of National Park, Gloucester County 1198

National Park *et al.*, Gloucester County, Borough Council of; Board of Education of the Borough of National Park v. 39

National Park, Gloucester County, Borough Council of the Borough of; Board of Education of the Borough of National Park v. 1198

Neptune, Monmouth County, Board of Education of the Township of, and Board of Education of the City of Asbury Park; Board of Education of the Borough of Bradley Beach v. 959

Neptune, Monmouth County, Board of Education of the Township of; "S.S.," on behalf of "G.A.S.," a minor v. 261

New Brunswick, Board of Education of the City of v. Mayor and Council of the City of New Brunswick, Middlesex County 293

New Brunswick, Middlesex County, Board of Education of the City of; Walter Wilson v. 555

New Brunswick, Middlesex County, Mayor and Council of the City of; Board of Education of the City of New Brunswick v. 293

New Jersey State Board of Examiners, Bureau of Teacher Education and Academic Credentials, Division of Field Services, New Jersey Department of Education; Ernest E. Gilbert v. 908

New Jersey State Board of Examiners; Ingrid Boonstra Sarrat *et al.* v. 1242

Newark, Essex County, Board of Education of the City of; George Delli Santi v. . . . 1211

Newark, Essex County, Board of Education of the City of; Vickie Donaldson and George Branch v. 926

Newark, Essex County, Board of Education of the City of; Donna Frick v. 1091

Newark, Essex County, Board of Education of the City of; Lila Lane v. 812

Newark, Essex County, Board of Education of the City of; Ruth Levitt and Esther Sasloe v. 1063

Newark, Essex County, Board of Education of the City of and Stanley Taylor, Acting Executive Superintendent; Alfonse Rossi v. 734

You are viewing an archived copy from the New Jersey State Library.

Newark, Essex County; In the Matter of the Tenure Hearing of Marilyn Feitel, School District of the City of 451
Newark, Essex County; In the Matter of the Tenure Hearing of Stephen Levitt, School District of the City of 976
Newark, Essex County; In the Matter of the Tenure Hearing of Thomas L. Puryear, School District of the City of 934
Newark *et al.*, Essex County Board of Education of the City of; David Hochman v. . 11
Nicastro, Peter, t/a Nicastro Studio v. Board of Education of the City of Garfield, Bergen County 213
Nicholson, Bruce J. and Rose Marie, Donald R. and Isabel M. Walters v. Board of Education of the Township of Mendham, Morris County 854
North Arlington, Bergen County, Board of Education of the Borough of; Kenneth Ludviksen v. 115
North Arlington, Bergen County, Board of Education of the Borough of; Peter Marshall v. 1220
North Arlington, Bergen County, Mayor and Council of the Borough of; Board of Education of the Borough of North Arlington v. 130
North Arlington, Board of Education of the Borough of v. Mayor and Council of the Borough of North Arlington, Bergen County 130
North Bergen Federation of Teachers and Andrew Guddemi v. Board of Education of the Township of North Bergen, Hudson County 1125
North Bergen, Hudson County, Board of Education of the Township of; North Bergen Federation of Teachers and Andrew Guddemi v. 1125
North Brunswick, Middlesex County, Board of Education of the Township of; Patricia Peters v. 72
North Brunswick, Middlesex County, Board of Education of the Township of; John C. Saccenti v. 265
Northern Highlands Regional High School District, Bergen County, Board of Education of the; James Martin v. 886
Northern Highlands Regional High School District, Bergen County, Board of Education of the; Marilyn Van Hassel v. 871
Northvale, Bergen County, Mayor and Council of the Borough of; Board of Education of the Borough of Northvale v. 245
Northvale, Board of Education of the Borough of v. Mayor and Council of the Borough of Northvale, Bergen County 245
Oakland, Bergen County, Mayor and Council of the Borough of; Board of Education of the Borough of Oakland v. 110
Oakland, Board of Education of the Borough v. Mayor and Council of the Borough of Oakland, Bergen County 110
Oaklyn, Board of Education of the Borough of v. Borough Council of the Borough of Oaklyn, Camden County 20
Oaklyn, Camden County, Borough Council of the Borough of; Board of Education of the Borough of Oaklyn v. 20
O'Biso, Christine v. Board of Education of the Borough of Lincoln Park, Morris County 892
Ogdensburg for the Termination of its Sending-Receiving Relationship with the Board of Education of the Borough of Franklin, Sussex County; In the Matter of the Application of the Borough of 610
Oppermann, Suzanne; Rolane Seastrand v. 361

You are viewing an archived copy from the New Jersey State Library.

Oradell, Bergen County, Mayors and Councils of the Boroughs of River Edge and; River Dell Regional Board of Education v. 209
Outslay, Margot v. Board of Education of the Borough of Midland Park; Bergen County 1033
Palisades Park, Bergen County, Mayor and Council of the Borough of; Board of Education of the Borough of Palisades Park v. 22
Palisades Park, Board of Education of the Borough of v. Mayor and Council of the Borough of Palisades Park, Bergen County 22
Parsippany-Troy Hills, Board of Education of the Township of v. Parsippany-Troy Hills Education Association, Morris County 1080
Parsippany-Troy Hills, Board of Education of the Township of v. Township of Parsippany-Troy Hills, Morris County 19
Parsippany-Troy Hills, Morris County, Board of Education of the Township of; Richard Bates v. 241
Parsippany-Troy Hills, Morris County, Education Association of; Board of Education of the Township of Parsippany-Troy Hills v. 1080
Parsippany-Troy Hills, Morris County, Township of; Board of Education of the Township of Parsippany-Troy Hills v. 19
Passaic, Board of Education of the City of v. Municipal Council of the City of Passaic, Passaic County 445
Passaic County Regional School District #1, Passaic County, William C. Poole v. . . . 1179
Passaic, Passaic County, Municipal Council of the City of; Board of Education of the City of Passaic v. 445
Paterson, Passaic County, Board of Education of the City of; Robert Tirri and Patrick F. Montrose v. 1237
Paterson, Passaic County; In the Matter of the Tenure Hearing of Basil Fattell, School District of the City of 941
Paterson, Passaic County; In the Matter of the Tenure Hearing of Lillian H. Levine, School District of the City of 1129
Paulsboro, Gloucester County; In the Matter of the Tenure Hearing of Thomas Healy, School District of the Borough of 876
Pedersen, Vivienne v. Board of Education of the Borough of Midland Park, Bergen County 416
Pelose, Margaret v. Board of Education of the Township of South Brunswick, Middlesex County 232
Pemberton, Board of Education of the Township of v. Township Committee of the Township of Pemberton, Burlington County 21
Pemberton, Burlington County, Board of Education of the Township of; Dominick DiNunzio v. 24
Pemberton, Burlington County, Township Committee of the Township of; Board of Education of the Township of Pemberton v. 21
Pequannock, Board of Education of the Township of v. Mayor and Council of the Township of Pequannock, Morris County 86
Pequannock, Morris County, Mayor and Council of the Township of; Board of Education of the Township of Pequannock v. 86
Perth Amboy, Board of Education of the City of v. Mayor and Council of the City of Perth Amboy and Board of School Estimate of the City of Perth Amboy, Middlesex County 228
Perth Amboy, Middlesex County, Mayor and Council of the City of, and Board of School Estimate of the City of Perth Amboy; Board of Education of the City of Perth Amboy v. 228

You are viewing an archived copy from the New Jersey State Library.

Peters, Patricia v. Board of Education of the Township of North Brunswick, Middlesex County 72
Pine Hill, Board of Education of the Borough of v. Mayor and Commissioner of Borough of Pine Hill, Camden County 36
Pine Hill, Camden County, Mayor and Commissioner of the Borough of; Board of Education of the Borough of Pine Hill v. 36
Piscataway, Middlesex County, Board of Education of the Township of; Nancy Sherwood v. 1226
Piscataway, Middlesex County; In the Matter of the Tenure Hearing of Raymond Bradshaw, School District of the Township of 1178
Plainfield, Board of Education of the City of v. Boards of Education of the Borough of Dunellen *et al.* 808
Pleasantville, Atlantic County, Board of Education of the City of; Anna Brennan v. . 1059
Plumsted, Board of Education of the Township of v. Township Committee of the Township of Plumsted, Ocean County 23
Plumsted, Ocean County, Board of Education of the Township of; Michael J. Watsula v. 692
Plumsted, Ocean County, to Abolish the Position of Superintendent of Schools; In the Matter of the Application of the Board of Education of 913
Plumsted, Ocean County, Township Committee of the Township of; Board of Education of the Township of Plumsted v. 23
Point Pleasant Beach, Ocean County, Board of Education of the Borough of, and Dr. James Callam; Point Pleasant Beach Teachers Association *et al.* v. 1204
Point Pleasant Beach Teachers Association *et al.* v. Dr. James Callam and Board of Education of the Borough of Point Pleasant Beach, Ocean County 1204
Polaski, Marianne H. v. Board of Education of Burlington County Vocational Technical High School, Burlington County 346
Pompton Lakes, Passaic County; Board of Education of the Borough of; "D.W." *et al.* v. 1240
Pompton Lakes, Passaic County, In the Matter of the Annual School Election Held in the School District of the Borough of 586
Poole, William C. v. Board of Education of the Passaic County Regional School District #1, Passaic County 1179
Popovich, Mary Ann v. Board of Education of the Borough of Wharton, Morris County 440
Previti, Jacquelyn v. Board of Education of Camden County Vocational and Technical Schools, Camden County 820
Price, Thomas B. v. Board of Education of the Township of Harding, Morris County . 1030
Princeton, Mercer County, Board of Education of the Regional School District; Elaine Solomon v. 650
Princeton, Mercer County, Mayor and Council of the Borough of, and Township Committee of the Township of Princeton; Board of Education of the Princeton Regional School District v. 332
Princeton Regional School District, Board of Education of the v. Mayor and Council of the Borough of Princeton and Township Committee of the Township of Princeton, Mercer County 332
Puryear, Thomas L., School District of the City of Newark, Essex County; In the Matter of the Tenure Hearing of 934
Raciti, Carmine Stephen, School District of the Township of Brick, Ocean County; In the Matter of the Tenure Hearing of 685
Ramsey, Bergen County, Board of Education of; Lewis Jacobus v. 521

You are viewing an archived copy from the New Jersey State Library.

Red Bank, Monmouth County, Board of Education of the Borough of; Adele Vexler v. . . . 625

Red Bank, Monmouth County, Borough Councils of the Boroughs of, Little Silver and Shrewsbury; Board of Education of the Red Bank Regional High School District v. . . . 195

Red Bank Regional High School District, Board of Education of the v. Borough Councils of the Boroughs of Little Silver, Red Bank and Shrewsbury, Monmouth County . . . 195

Reilly, Catherine, School District of the City of Jersey City, Hudson County; In the Matter of the Tenure Hearing of . . . 403

River Dell Regional Board of Education v. Mayors and Councils of the Boroughs of Oradell and River Edge, Bergen County . . . 209

River Edge, Bergen County, Mayors and Councils of the Boroughs of Oradell and; River Dell Regional Board of Education v. . . . 209

Rockaway, Morris County, Board of Education of the Township of; Emil Scachetti v. 142

Roosevelt, Monmouth County, and the Township of Cranbury, Middlesex County; In the Matter of the Application of the East Windsor Regional School District for the Termination of the Sending-Receiving Relationship with the School Districts of the Borough of . . . 304

Roselle, Board of Education of the Borough of v. Mayor and Council of the Borough of Roselle, Union County . . . 323

Roselle, Union County, Mayor and Council of the Borough of; Board of Education of the Borough of Roselle v. . . . 323

Rossi, Alfonse v. Board of Education of the City of Newark and Stanley Taylor, Acting Executive Superintendent, Essex County . . . 734

Roxbury, Morris County, Board of Education of the Township of; "H.D." and "M.D.," on behalf of "H.D." v. . . . 760

Rumson-Fair Haven Regional High School District, Board of Education of the v. Mayors and Councils of the Boroughs of Rumson and Fair Haven, Monmouth County . . . 1193

Rumson, Monmouth County, Mayors and Councils of the Boroughs of Fair Haven and; Board of Education of the Rumson-Fair Haven Regional High School District v. . . . 1193

Runnemede, Camden County, Borough Councils of the Boroughs of, and Bellmawr and the Township Committee of the Township of Gloucester; Board of Education of the Black Horse Pike Regional School District v. . . . 34

Runnemede, Camden County, Borough Councils of the Boroughs of, and Bellmawr and the Township Committee of the Township of Gloucester; Board of Education of the Black Horse Pike Regional School District v. . . . 1195

Rutherford, Bergen County, Board of Education of the Borough of; John Melone v. . . 858

Ryan, James, School District of the Township of Garfield, Bergen County; In the Matter of the Tenure Hearing of . . . 1117

"S.S.," on behalf of "G.A.S.," a minor v. Board of Education of the Township of Neptune, Monmouth County . . . 261

"S.W." and "D.W." v. Board of Education of the Town of Westfield, Union County . 698

Saccenti, John C. v. Board of Education of the Township of North Brunswick, Middlesex County . . . 265

Salem County Vocational-Technical School, Salem County; In the Matter of the Suspension of the Teacher's Certificate of Gordon Verge, School District of . 1235

Salem, Salem County, Board of Education of the City of; Susan Zink v. . . . 1102

Salowe, Ava, and Highland Park Education Association v. Board of Education of the Borough of Highland Park *et al.*, Middlesex County . . . 832

You are viewing an archived copy from the New Jersey State Library.

Sarrat, Ingrid Boonstra, and Board of Education of the Borough of Audubon, Camden County v. New Jersey State Board of Examiners 1242
Scachetti Emil v. Board of Education of the Township of Rockaway, Morris County . 142
Sciarrillo, Thomas, School District of the City of Garfield, Bergen County; In the Matter of the Tenure Hearing of 197
Scotch Plains-Fanwood, Union County, Board of Education of the Regional School District of; Paul Ferrara *et al.* v. 997
Scotch Plains-Fanwood, Union County, Board of Education of the Regional School District of; Learning Disabilities Association of Scotch Plains-Fanwood *et al.* v. 478
Scrupski, Joan *et al.* v. Board of Education of the Township of Warren, Somerset County 1047
Seaside Heights and Seaside Park and the Township of Lacey for Withdrawal from the Central Regional High School District, Ocean County; In the Matter of the Petition of the Boroughs of 632
Seaside Park and the Township of Lacey for Withdrawal from the Central Regional High School District, Ocean County; In the Matter of the Petition of the Boroughs of Seaside Heights and 632
Seastrand, Rolane v. Suzanne Oppermann 361
Secula, Michael E., School District of West Morris Regional, Morris County; In the Matter of the Tenure Hearing of 967
Selfridge, Katherine v. Board of Education of Township of Kinnelon, Morris County . 522
Shahbazian, Eileen *et al.* v. Board of Education of the Township of Weehawken, Hudson County 952
Shamong, Burlington County; In the Matter of the Annual School Election Held in the Township of 621
Sherr, Robert M., III; Board of Education of the Borough of Middlesex, Middlesex County v. 363
Sherwood, Nancy v. Board of Education of the Township of Piscataway, Middlesex County 1226
Shrewsbury, Monmouth County, Borough Councils of the Boroughs of Little Silver, Red Bank and; Board of Education of the Red Bank Regional High School District v. 195
Silver, Joseph v. Board of Education of the Township of Hillside, Union County . . . 366
Silverman, Marjorie v. Fred G. Burke *et al.* 724
Smith, John A., III v. Board of Education of the City of Jersey City, Hudson County 1186
Solomon, Elaine v. Board of Education of the Princeton Regional School District, Mercer County 650
Somerdale, Camden County, Borough Councils of the Boroughs of, Stratford and Magnolia; Board of Education of Sterling Regional High School District v. . . 157
Somerville, Somerset County, Board of Education of the Borough of; Wanda Goldsworthy v. 743
Somerville, Somerset County; In the Matter of the Application of Branchburg for the Termination of the Sending-Receiving Relationship with the Board of Education of the Borough of 662
South Amboy, Middlesex County, Board of Education of the City of v. Bureau of Facility Planning, Division of Field Services, New Jersey Department of Education 777
South Amboy School District, Middlesex County; In the Matter of the Deficient and Overcrowded High School Facilities in the 488
South Bound Brook, Board of Education of the Borough of v. Mayor and Council of the Borough of South Bound Brook, Somerset County 87

You are viewing an archived copy from the New Jersey State Library.

South Bound Brook, Somerset County, Mayor and Council of the Borough of; Board of Education of the Borough of South Bound Brook v. 87
South Brunswick, Middlesex County, Board of Education of; Margaret Pelose v. . . . 232
South Orange-Maplewood, Board of Education of the School District of v. Board of School Estimate of South Orange-Maplewood, Essex County 564
South Orange-Maplewood, Board of Education of the School District of v. Board of School Estimate of the School District of South Orange-Maplewood, Essex County 1196
South Orange-Maplewood, Essex County, Board of School Estimate of; Board of Education of the School District of South Orange-Maplewood v. 564
South Orange-Maplewood, Essex County, Board of School Estimate of the School District of; Board of Education of the School District of South Orange-Maplewood v. 1196
South Orange-Maplewood, Essex County, Board of Education of the School District of; William and Lorraine McMillan *et al.* v. 137
Sparta, Board of Education of the Township of v. Township Council of the Township of Sparta, Sussex County 349
Sparta, Sussex County, Township Council of the Township of; Board of Education of the Township of Sparta 349
Spotswood, Board of Education of the Borough of v. Mayor and Borough Council of the Borough of Spotswood, Middlesex County 940
Spotswood, Middlesex County; In the Matter of the Application of the Board of Education of the Borough of Milltown to Establish a Sending-Receiving Relationship with the Board of Education of the Borough of 207
Spotswood, Middlesex County, Mayor and Council of the Borough of; Board of Education of the Borough of Spotswood v. 940
Sterling Regional High School District v. Borough Councils of the Boroughs of Stratford, Somerdale and Magnolia, Camden County 157
Stratford, Camden County, Borough Councils of the Boroughs of, Somerdale and Magnolia; Board of Education of Sterling Regional High School District v. . . 157
Strauss, Deborah v. Board of Education of the Borough of Glen Gardner, Hunterdon County 841
"T.M.," parent of "F.L.," a minor v. Board of Education of the Lower Camden County Regional High School District #1, Camden County 284
Talarsky, Henry *et al.* v. Edison Township Board of Education *et al.*, Middlesex County 862
Teaneck, Bergen County, Board of Education of the Township of; Stuart Williams v. . 1008
Tesi, Roger v. Board of Education of the Township of Union *et al.*, Ocean County . . 504
Tirri, Robert, and Patrick F. Montrose v. Board of Education of the City of Paterson, Passaic County 1237
Toms River, Ocean County, Board of Education of the Regional School District of; Louis A. Garibaldi, Jr. v. 192
Toms River Regional, Ocean County; In the Matter of the Tenure Hearing of Samuel Ivens, School District of 960
Totowa, Board of Education of the Borough of v. Mayor and Council of the Borough of Totowa, Passaic County 70
Totowa, Passaic County, Mayor and Council of the Borough of; Board of Education of the Borough of Totowa v. 70
Trenton, Board of Education of the City of v. City Council of the City of Trenton, Mercer County 45

You are viewing an archived copy from the New Jersey State Library.

Trenton, Mercer County, City Council of the City of; Board of Education of the City of Trenton v. 45

Trenton, Mercer County; In the Matter of the Tenure Hearing of Inez McRae, School District of the City of 570

Unger, Philip; M. Herbert Axler v. 809

Union Beach, Board of Education of the Borough of v. Mayor and Council of the Borough of Union Beach, Monmouth County 1194

Union Beach, Monmouth County; In the Matter of the Annual School Election Held in the School District of the Borough of 607

Union Beach, Monmouth County, Mayor and Council of the Borough of; Board of Education of the Borough of Union Beach v. 1194

Union County Regional High School District No. 1, Union County, Board of Education of the v. Henry T. Karamus 162

Union *et al.*, Ocean County, Board of Education of the Township of; Roger Tesi v. . 504

Union, Hudson County, Board of Education of the City of; Angela Cieri and Maria Rosa v. 393

Upper, Cape May County; In the Matter of the Annual School Election Held in the School District of the Township of 1088

Van Hassel, Marilyn v. Board of Education of the Northern Highlands Regional High School District, Bergen County 871

Van Houten, Edgar v. Board of Education of the Township of Middletown, Monmouth County 984

Van Os, Joseph v. Board of Education of the Township of Cinnaminson, Burlington County 1040

Verge, Gordon, School District of Salem County Vocational-Technical School, Salem County; In the Matter of the Suspension of the Teacher's Certificate of 1235

Verona, Essex County, Board of Education of the Borough of; Alan DeOld and Verona Education Association 1096

Vexler, Adele v. Board of Education of the Borough of Red Bank, Monmouth County 625

Voorhees, Camden County; In the Matter of the Annual School Election Held in the Constituent District of the Township of 585

Voorhees *et al.*, Camden County, Board of Education of the Township of; Patricia Crawford v. 364

Wall, Monmouth County, Board of Education of the Township of; Harry D. Whittley, Jr. v. 1200

Wall Township *et al.*, Monmouth County, Board of Education of; Robert and Barbara Foote v. 462

Walters, Donald R. and Isabel M., Bruce J. and Rose Marie Nicholson v. Board of Education of the Township of Mendham, Morris County 854

Warren, Somerset County, Board of Education of the Township of; Joan Scrupski *et al.* v. 1047

Washington Township *et al.*, Morris County, Board of Education of the School District of; Peter J. Fanella v. 383

Watchung Hills Regional High School District, Board of Education of the v. Mayor and Council of the Borough of Watchung, Township Committee of the Township of Warren, Somerset County, and Township Committee of the Township of Passaic, Morris County 487

Watchung Hills, Somerset County, Board of Education of the Regional High School District of; Kathryn R. Fox v. 1107

You are viewing an archived copy from the New Jersey State Library.

Watchung, Somerset County, Board of Education of the Borough of; Barton Lilenfield v. . . . 315
Watchung, Somerset County, Mayor and Council of the Borough of, Township Committee of the Township of Warren and Township Committee of the Township of Passaic, Morris County; Board of Education of the Watchung Hills Regional High School District v. . . . 487
Watsula, Michael J. v. Board of Education of the Township of Plumsted, Ocean County . . . 692
Wayne, Passaic County, Board of Education of the Township of; Mountain View Residents Association *et al.* v. . . . 59
Weehawken, Board of Education of the Township of v. Municipal Council of the Township of Weehawken, Hudson County . . . 18
Weehawken, Hudson County, Board of Education of the Township of; Harbor Hall School, William L. Hess, Executive Director v. . . . 342
Weehawken, Hudson County, Board of Education of the Township of; Eileen Shahbazian *et al.* v. . . . 952
Weehawken, Hudson County; In the Matter of the Tenure Hearing of Arthur Kaplan, School District of the Township of . . . 435
Weehawken, Hudson County, Municipal Council of the Township of; Board of Education of the Township of Weehawken v. . . . 18
Welch, Susan, and Long Branch Education Association v. Board of Education of the City of Long Branch, Monmouth County . . . 88
West Long Branch, Monmouth County, Board of Education of the Borough of; Joseph Barnarr v. . . . 518
West Milford, Passaic County; In the Matter of the Annual School Election Held in the School District of the Township of . . . 339
West Morris Regional School District, Morris County; In the Matter of the Petition of the Township of Mount Olive for Withdrawal from the . . . 1162
West Morris Regional, Morris County; In the Matter of the Tenure Hearing of Michael E. Secula, School District of . . . 967
West New York, Hudson County; In the Matter of the Tenure Hearing of Emil F. Guasconi, School District of the Town of . . . 513
Westfield, Union County, Board of Education of the Town of; "S.W." and "D.W." v. 698
Wharton, Morris County, Board of Education of the Borough of; Mary Ann Popovich v. . . . 440
White, Joan v. Board of Education of the Township of Galloway, Atlantic County . . 900
Whittley, Harry D., Jr. v. Board of Education of the Township of Wall, Monmouth County . . . 1200
Williams, Stuart v. Board of Education of the Township of Teaneck, Bergen County . 1008
Wilson, Elsie v. Board of Education of the Borough of Florham Park, Morris County . 823
Wilson, Walter v. Board of Education of the City of New Brunswick, Middlesex County . . . 555
Woodcliff Lake, Bergen County, Board of Education of the Borough of; Mary C. Mihatov v. . . . 1
Zielenski, Juanita, School District of the Town of Guttenberg, Hudson County; In the Matter of the Tenure Hearing of . . . 786
Zink, Susan v. Board of Education of the City of Salem, Salem County . . . 1102

You are viewing an archived copy from the New Jersey State Library.

BUDGETS – NOT PRINTED

Elmwood Park
Fairfield
Little Egg Harbor
Wallington

ELECTION RECOUNTS CONFIRMED – NOT PRINTED

Audubon Park
Edgewater Park
Hasbrouck Heights
Highlands (Recount)
Howell
Merchantville
South River
Trenton
West Deptford

TENURE CASES – NOT PRINTED

In the Matter of the Tenure Hearing of:
Evelyn Bartko (Order)
Jane Erdo (Order)
Raphael Inzitari (Order)
Jerome Luft (Order)
Mildred Shaklee (Order)
Don Tullman (Order)

You are viewing an archived copy from the New Jersey State Library.

DECISIONS RENDERED BY THE STATE BOARD OF EDUCATION, SUPERIOR COURT AND SUPREME COURT 1977

Arzberger, Marilyn v. Board of Education of the Township of Neptune, Monmouth County (State Board of Education) 1271

Arzberger, Marilyn v. Board of Education of the Township of Neptune, Monmouth County (Superior Court) 1271

Avon-by-the-Sea for the Termination of the Sending-Receiving Relationship with the School District of Asbury Park, Monmouth County; In the Matter of the Application of the Board of Education of the Borough of (Superior Court) . . 1275

Axler, M. Herbert v. Philip Unger (State Board of Education) 811

Baley, Carolyn D., School District of the Township of Mansfield, Warren County; In the Matter of the Tenure Hearing of (State Board of Education) 1277

Biancardi, Nicoletta v. Waldwick Board of Education (Supreme Court) 1277

Brick, Board of Education of the Township of v. Ronald Heinzman; John Hickman; Brick Township Education Association; the American Arbitration Association; and Julius Malkin, Arbitrator, Ocean County (State Board of Education) . . . 1278

Chianese, Elaine M. v. Board of Education of the Township of Bordentown, Burlington County (State Board of Education) 1279

Ciccone, Louis v. Board of Education of the Township of Weehawken, Hudson County (State Board of Education) 1279

D'Ambrosio, Ciro v. Board of Education of the Borough of Palisades Park and George Iannacone, Superintendent, Bergen County (State Board of Education) 1280

Deal Education Association, Kathleen Chokov and Sandra Layton v. Board of Education of the Borough of Deal, Monmouth County (State Board of Education) 925

Dennis, Larry and Arline, on behalf of Scott Dennis v. Board of Education of the Township of Holmdel, Monmouth County (State Board of Education) 393

Diffenderfer, Kenneth W. v. Board of Education of the Borough of Washington, Warren County (Superior Court) 1280

Driscoll, Joan v. Board of Education of the City of Clifton, Passaic County (Superior Court) 1281

Fallon, Patricia v. Board of Education of the Township of Mount Laurel, Burlington County (Superior Court) 1287

Feitel, Marilyn, School District of the City of Newark, Essex County; In the Matter of the Tenure Hearing of (State Board of Education) 458

Felmey, Robert, School District of the City of Bridgeton, Cumberland County; In the Matter of the Tenure Hearing of (State Board of Education) 57

Foote, Robert and Barbara v. Board of Education of the Town of Wall and the Old Wall Historical Society, Monmouth County (State Board of Education) 477

Gearing, Richard R. v. Board of Education of the Borough of Manasquan, Monmouth County (State Board of Education) 760

Gilbert, Ernest E. v. New Jersey State Board of Examiners, Bureau of Teacher Education and Academic Credentials, Division of Field Services, New Jersey Department of Education (State Board of Education) 913

Gill, Anna v. Board of Education of the City of Clifton, Passaic County (Superior Court) 1289

Green Village Road School Association *et al.* v. Board of Education of the Borough of Madison, Morris County (Superior Court) 1292

You are viewing an archived copy from the New Jersey State Library.

Guasconi, Emil J., School District of the Town of West New York, Hudson County; In the Matter of the Tenure Hearing of (State Board of Education) 517

"H.D." and "M.D." v. Board of Education of the Township of Roxbury, Morris County (State Board of Education) 771

Hochman, David v. Board of Education of the City of Newark; Stanley Taylor, Superintendent of Schools; Theresa David, Assistant Superintendent of Schools; and James Vasselli, Principal, Broadway Junior High School, Essex County (State Board of Education) 15

Humen, William S. v. Board of Education of the City of Bayonne, Hudson County (State Board of Education) 807

Laing, Lorraine E. v. Board of Education of the Township of Edison, Middlesex County (State Board of Education) 427

Lefakis, Consuelo Garcia, School District of the Borough of Midland Park, Bergen County; In the Matter of the Tenure Hearing of (State Board of Education) . 1293

Long Branch Education Association and William Cook v. Board of Education of the City of Long Branch, Monmouth County (Superior Court) 1294

Long Branch Education Association, Inc. v. Board of Education of the City of Long Branch, Monmouth County (Supreme Court) 1295

"M.D." and "R.D." v. Board of Education of the City of Rahway, Union County (State Board of Education) 1296

McCormack, Mary Ann, Robert R. Yundzel and Elwyn F. Spangler v. Boards of Education of the Northern Highlands Regional High School District or the Borough of Fair Lawn, Bergen County (State Board of Education) 1299

Means, Helen P. v. Board of Education of the City of Newark, Essex County (State Board of Education) 1300

O'Biso, Christine v. Board of Education of the Borough of Lincoln Park, Morris County (State Board of Education) 900

Ogdensburg, Board of Education of the Borough of, for the Termination of its Sending-Receiving Relationship with the Board of Education of the Borough of Franklin, Sussex County (State Board of Education) 618

Parachini, Lawrence v. Board of Education of the City of Union and Robert Menendez, Hudson County (Superior Court) 1301

Payne, David v. Board of Education of the Borough of Verona, Essex County (Superior Court) 1303

Pederson, Vivienne v. Board of Education of the Borough of Midland Park, Bergen County (State Board of Education) 421

Pelose, Margaret v. Board of Education of the Township of South Brunswick, Middlesex County (State Board of Education) 240

Peters, Patricia v. Board of Education of the Township of North Brunswick, Middlesex County (State Board of Education) 85

"R.D.H." and "J.D.H." v. Board of Education of Flemington-Raritan Regional School District, Hunterdon County (Superior Court) 1304

Raciti, Carmine Stephen, School District of the Township of Brick, Ocean County; In the Matter of the Tenure Hearing of (State Board of Education) 689

"S.W." and "D.W." v. Board of Education of the Town of Westfield, Union County (State Board of Education) 703

"S.W." and "D.W." v. Board of Education of the Town of Westfield, Union County (Superior Court) 704

Sachs, Iris v. Board of Education of the East Windsor Regional School District *et al.*, Mercer County (Superior Court) 1306

You are viewing an archived copy from the New Jersey State Library.

Scachetti, Emil v. Board of Education of the Township of Rockaway, Morris County (State Board of Education) 153

Secula, Michael E., School District of West Morris Regional, Morris County; In the Matter of the Tenure Hearing of (State Board of Education) 975

Silver, John v. Board of Education of the Township of Hillside, Union County (State Board of Education) 371

Solomon, Elaine v. Board of Education of the Princeton Regional School District, Mercer County (State Board of Education) 657

South Amboy, Board of Education of the City of, Middlesex County v. Bureau of Facility Planning, Division of Field Services, New Jersey Department of Education (State Board of Education) 786

Ulozas, Gloria v. Board of Education of the Matawan Regional School District, Monmouth County and State Board of Education (Superior Court) 1307

Vieland, Constance v. Board of Education of the Princeton Regional School District, Mercer County (State Board of Education) 1308

Wall Township Education Association *et al.* v. Board of Education of the Township of Wall, Monmouth County (Superior Court) 1309

Welch, Susan, and Long Branch Education Association v. Board of Education of the City of Long Branch (State Board of Education) 95

Whidden, Howard J. v. Board of Education of the City of Paterson, Passaic County (Superior Court) 1312

White, Joan v. Board of Education of the Township of Galloway, Atlantic County (State Board of Education) 903

Wisner, Thelma v. Harold Y. Bills, Monmouth County Superintendent of Schools, Monmouth County (State Board of Education) 1314

You are viewing an archived copy from the New Jersey State Library.

You are viewing an archived copy from the New Jersey State Library.

Mary C. Mihatov,

Petitioner,

v.

Board of Education of the Borough of Woodcliff Lake, Bergen County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Joseph T. Skelley (Robert T. Tessaro, Esq., of Counsel)

For the Respondent, Wittman, Anzalone, Bernstein & Dunn (Walter T. Wittman, Esq., of Counsel)

Petitioner, a teacher of Spanish who was employed by the Board of Education of Woodcliff Lake, hereinafter "Board," contends that the Board's determination in April 1975 not to continue her employment for the ensuing school year was arbitrary, capricious, unreasonable, and violative of both her contractual guarantees and her rights under the teacher tenure statutes. The Board asserts that its determination not to reemploy petitioner was a sound exercise in discretion which was in no way violative of petitioner's protected rights.

A hearing in this matter was conducted on March 26 and April 2, 1976 at the office of the Morris County Superintendent of Schools, Morris Plains, before a hearing examiner appointed by the Commissioner of Education. Numerous exhibits were received in evidence at the hearing and Briefs were subsequently filed. The report and recommendations of the hearing examiner follow setting forth first those facts which are uncontroverted:

Petitioner was initially issued a contract by the Board, dated July 5, 1972 to teach part time for the Board from July 1, 1972 to June 30, 1973, which specified that she would begin service on September 5, 1972, and be compensated in twenty semimonthly installments beginning September 15. Subsequent annual contracts covering the period from July 1, 1973 through June 30, 1975, provided that petitioner would teach and be paid on a full-time basis beginning in September and ending in June of each of those two years. (P-2, 3, 4) Petitioner, in fact, instructed pupils in grades six, seven and eight during those academic years. Additionally, she was paid $75 for participating with other teachers in a one week summer Spanish curriculum workshop program in June 1972 to develop teaching techniques and curriculum materials in the Spanish instructional program. (Tr. II-7, 31-37; R-1; J-9) Petitioner was also paid a $175 stipend on August 15, 1973 for participating in an in-service video taping workshop in July with other teaching staff members. (Tr. I-71; Tr. II-13; J-9)

You are viewing an archived copy from the New Jersey State Library.

Petitioner's principal and the Superintendent both recommended that she be reemployed for the 1975-76 school year. (J-2, 4) The Board, however, voted on April 21, 1975, not to continue her employment for the ensuing year. (J-7, 10) Thereafter, petitioner asked for a statement of the reasons why she was not reemployed. The Board supplied a statement which affirmed that her nonrenewal was not predicated upon any deficiencies in technical skills and academic qualifications but upon what the Board perceived to be a divisive controversy which had sprung up in the community over petitioner's ability to inspire, motivate and develop empathy with pupils of divergent achievement levels. (J-1) Petitioner was granted an informal appearance on June 17, 1975, wherein she had opportunity to express to the Board the reasons why she believed she should be reemployed. Nevertheless, the Board resolved on June 26, 1975 to affirm its prior determination. (J-8) Thereupon, the within Petition of Appeal was filed with the Commissioner.

Petitioner argues that the Board's discretionary power to terminate the employment of a nontenured teacher is not absolute but must be exercised in a manner that is not arbitrary, unreasonable, capricious, illegal or otherwise improper. In this regard petitioner cites, *inter alia,* the following: *Donaldson v. Board of Education of North Wildwood,* 65 *N.J.* 236 (1974); *George A. Ruch v. Board of Education of the Greater Egg Harbor Regional High School District, Atlantic County,* 1968 *S.L.D.* 7, dismissed State Board of Education 11, aff'd New Jersey Superior Court, Appellate Division, 1969 *S.L.D.* 202; *Marilyn Stein v. Board of Education of the Township of North Bergen, Hudson County,* 1975 *S.L.D.* 524. (See Petitioner's Brief, at pp. 1-5.)

Petitioner alleges that the Board's failure to renew her contract was tainted by the fact that the Board's determination was grounded solely on its belief that she had become controversial and not on evaluations of her competence as a teacher. *Kersey v. Maine Consolidated School District*, 394 *P.2d* 201, 96 *Ariz.* 266 (1964) In this regard petitioner states that "***the Board's action***smacks of an emotional [deference] to 'mob' rule rather than reasoned decision making.***" (Petitioner's Brief, at p. 8) Petitioner contends that, were the board's reasoning to be upheld as sufficient grounds for her non-reemployment, it would have a chilling effect on academic freedom and teacher initiative. (*Id.*, at pp. 9-10)

Petitioner also contends that two members of the Board based their opposition to her reemployment on philosophical opposition to tenure and that such opposition is not only inconsistent with the school laws but patently unfair to petitioner who had not been apprised of such opposition. *Viemeister v. Board of Education of Prospect Park*, 5 *N.J. Super.* 215 (*App. Div.* 1949)

Petitioner further contends that the principal, Superintendent and the Board failed to advise her of or place certain letters of complaint from parents in her personnel file as required by the negotiated agreement, which provided, *inter alia,* as follows:

"***No material derogatory to a teacher's conduct, service, character or

You are viewing an archived copy from the New Jersey State Library.

personality shall be placed in his personnel file unless the teacher has had an opportunity to review this material.***

"Although the Board agrees to protect the confidentiality of personal references, academic credentials and other similar documents, it shall not establish any separate personnel file which is not available for the teacher's inspection.***" (J-13, at p. 21)

Petitioner contends that the failure to adhere to this facet of the negotiated agreement, upon which she felt she could rely, kept her ignorant of the controversy which was building about her and which influenced the Board not to renew her contract. (Petitioner's Brief, at pp. 11-13; Tr. I-97, 100) Petitioner avers that the Board's reliance upon those complaining letters and petitions adverse to her, without taking steps to authenticate them, was a capricious, unfair, and frivolous exercise of the Board's discretion. (*Id.*, at pp. 13-14)

Finally, petitioner argues that she was tenured by reason of having served under contracts which ran from July 1, 1972 to June 30, 1975.

In this regard petitioner testified that she rendered service to the Board by developing a new language instruction program during June, July and August of 1972. (Tr. I-67-71) She testified further that during the summers of 1973 and 1974 she did further curriculum and audiovisual work in preparation for a curriculum change. (Tr. I-71-72) Petitioner reasons that her service to the Board during each of the summers of her contract years, when considered *in pari materia* with her teaching service during the same three academic years, meets the precise test set forth in *N.J.S.A.* 18A:28-5 which provides that a properly certificated teacher achieves tenured status after employment in a school district for:

"***(a) Three consecutive calendar years***; or ***

"(c) the equivalent of more than three academic years within a period of any four consecutive academic years.***"

Thus, petitioner contends that she was tenured, that the Board illegally terminated her services without certification of charges pursuant to *N.J.S.A.* 18A:6-10 *et seq.*, and that aside from her tenured status, the Board's determination not to employ her was so arbitrary and capricious that it must be set aside. Accordingly, petitioner requests that the Commissioner direct the Board to reinstate her to her teaching position with all benefits and entitlements. (Petitioner's Brief, at pp. 15-17)

The Board, conversely, maintaining that petitioner was at no time its tenured employee, reasons that her contracts specified that she was to provide service only during the academic years. In this regard, the Board points out that petitioner was not compensated during the summer months except for the workshops in June 1972 and July 1973. Thus, it is argued that petitioner did not present a three calendar year period of continuous unbroken service as

You are viewing an archived copy from the New Jersey State Library.

contemplated by *N.J.S.A.* 18A:28-5(a). It is further argued that if petitioner's voluntary, unsalaried preparatory work during the summers could be counted as time served toward tenure, "***all teachers having a third contract would automatically acquire tenure***merely by showing the occurrence of [such] preparation.***" (Respondent's Brief, at p. 7) Respondent argues that such was not the intent of the Legislature in enacting the tenure laws.

The Board argues that petitioner's reliance on *N.J.S.A.* 18A:28-5(c) is similarly misplaced since *N.J.S.A.* 18A:1-1 defines an academic year as

> "***the period between the time school opens***after the general summer vacation until the next succeeding summer vacation***."

Thus, the Board contends that *N.J.S.A.* 18A:28-5(c), which contemplates "***the equivalent of more than three academic years within a period of four consecutive academic years***" could have no application to the period of the summer workshop after the close of school in June 1972.

The Board denies that its determination not to reemploy petitioner was arbitrary or capricious or that its decision was made in haste, lightly or without substantial evidence of a divisiveness of opinion in the community as concerned with petitioner's teaching effectiveness. (Respondent's Brief, at pp. 10-17) *Zimmerman v. Board of Education of Newark,* 38 *N.J.* 65 (1962); *Ronnie Abramson v. Board of Education of Colts Neck, Monmouth County,* 1975 *S.L.D.* 418, aff'd State Board of Education 424

The Board avers that the public controversy surrounding petitioner in Woodcliff Lake had escalated to such proportions that the charge of arbitrariness or capriciousness may not justifiably be directed against its conscientious exercise of discretion to remove petitioner from the center of controversy.

The Board argues further that petitioner's charge of noncompliance with the negotiated agreement is of little consequence since the Superintendent's purpose for not placing the derogatory letters in her file was to keep them from damaging her, at least until verification was procured. (Tr. II-39) The Board reasons that, in view of the administrators' unanimous support of petitioner for a tenure contract, the letters could not have damaged her reputation in their eyes. (Respondent's Brief, at p. 18) The Board contends that, in any event, petitioner waived her right to exercise the grievance procedure when the existence of the offending letters came to petitioner's attention. (*Id.*, at pp. 19-20)

Finally, the Board asks that the Petition of Appeal be dismissed by reason of petitioner's failure to prove that she was tenured, or that the Board's action was arbitrary, capricious, contrary to the procedural requirements of the negotiated agreement or otherwise improper.

The hearing examiner recommends that the Commissioner determine that petitioner was not tenured either by reason of having participated in curriculum workshops in June 1972 and July 1973 or by reason of her preparation of

You are viewing an archived copy from the New Jersey State Library.

curricular materials during the summers of 1972-74. This recommendation is grounded on a finding that it was not required of petitioner that she participate in each of these workshops. (Tr. II-37) Nor was she performing the regular work of a teacher which would have enabled the Board or its agents to observe and evaluate her performance as a probationary teacher. Petitioner was paid stipends only for the two brief workshops. Nor is there significance to the dating of her contracts beginning as of July 1, since the contracts clearly specify that she was to begin service to the Board in each of the three years on September 1. Accordingly, the hearing examiner finds that petitioner did not meet the criteria of three consecutive calendar years as required by *N.J.S.A.* 18A:28-5(a). While such work as petitioner performed during the workshops and in developing and improving the curriculum during the summer periods was undoubtedly of value to the instructional program, it was voluntarily engaged in and not such that petitioner demanded or that the Board offered a regular salary with attendant emoluments.

Clearly, petitioner does not meet the test of *N.J.S.A.* 18A:28-5(c). As was said by the Commissioner in *Lawrence M. Davidson v. Newark State College et al.,* 1968 *S.L.D.* 12 wherein a college instructor desired to "tack on" for purposes of tenure a period of employment in the college extension division:

> "***A statute will not be construed to reach an absurd or anomalous result.*** [P]etitioner's argument enlarges the statute far beyond any intent of the Legislature and would produce untenable and unreasonable results.***" (at 16)

Therein, the Commissioner also quoted with favor *Frank S. Taylor v. Paterson State College et al.,* 1966 *S.L.D.* 33, wherein it was stated:

> "***Petitioner cites the fact that he was employed for three consecutive academic years and contends that his summer school employment between the second and third years accomplishes the 'equivalent of more than three academic years' required by the statute.***
>
> "Summer sessions are not part of the academic year. They differ in many respects from the regular school term. The courses may enroll others than full-time students, may be taught by other than regular faculty members, and may be administered and supervised by persons other than those assigned to such duties during the academic year. Under petitioner's argument, teachers who are employed in an evening session or any other special or extra session could count that service toward the probationary employment requirement and acquire tenure before three years had elapsed. The Commissioner finds no such intention in the statute and holds that the legislative purpose was to require persons employed on an academic year basis to be employed for a fourth such year or its equivalent before tenure accrues.
>
> "Reliance on petitioner's argument would create an anomaly in that persons employed for an academic year could gain tenure in less time than those hired by the calendar year. Thus a superintendent employed on a 12

You are viewing an archived copy from the New Jersey State Library.

> months basis would need to serve three full calendar years or 36 months before tenure became effective. But if petitioner's contention prevails a teacher could acquire the equivalent of more than three academic years some months before the end of the third year of employment by teaching two summer sessions. A statute will not be construed to reach an absurd or anomalous result. *Robson v. Rodriquez,* 26 *N.J.* 517, 528 (1958); *Gannon v. Saddle Brook Twp.,* 56 *N.J. Super.* 76, 80 (*App. Div.* 1959) See also *Schumacher v. Mansfield Twp. Board of Education,* 1961-62 *S.L.D.* 175, affirmed as *Board of Education of Manchester Twp. v. Raubinger,* 78 *N.J. Super.* 90 (*App. Div.* 1963).***" (at 36-37)

Nor does petitioner's summer service meet the criteria of time served toward tenure as enunciated by the New Jersey Supreme Court in *Cammarata v. Essex County Park Commission,* 26 *N.J.* 404 (1958) as follows:

> "***It is difficult to evaluate the character, industry, personality, and responsibility of an applicant from his performance on a written examination or through cursory personal interviews. Knowledge and intelligence do not alone*** [suffice]. The crucial test of his fitness is how he fares on the job from day to day when suddenly confronted by situations demanding a breadth of resources and diplomacy. Many intangible qualities must be taken into account, and, since the lack of them may not constitute good cause for dismissal under a tenure statute, the *** [employer] is entitled to a period of preliminary scrutiny, during which the protection of tenure does not apply, in order that it may make pragmatically informed and unrestricted decisions as to an applicant's suitability.***" (at 412)

It remains to treat petitioner's remaining contentions that the Board's action was arbitrary and capricious. The Board Secretary testified that two members of the Board did in fact state at the public meeting of April 21, 1975, that their reason for not voting for certain employment contracts, including that of petitioner, was "*** their philosophical objection to the granting of tenure to any employee.***" (Tr. I-19) The hearing examiner's judgment is that such statements, within the contextual setting in which they were uttered, are contrary to the spirit of the education laws. The record is clear, nevertheless, that even were the votes of these two members of the seven member Board to be invalidated, the resolution not to employ petitioner would have passed by a majority of the Board's full membership. (J-7)

The Superintendent testified at the hearing that, although he had recommended petitioner's reemployment in March 1975, he finally concluded in June that the controversy surrounding petitioner was so intense as to jeopardize the survival of the Spanish offering to the detriment of the educational program. (Tr. II-55-58, 60) He stated that in his professional experience, he had not previously witnessed such a sharp division of opinion. (*Id.,* at p. 49) The Superintendent further testified that, in addition to numerous letters and a petition of complaint (R-3-10) and letters and petition of support for petitioner (R-11-21; P-5, 9), members of the Board and administrators had received numerous telephone calls unfavorable to petitioner both before and after the

You are viewing an archived copy from the New Jersey State Library.

Board's decision of April 21, 1975. (Tr. II-49; P-6) He related that when such communications came in, he referred the letters or substance of the calls to the principal, rather than placing them in petitioner's personnel file. The principal, in turn, testified that he did not show petitioner the letters, but openly revealed to her their contents and the nature of telephoned complaints. (Tr. II-84-85)

In any event, in April 1975, upon her request, petitioner, accompanied by an education association representative, was shown the letters. No grievance was filed by her pursuant to the provisions of Article III of the negotiated agreement.

Absent such action which petitioner could have initiated and in accord with the enunciated doctrine that a violation of a negotiated agreement may not supersede or nullify the statutory requirement that the Board determine who is to teach in its schools, the hearing examiner recommends that the Commissioner determine that the fact that the letters of complaint were not placed in petitioner's personnel file has no pertinence in the determination herein. This recommendation is grounded on the Commissioner's decision in *Margaret A. White v. Board of Education of the Borough of Collingswood, Camden County,* 1973 *S.L.D.* 261, wherein he said:

> "***[A] board may not adopt a rule or policy which would in effect either amend a statute or deny the board's authority conferred by a statute.***" (at 263)

For a more exhaustive list of citations expounding this principle, see *Frederick J. Procopio, Jr. v. Board of Education of the City of Wildwood, Cape May County,* 1975 *S.L.D.* 805, aff'd State Board of Education 1976 *S.L.D.* 1161.

A member of the Board testified that he had carefully considered the administrators' favorable recommendations for petitioner. (Tr. II-93) He also stated that:

> "***I felt that I could not, in good conscience, vote to give her an additional contract because of the tremendous amount of controversy and upheaval that surrounded her employment in the district.*** (Tr. II-94)

And,

> "***It seemed as if we were talking about Mrs. Mihatov on many, many meetings, because this was a controversial issue that was occupying *** an undue amount of time***." (Tr. II-96)

The Board President similarly testified that he voted not to reemploy petitioner because of the

> "***divisiveness that was being caused in the community as a result of this teacher and the *** unprecedented number of complaints concerning ***her method or way of teaching.***" (Tr. II-101)

You are viewing an archived copy from the New Jersey State Library.

In the judgment of the hearing examiner the Board is statutorily empowered to make a determination which is contrary to the recommendation of its administrators, when it does so for reasons which are not proscribed. As was enunciated in *Moses Cobb v. Board of Education of the City of East Orange, Essex County,* 1975 *S.L.D.* 1047, aff'd State Board of Education 1976 *S.L.D.* 1135:

> "***[T]he Commissioner holds that the validity of the Board's actions with respect to petitioner may not be impinged because certain supervisory evaluations concerned with petitioner's work were not made in accordance with a contractual agreement *** that the Board had negotiated with its staff. The judgment of local boards of education, with respect to the employment or non-reemployment of nontenured teaching staff members, does not depend alone on such evaluations although they may constitute a part, even the principal part, of a total consideration. As the Court said in *Mary C. Donaldson v. Board of Education of the City of North Wildwood,* 65 *N.J.* 236 (1974):
>
> > '***The board's determination not to grant tenure need not be grounded on unsatisfactory classroom or professional performance for *there are many unrelated but nonetheless equally valid reasons why a board,* having had the benefits of observation during the probationary period, *may conclude that tenure should not be granted.*' (*Emphasis supplied.*) (at p. 241)***" (at 1055)

The hearing examiner, after careful consideration of the testimony of witnesses, the exhibits and the relevant law, finds no evidence that the Board, in deciding not to reemploy petitioner, acted in an arbitrary or capricious manner although this decision was contrary to the recommendation of its administrators. See *Donaldson, supra; Zimmerman, supra; Abramson, supra; Cammarata, supra; Downs v. Board of Education of Hoboken,* 12 *N.J. Misc.* 345 (*Sup. Ct.* 1934); *Ruth Burstein et al. v. Board of Education of the Borough of Englewood Cliffs, Bergen County,* 1970 *S.L.D.* 327, aff'd State Board of Education 1971 *S.L.D.* 661.

Absent a finding of illegality, the hearing examiner recommends that the Commissioner determine that the Board's action on April 21, 1975, not to reemploy petitioner and its later reaffirmation of that decision were legitimately taken, deserving of a presumption of correctness, and not subject to abridgment by reviewing authority. *Downs, supra; Ruch, supra*

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record of the controverted matter including the hearing examiner report and the exceptions filed thereto by the litigants pursuant to *N.J.A.C.* 6:24-1.17(b).

No exceptions were filed to the findings of the hearing examiner wherein

You are viewing an archived copy from the New Jersey State Library.

he grounded his recommendation that petitioner was not tenured. In this regard, the Commissioner adopts as his own those findings which he determines to be consistent with the factual context revealed by testimony and documentary evidence. The Commissioner is constrained to emphasize that neither short summer seminars and workshops nor voluntary summer work performed by a teacher in preparation for the important duty of teaching in the ensuing academic year establish eligibility to compute the time spent in such readiness endeavors toward the time required for tenure entitlement. *Davidson, supra; Taylor, supra; Cammarata, supra* Petitioner, by the facts established at the hearing, was without tenure rights when her contract expired under its own terms in June 1975. The Commissioner so holds.

The Commissioner finds no necessity to treat in detail the allegation of petitioner that there was violation of the negotiated agreement when the controverted letters were not placed immediately in her permanent record file. The relief for such violation as may have existed is in the grievance procedure enumerated in the agreement. Petitioner chose not to follow such procedure and she may not now properly litigate that matter in this forum. In any event the failure of the administrators to comply therewith could not rise to a level that would abrogate the Board's discretionary statutory right to determine whether she should be reemployed. *Cobb, supra; White, supra*

Petitioner charges in the exceptions that the hearing examiner report fails to address the central issue of whether the existence of a controversy among members of the community over reemployment of petitioner meets the test of *Donaldson, supra,* as sufficient reason for nonrenewal. A careful scrutiny of the report reveals that such charge is unfounded. The report faithfully sets forth petitioner's principal arguments wherein she seeks to establish that the reason was inappropriate and inadequate. Many pages of the report set forth the relevant testimony of witnesses pertinent to this issue. Accordingly, the Commissioner, after full consideration of the entire record, finds no merit in this exception.

The record amply supports the conclusion that the Board on numerous occasions conscientiously considered the recommendations of its professional staff that petitioner be reemployed under a tenure year contract. (Tr. II-93-94, 96, 101) The Legislature in its wisdom has empowered local boards of education to determine which teachers shall be employed in the several public schools of the State. Similarly, it is the prerogative of the Board, herein, to determine which teachers shall achieve a tenure status in the district. As was enunciated by the New Jersey Superior Court in *Victor Porcelli et al. v. Franklyn Titus, Superintendent, and the Newark Board of Education, Essex County,* 1968 *S.L.D.* 225, aff'd State Board of Education, 1969 *S.L.D.* 188, aff'd 108 *N.J. Super.* 301 (*App. Div.* 1969), *cert.* denied, 55 *N.J.* 310 (1970):

> "***We endorse the principle, as did the court in *Kemp v. Beasley,* 389 *F.2d* 178, 189 (8 Cir. 1968), that 'faculty selection must remain for the broad and sensitive expertise of the School Board and its officials'***."
> (108 *N.J. Super.* at 312)

You are viewing an archived copy from the New Jersey State Library.

It was similarly emphasized by that Court in *Michael A. Fiore v. Board of Education of the City of Jersey City, Hudson County,* 1965 *S.L.D.* 177 that:

> "***The Legislature has committed the operation of local schools to district boards of education. It has provided a system of administrative appeals from such boards to the Commissioner, *R.S.* 18:3-14, and thereafter to the State Board, *R.S.* 18:3-15. The powers of boards of education in the management and control of school districts are broad. *Downs v. Board of Education, Hoboken,* 12 *N.J. Misc.* 345, 171 *A.* 528 (*Sup. Ct.* 1934), affirmed *sub nomine Flechtner v. Board of Education of Hoboken,* 113 *N.J.L.* 401 (*E. & A.* 1934) Subject to statutes relating to tenure, they are vested with wide discretion in determining the number of employees necessary to carry out the program, the services to be rendered by each and the compensation to be paid for such services. Where a board, in the exercise of its discretion, acts within the authority conferred upon it by law, the courts will not interfere absent a showing of clear abuse. 78 *C.J.S., Schools and School Districts,* § 128, p. 920; *Boult v. Board of Education of Passaic,* 135 *N.J.L.* 331 (*Sup. Ct.* 1947), affirmed 136 *N.J.L.* 521 (*E. & A.* 1948). ***In short, we may not substitute our discretion for that of the local board, nor may we condemn the exercise of the board's discretion on the ground that some other course would have been wiser or of more benefit to the parties or community involved. *Boult, supra****"
>
> (at 178)

See also *Quinlan v. Board of Education of North Bergen Township,* 73 *N.J. Super.* 40 (*App. Div.* 1962); *Robert B. Lee v. Board of Education of the Town of Montclair, Essex County,* 1972 *S.L.D.* 5, 8.

Although the Board was not under obligation at the hearing to prove its reasons for non-reemployment, the record is amply supportive of the conclusion that it did not act irrationally, arbitrarily or capriciously in determining that the non-reemployment of petitioner was in the best interests of the schools and community of Woodcliff Lake. As was stated in *Donaldson, supra*:

> "***The board's determination not to grant tenure need not be grounded on unsatisfactory classroom or professional performance for *there are many unrelated but nonetheless equally valid reasons why a board***may conclude that tenure should not be granted.****" (*Emphasis supplied.*)
>
> (65 *N.J.* at 241)

Within the factual context of the herein controverted matter, the Commissioner views the Board's determination not to renew petitioner's contract as a valid exercise of its discretionary powers. Accordingly, absent an affirmative finding of such violations as were alleged by petitioner, the Petition of Appeal is found to be without merit and is dismissed.

COMMISSIONER OF EDUCATION

January 5, 1977

You are viewing an archived copy from the New Jersey State Library.

David Hochman,

Petitioner,

v.

**Board of Education of the City of Newark,
Stanley Taylor, Superintendent of Schools,
Theresa David, Assistant Superintendent of Schools and
James Vasselli, Principal, Broadway Junior High School, Essex County,**

Respondents.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, David Hochman, *Pro Se*

For the Respondents, Pickett & Jennings (Robert T. Pickett, Esq., of Counsel)

Petitioner, who unsuccessfully challenged his termination of emplcyment by the Board of Education of the City of Newark, hereinafter "Board," now seeks to have the Commissioner of Education reconsider his determination in the matter. (See *David Hochman v. Board of Education of the City of Newark et al.*, 1976 *S.L.D.* 492.) Petitioner's Motion for Reconsideration is grounded on the fact that he did not receive a hearing examiner's report prior to the Commissioner rendering his decision in the referenced matter. Petitioner also asserts that he was foreclosed from submitting certain documents for the Commissioner's consideration. Finally, petitioner requested and was granted a hearing examiner other than the one assigned to his original appeal, for purposes of the Motion. *Hochman, supra*

A hearing was conducted in the matter on June 29, 1976 at the State Department of Education, Trenton, by a hearing examiner appointed by the Commissioner. The report of the hearing examiner is as follows:

A brief history of the matter is in order. Petitioner was first employed by the Board in September 1973 and continued in that employment until November 25, 1974. On that date the Superintendent of Schools suspended him from his teaching duties. Thereafter, petitioner was notified on December 5, 1974 that his employment would be terminated on December 25, 1974 because of unsatisfactory performance. The Board granted petitioner the opportunity to be heard with respect to its reasons for the termination of his employment. The Board, subsequent to petitioner's plea, affirmed his termination of employment.

Petitioner, who had been represented by counsel, then appealed his termination of employment to the Commissioner on February 21, 1975. An amended Petition was filed during March 1975 to which the Board filed its answer on April 4, 1975. A conference of counsel was held on May 19, 1975. It was agreed at this conference that the pleadings would again be amended; that

You are viewing an archived copy from the New Jersey State Library.

the documents to be submitted as evidentiary would be stipulated; that the issues would center on the procedures used by the Board in its termination of employment as well as the reasons for petitioner's termination being subject to a constitutional attack; and finally that the parties would submit respective memoranda of law in support of their positions by specified dates. Thereafter, both sides requested and were granted extensions of time within which to file their memoranda.

Petitioner, by letter (C-1) dated October 6, 1975, advised the office of the Commissioner that he no longer was represented by counsel and that, henceforth, he would represent himself, *pro se.* Petitioner also requested in this letter the opportunity to "***address the commissioner or a representative–or at least submit a letter–to discuss in detail several matters and to present the necessary documentation.***" (C-1) The hearing examiner observes that petitioner's counsel had already filed his Memoranda of Law by the time petitioner submitted his letter of October 6, 1975.

In any event, the then assigned hearing examiner replied by letter (C-2) dated October 14, 1975 in which he advised petitioner of the following:

> "***It is noted that you request permission to 'discuss' or 'present' certain other materials or documentation. However, by agreement the matter is now submitted for review on the total record which includes the transcript [of the hearing afforded petitioner by the Board], Petition of Appeal, Briefs, etc. Except for the Board's Brief or Memorandum the case submission is complete and may not be reopened at this juncture.
>
> "After receipt of the hearing examiner's report you will be afforded an opportunity to take exception to it before the final Commissioner's Decision is handed down. Such exception must be filed within 15 days after receipt of the report." (C-2)

The hearing examiner observes that a hearing examiner's report is issued in administrative hearings subsequent to the taking of testimony from witnesses when there are facts in dispute. The hearing examiner weighs the testimony, establishes the credibility of the witnesses, and arrives at findings of fact with respect to the controverted facts and sets them forth clearly and concisely in a written report. It is this report from which exceptions and objections may be taken pursuant to *N.J.A.C.* 6:24-1.16 prior to the Commissioner rendering his opinion.

In the instant matter the parties agreed to submit the matter wholly on the record to the Commissioner for adjudication pursuant to *N.J.A.C.* 6:24-1.15. As such there is no hearing examiner's report for there are no essential facts in dispute. *N.J.A.C.* 6:24-1.15 provides, in pertinent part, as follows:

> "If a statement of the material facts has been agreed upon by the parties and the Commissioner, or if the controversy is submitted solely upon a stenographic transcript of proceedings with the approval of the Commissioner, or if for any other reason there are no issues of fact to be

You are viewing an archived copy from the New Jersey State Library.

heard, the Commissioner shall afford to all parties the opportunity to submit briefs on the matter, and to present oral argument if requested. Oral argument shall be limited to 30 minutes for each party, unless the Commissioner shall otherwise order. Briefs, if any, shall be submitted within the time fixed by the hearer."

While the State Board has recently acted to amend the whole of *N.J.A.C.* 6:24-1.1 *et seq.*, no substantial change has occurred to *N.J.A.C.* 6:24-1.15. The codification is now *N.J.A.C.* 6:24-1.16, while the section formerly designated 6:24-1.16 is now 6:24-1.17(b).

It is obvious that the then assigned hearing examiner erred in his letter (C-2) dated October 14, 1975. A matter which is referred directly to the Commissioner for adjudication will produce no hearing examiner's report.

Notwithstanding the aforementioned circumstances, the hearing examiner can find no prejudice or bias which has attached to petitioner as a result. The Commissioner, in his written decision in the matter, reviewed the total actions of the Board with respect to petitioner's termination and the entire transcript of the hearing afforded petitioner by the Board. The Commissioner also reviewed the testimony of petitioner and the proofs he submitted in support of his position. The Commissioner found, on the basis of the entire record, that:

"***there were ample reasons for the Board's ultimate action to exercise a thirty day notice clause in petitioner's contract of employment. The Board's procedure of March 1975 afforded petitioner a full measure of due process which exceeded the requirements of law for written reasons and an informal appearance before the Board. See *Barbara Hicks v. Board of Education of the Township of Pemberton, Burlington County,* 1975 *S.L.D.* 332 (decided May 6, 1975).

"The Commissioner finds and determines that petitioner has failed to carry the necessary burden of proof that the Board's action terminating his employment was for improper and/or proscribed reasons or was performed in an improper manner.***" (*Hochman, supra,* at 495)

Next, petitioner argues in support of his Motion for Reconsideration that the documents he was precluded from submitting into the record support his allegation that a conspiracy of unnamed persons with the Board existed to conceal his termination of employment. The hearing examiner observes that petitioner testified that the referenced documents were always available to him, that his former counsel was aware of them, and that his counsel elected not to use the documents either before the Board or before the Commissioner. (Tr. 31-32)

The hearing examiner finds that petitioner's allegation of a conspiracy or of being denied an opportunity to present documentary evidence into the record is totally unsubstantiated. The documents which petitioner alleges support his claim of conspiracy include a Contemplated Employee Action Form (P-2) dated

You are viewing an archived copy from the New Jersey State Library.

December 27, 1974; a letter (P-4) dated January 6, 1975 addressed to petitioner requesting information with respect to hospitalization coverage; a letter request (P-6) in regard to unemployment compensation; and another letter request (P-5) for information with respect to hospitalization coverage.

The hearing examiner finds no evidence from the referenced documents to establish that petitioner has been improperly treated by the Board with respect to his termination of employment nor does the hearing examiner find any basis upon which to recommend that the Motion for Reconsideration be granted. The hearing examiner recommends that the Motion be denied. This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner with respect to petitioner's Motion for Reconsideration and petitioner's exceptions and objections filed thereto.

The Commissioner finds no merit in petitioner's argument that his suspension on November 25, 1974, is defective because the notice of suspension was not in writing. The Commissioner is unaware of any requirement, nor has any been cited to him, that would require a written notice to a nontenure teacher prior to his suspension. *N.J.S.A.* 18A:25-6

The Commissioner does not agree with petitioner's argument that due process requires charges to be proven against a nontenure teacher prior to the Board's exercise of a termination clause of an employment contract. It has been consistently held that employment contracts may be terminated according to their stated terms for any reason or no reason. *Sue S. Branin v. Board of Education of the Township of Middletown et al., Monmouth County,* 1967 *S.L.D.* 9; *D. Diana Ramo v. Board of Education of the Borough of Hopatcong, Sussex County,* 1972 *S.L.D.* 469 To hold, as petitioner urges, would be to extend the protection of tenure to nontenure teaching staff members. Such is not the intention of the Legislature.

Finally, the Commissioner has reviewed petitioner's argument with respect to the alleged cover-up of his termination of employment by the Board. The Commissioner finds no basis to conclude that the Board made any attempt to hide its action in its termination of petitioner's employment.

The Commissioner adopts as his own the findings and recommendations of the hearing examiner. Accordingly, petitioner's Motion for Reconsideration is denied. The matter is dismissed.

COMMISSIONER OF EDUCATION

January 6, 1977

You are viewing an archived copy from the New Jersey State Library.

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, January 6, 1977

For the Petitioner-Appellant, David Hochman, *Pro Se*

For the Respondents-Appellees, Pickett & Jennings (Robert T. Pickett, Esq., of Counsel)

The decision of the Commissioner of Education is affirmed for the reasons expressed therein.

May 4, 1977
Pending Superior Court of New Jersey

Board of Education of the Morris School District,

Petitioner,

v.

Town Council of the Town of Morristown and Township Committee of the Township of Morris, Morris County,

Respondents.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Morris School District, hereinafter "Board," Frederic J. Sirota, Esq., which challenges the reductions imposed upon its 1976-77 school budget by the Mayor and Council of the Town of Morristown and the Mayor and Council of the Township of Morris, hereinafter "governing bodies," John M. Newman, Esq., and John M. Mills, Esq., respectively. The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposals for amounts to be raised by local taxation for the 1976-77 school year:

Current Expense	$13,166,409
Capital Outlay	$ 19,635

The current expense proposal was defeated. Thereafter, the Board and

You are viewing an archived copy from the New Jersey State Library.

governing bodies consulted and the governing bodies adopted a Resolution determining that lesser amounts were necessary to be raised by local taxation as follows:

	Board's Proposal	Governing Bodies' Resolution	Reduction
Current Expense	$13,166,409	$12,711,461	$454,948
Capital Outlay	19,635	19,635	–0–
Total Reduction			$454,948

The Commissioner observes that in their Answer the governing bodies state their intention that their reduction include the amount budgeted for an anticipated expenditure for a twenty-five percent local share of the employer's contribution to the Teachers' Pension and Annuity Fund. The Commissioner further observes that the enactment of *c.* 113, *L.* 1976 (Senate Bill 1503) on November 9, 1976, particularly section 3, paragraphs a, b and c, has provided the following adjustments to the Board's 1976-77 school budget as proposed to the voters of the district:

Proposed Current Expense Expenditures		$13,166,409
Less Proposed TPAF Expenditure		$ 330,448
	Subtotal	$12,835,961
Reduction by Governing Bodies		$ 454,948*
Adjusted 1976-77 School Budget		$12,381,013

*Includes Estimated TPAF Expenditure

It may be seen that the adjustments required in accordance with *c.* 113, *L.* 1976 accomplished the reduction of the proposed TPAF expenditure, which was the stated intention of the governing bodies. The Commissioner observes that the result is a dual reduction of the amount intended for reduction by the governing bodies.

Accordingly, the Commissioner hereby authorizes the expenditure of the amount of $330,448 of unbudgeted current expense State aid by the school district of Morris for the 1976-77 school year.

It is so Ordered this 7th day of January 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Township of Bass River,

Petitioner,

v.

Board of Commissioners of the Township of Bass River, Burlington County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of Bass River Township, hereinafter "Board," James L. Wilson, Esq., which challenges the reduction imposed upon its 1976-77 school budget by the Board of Commissioners of Bass River Township, hereinafter "governing body," Malcolm S. Zlotkin, Esq. The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposal for the amount to be raised by local taxation for the 1976-77 school year:

Current Expense	$467,954

This proposal was defeated. Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$418,442	$378,442	$40,000

Subsequent to the enactment of *c.* 113, *L.* 1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $40,000 for current expense available to it as unbudgeted current expense State aid. The Commissioner observes that this authorization for increased expenditure by the Board has no effect on the local tax levy for school purposes in the community of Bass River Township.

The Commissioner of Education concurs with the Stipulation of Settlement. The Petition of Appeal is hereby dismissed this 17th day of January 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Township of Weehawken,

Petitioner,

v.

Municipal Council of the Township of Weehawken, Hudson County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Township of Weehawken, hereinafter "Board," Le Roy D. Safro, Esq., which challenges the reductions imposed upon its 1976-77 school budget by the Mayor and Council of Weehawken, hereinafter "governing body," Farmer & Campen, (George B. Campen, Esq., of Counsel). The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposals for amounts to be raised by local taxation for the 1976-77 year:

Current Expense	$3,466,683
Capital Outlay	$ 74,921

Both proposals were defeated. Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation for current expenses as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$3,466,683	$2,733,195	$733,488

Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Consent Order of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $529,546 for current expense from the total amount available to it as unbudgeted current expense State aid. It is further agreed by the governing body that it shall increase its previous certification to the Hudson County Board of Taxation for school purposes in the amount of $72,922 for current expense so that the aggregate tax levy certification for the 1976-77 school year shall be $2,806,117.

The Commissioner of Education concurs with the Consent Order of Settlement. The Petition of Appeal is hereby dismissed this 18th day of January 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Township of Parsippany-Troy Hills,

Petitioner,

v.

Township of Parsippany-Troy Hills, Morris County,

Respondent.

COMMISSIONER OF EDUCATION

AMENDED ORDER

For the Petitioner, Alten W. Read, Esq.

For the Respondent, Bertram J. Latzer, Esq.

An Order of the Commissioner of Education having been issued in this matter under date of May 7, 1976, whereby the Commissioner consented to a Stipulation of Dismissal accompanied by an appropriate resolution adopted by the Board and by the municipal governing body; and

The governing body's resolution having certified to the Morris County Board of Taxation a supplemental appropriation of $264,859 to be raised by local taxation for the Board's 1976-77 current expense budget;

Therefore the Commissioner had considered this matter to be closed.

As a result of the enactment of *c.* 113, *L.* 1976 (Senate Bill No. 1503) on November 9, 1976, unbudgeted State aid moneys are available to the Board in excess of the amount restored by the governing body in the form of a supplemental certification to the Morris County Board of Taxation. Therefore, such supplemental certification is unnecessary and the governing body is directed to so notify the Morris County Board of Taxation immediately.

The Stipulation of Settlement and Dismissal which provided that the sum of $264,859 for current expenses would be added to the amount previously certified to be raised by local taxation for current expenses of the Township of Parsippany-Troy Hills for the 1976-77 school year is hereby set aside.

The Commissioner concurs with the amount of money found necessary for utilization by the Board in the litigants' agreement. The amount of $264,859 will be made available to the Board from unbudgeted State aid. Accordingly, there will be no additional tax certification for school purposes for the 1976-77 school year.

It is ORDERED that the matter be and is hereby dismissed.

Entered this 11th day of January 1977.

COMMISSIONER OF EDUCATION

Pending State Board of Education

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Borough of Oaklyn,

Petitioner,

v.

Borough Council of the Borough of Oaklyn, Camden County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Borough of Oaklyn, hereinafter "Board," William D. Hogan, Esq., which challenges the reductions imposed upon its 1976-77 school budget by the Borough Council of the Borough of Oaklyn, hereinafter "governing body," Robert Messick, Esq. The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposal for the amount to be raised by local taxation for the 1976-77 school year:

Current Expense	$745,037

This proposal was defeated. Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation as follows:

	Board's Proposal	**Governing Body's Resolution**	**Reduction**
Current Expense	$745,037	$661,877	$83,160

Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $83,160 for current expense from the total amount available to it as unbudgeted current expense State aid. The Commissioner observes that this authorization for increased expenditure by the Board has no effect on the local tax levy for school purposes in the community of Oaklyn.

The Commissioner of Education concurs with the Stipulation of Settlement. The Petition of Appeal is hereby dismissed this 18th day of January 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Township of Pemberton,

Petitioner,

v.

Township Committee of the Township of Pemberton, Burlington County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

For the Petitioner, Friedman & Smith (Victor Friedman, Esq., of Counsel)

For the Respondent, Maurice Denbo, Esq.

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Township of Pemberton, hereinafter "Board," Victor Friedman, Esq., which challenges the reductions imposed upon its 1976-77 current expense school budget by the Township Committee of the Township of Pemberton, hereinafter "governing body," Maurice Denbo, Esq. The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposal for the amount to be raised by local taxation for the 1976-77 school year:

Current Expense	$3,572,633

This proposal was defeated. Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation, as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$3,572,633	$2,064,633	$1,508,000

Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $1,508,000 for current expenses from the total amount available to it as unbudgeted current expense State aid. The Commissioner observes that this authorization for increased expenditure by the Board has no effect on the local tax levy for school purposes in the Township of Pemberton.

The Commissioner of Education concurs with the Stipulation of

You are viewing an archived copy from the New Jersey State Library.

Settlement. The Petition of Appeal is hereby dismissed this 18th day of January 1977.

COMMISSIONER OF EDUCATION

Board of Education of the Borough of Palisades Park,

Petitioner,

v.

Mayor and Council of the Borough of Palisades Park, Bergen County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of Palisades Park, hereinafter "Board," Patrick J. Tansey, Esq., which challenges the reductions imposed upon its 1976-77 school budget by the Mayor and Council of the Borough of Palisades Park, hereinafter "governing body," Stephen P. Sinisi, Esq. The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposals for amounts to be raised by local taxation for the 1976-77 school year:

Current Expense	$2,925,307
Capital Outlay	$ 20,000

Both proposals were defeated. Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$2,925,307	$2,850,307	$75,000

Subsequently, the parties entered into a Stipulation of Settlement and Dismissal which provides that the sum of $75,000 for current expense costs would be added to the amounts previously certified to be raised for expenses for the Palisades Park School District for the 1976-77 school year so that the total levy shall be $2,925,307 for current expenses and $20,000 for capital outlay.

You are viewing an archived copy from the New Jersey State Library.

As a result of the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, unbudgeted State aid moneys are available to the Board in excess of the amount restored by the governing body in the form of a supplemental certification to the Bergen County Board of Taxation. Therefore, such supplemental certification is unnecessary and the governing body is directed to so notify the County Board of Taxation immediately.

The Stipulation of Settlement and Dismissal which provided that the sum of $75,000 for current expenses would be added to the amount previously certified to be raised by local taxation for current expenses of the Palisades Park School District for the 1976-77 school year is hereby set aside.

The Commissioner concurs with the amount of money found necessary for utilization by the Board in the litigants' agreement. The amount of $75,000 will be made available to the Board from unbudgeted State aid. Accordingly, there will be no additional tax certification for school purposes for the 1976-77 school year.

It is ORDERED that the matter be and is hereby dismissed.

Entered this 19th day of January 1977.

COMMISSIONER OF EDUCATION

Board of Education of the Township of Plumsted,

Petitioner,

v.

Township Committee of the Township of Plumsted, Ocean County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of Plumsted Township, hereinafter "Board," Henry G. Tutek, Esq., which challenges the reduction imposed upon its 1976-77 school budget by the Township Committee of Plumsted Township, hereinafter "governing body," Howard S. Borden, Esq. The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposal for the amount to be raised by local taxation for the 1976-77 school year:

You are viewing an archived copy from the New Jersey State Library.

Current Expense $779,358

This proposal was defeated. Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$779,358	$704,358	$75,000

Subsequent to the enactment of *c.* 113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $75,000 for current expense from the total amount available to it as unbudgeted current expense State aid. The Commissioner observes that this authorization for increased expenditure by the Board has no effect on the local tax levy for school purposes in the community of Plumsted Township.

The Commissioner of Education concurs with the Stipulation of Settlement. The Petition of Appeal is hereby dismissed this 19th day of January 1977.

COMMISSIONER OF EDUCATION

Dominick DiNunzio,

Petitioner,

v.

Board of Education of the Township of Pemberton, Burlington County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Darnell and Scott (Emerson L. Darnell, Esq., of Counsel)

For the Respondent, Sever and Hardt (Ernest N. Sever, Esq., of Counsel)

Petitioner is a teaching staff member who contends that he holds a tenure status as high school principal in the School District operated by the Board of

You are viewing an archived copy from the New Jersey State Library.

Education of the Township of Pemberton, Burlington County, hereinafter "Board," and that his transfer to a position as an administrative assistant, and later as an elementary school principal, is violative of his tenure status and should be set aside. Petitioner asserts, also, that the Board has improperly reduced his salary, and he therefore demands to be placed on the appropriate step of the high school principals' salary guide.

A hearing in this matter was held on October 2, 1975, in the Agricultural Extension Building, Mount Holly, before a hearing examiner appointed by the Commissioner of Education. Several documents were admitted in evidence at the hearing and Briefs were filed thereafter. The report of the hearing examiner follows:

The pertinent facts in this matter are not in dispute and are set forth in summary as follows:

1. Petitioner holds certificates issued by the State Board of Examiners as Secondary School Principal and as School Administrator. He was employed by the Board in December 1961 as a vice-principal and thereafter in 1965 was appointed as the high school principal.

2. In September 1972, petitioner was transferred from his position as principal of Pemberton Township High School #1 to principal of Pemberton Township High School #2 to plan, with the Superintendent of Schools, for the opening of the new high school in 1974. His new office was located in the Board's offices. (P-3)

3. Prior to the opening of the new high school, and upon the recommendation of the Superintendent, the Board resolved to reassign petitioner from his position as principal of Pemberton Township High School #2 to Administrative Assistant to the Superintendent. Petitioner protested this transfer by letter dated May 7, 1974. (Petitioner's Statement of Facts, at p. 1)

4. On June 9, 1975, petitioner was assigned to be principal of two elementary schools in the District, effective July 1, 1975. Petitioner had been acting principal of the two schools since the latter part of January 1975 when the Superintendent asked him to fill in for the principal of those schools who had resigned.

5. Petitioner wrote a letter to the Superintendent on June 19, 1973 in which he complained about his position on the 1973-74 salary guide, indicating it was below the minimum salary for a high school principal. (P-7; Petitioner's Statement of Facts, at p. 2)

6. Petitioner's salary for the 1974-75 school year was again below the minimum for a high school principal. (Petitioner's Statement of Facts, at p. 2)

The Board stipulates that petitioner's Statement of Facts is accurate as set forth, *ante*. The issues to be determined, therefore, are set forth succinctly as follows:

You are viewing an archived copy from the New Jersey State Library.

1. Does the Board have the authority to transfer petitioner within the scope of his certificates?

2. Does the Board have the authority to transfer petitioner with an increase in salary to the position of Administrative Assistant to the Superintendent?

A brief history of the certificates required by the State Board of Examiners for the position of school principal reveals that, from about 1944 to 1969, persons seeking such employment had to qualify for a specific certificate, either elementary principal or secondary principal, in order to serve as an elementary or secondary school principal respectively. Those persons previously certified and already serving as school principals were not required to obtain the new specific certificates. Subsequently, the rule was modified in 1969, whereby the specific certificates were no longer required or offered, and persons who were eligible applied for and received a "School Principal" certificate. *N.J.A.C.* 6:11-10.4 Such a certificate confers on the holder the eligibility to serve either as an elementary or secondary school principal. It must be noticed also, that the State Board of Examiners issues a School Administrator certificate, which qualifies the holder to serve as an elementary or secondary school principal.

In recent years, a plethora of plans for the organization of school districts emerged. Some examples follow:

1. The 8-4 plan or eight years of elementary school followed by four years of high school.

2. The 6-3-3 plan or six years of elementary school, three years of junior high school, and three years of high school. (Under the former certification rule, a secondary principal's certificate is required for service in a junior high school.)

3. The 6-2-4 plan or six years of elementary school, two years of middle school, and four years of high school. (The exclusion of grade nine changed the designation of junior high school to middle school and the elementary school principal certificate was required to serve in that position.)

Still other arrangements call for a 4-4-4 plan, a 6-6 plan, and there are districts which have a fifth grade or a sixth grade plan under which all fifth or sixth grades of the district are housed in one school building. These several plans have been outlined to show that at times there is a very fine line to be drawn between the position of elementary and secondary school principal. For example, some educators label a seventh and eighth grade school as a secondary school if it offers a departmentalized program such as is generally offered in a seventh through ninth grade junior high school. On the other hand, the traditional kindergarten through eighth grade school has been clearly designated as an elementary school although it may offer some departmentalized programs.

For these reasons alone, it can be seen that a board of education has far greater discretion in reassigning its principals as its needs for the reorganization

You are viewing an archived copy from the New Jersey State Library.

of the schools in its district change from time to time. In this regard, *N.J.A.C.* 6:11-10.4 (a, b) reads as follows:

> "(a) School administrator: This endorsement is required for the position of superintendent of schools. The holder of this endorsement may also serve as assistant superintendent of schools, principal, or supervisor.
>
> "(b) Principal: This endorsement is required for positions of principal or vice-principal. Holders of this endorsement may also serve as assistant superintendent of schools."

There is no question that teaching staff members may be transferred within the scope of their certificates. *Angelo Spadoro v. Robert A. Coyle, Superintendent of Schools, and Board of Education of the City of Jersey City, Hudson County,* 1965 *S.L.D.* 134 Further, *N.J.S.A.* 18A:28-6 provides that a teaching staff member may be *"transferred or promoted with his consent."* (*Emphasis added.*) In the instant matter petitioner did not consent to being transferred to the position of Administrative Assistant to the Superintendent, a position which requires no certificate and for which no tenure is possible.

The hearing examiner finds, therefore, that the Board violated petitioner's tenure rights pursuant to *N.J.S.A.* 18A:28-6 when it transferred him to the position of Administrative Assistant to the Superintendent without his consent and over his objection. This transfer occurred in April 1974 and petitioner objected by letter in May 1974. (Amended Petition of Appeal; Amended Answer, paragraph two) That matter of transfer is now moot. Petitioner was subsequently reassigned as acting principal of two elementary schools, beginning in January 1975, and later as principal effective July 1, 1975. (Petitioner's Statement of Facts)

The Board has broad statutory and discretionary authority in personnel, as well as other matters, as set forth in *N.J.S.A.* 18A:11-1 which reads as follows:

> "The board shall -
>
> "a. Adopt an official seal;
>
> "b. Enforce the rules of the state board;
>
> "c. Make, amend and repeal rules, not inconsistent with this title or with the rules of the state board, for its own government and the transaction of its business and for the government and management of the public schools and public school property of the district and for the employment, regulation of conduct and discharge of its employees, subject, where applicable, to the provisions of Title 11, Civil Service, of the Revised Statutes[1]; and
>
> "d. Perform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper

[1]Section 11:1-1 *et seq.*

You are viewing an archived copy from the New Jersey State Library.

> conduct, equipment and maintenance of the public schools of the district."

It must be noticed that so long as the Board acts "consistent with law and the rules of the state board" its actions are entitled to a presumption of correctness. *N.J.S.A.* 18A:11-1

The hearing examiner has reviewed petitioner's records on file in the Commissioner's office of the Bureau of Teacher Certification and Academic Credentials and confirms that petitioner holds a School Administrator certificate and is also eligible to hold the School Principal certificate. Therefore, petitioner has been reassigned by the Board within the scope of a certificate he holds and another he is eligible to hold. Although it is obvious that petitioner would rather be a high school principal in Pemberton, his demand for such a position cannot be supported by law nor the rules of the State Board of Examiners. Nor can petitioner refuse his assignment as an elementary school principal. Certificated elementary school teachers have traditionally been reassigned to different grades within the scope of their certificates, and secondary certificated teachers have likewise been reassigned to classes and/or subjects which are within the scope of their certificates. *Greenway v. Camden,* 129 *N.J.L.* 46 (*Sup. Ct.* 1942), aff'd 129 *N.J.L.* 46 (*E.&A.* 1942); *Cheeseman v. Gloucester City,* 1 *N.J. Misc.* 318 (*Sup. Ct.* 1923)

Teaching staff members are protected by the tenure statutes in categories enumerated in *N.J.S.A.* 18A:28-5 as follows: "***all teaching staff members including all teachers, *principals,* assistant principals, vice principals, superintendents, assistant superintendents***." (*Emphasis added.*) Therefore, there can be no question of petitioner's tenure status as a principal; however, he relies on *Spadoro, supra,* to claim tenure as a high school principal. In that regard, the Commissioner commented in *Spadoro* as follows:

> "***In the instant case, Dr. Losi held tenure in a high school principalship. While there is no doubt that by appropriate Board action he could have been transferred to any other secondary school principalship in the district, the Commissioner can find no basis in law for a transfer without his consent to a position or location in which he could not be the principal of any secondary school.***" (at 137)

The hearing examiner finds, however, that the matter herein controverted is clearly distinguishable from *Spadoro, supra,* in that specific certificates were then required for principals who served in either elementary or secondary schools. Moreover, *Spadoro* was decided in 1965, four years before the rule change which no longer required that a specific elementary or secondary principal certificate be held by persons serving in either of those categories. Further, considering any reduction in force pursuant to *N.J.S.A.* 18A:28-9 *et seq.*, teaching staff members may be entitled to seniority status in positions covered by several certificates they hold. Therefore, it would be anomalous to grant such broad protection in the case of a reduction in force and to hold also that these same certificates held by teaching staff members may not be considered when the Board reassigns its personnel. *N.J.S.A.* 18A:28-10 *et seq.*

You are viewing an archived copy from the New Jersey State Library.

The hearing examiner concludes, therefore, that petitioner has been properly reassigned by the Board within the scope of a certificate he holds and another for which he is eligible.

The tenure provisions in the school laws were designed to aid in the establishment of a competent and efficient school system by affording to principals and teachers a measure of security in the ranks they hold after years of service, and they should be given liberal support consistent with legitimate demands for governmental economy. *Viemeister v. Board of Education of the Borough of Prospect Park, Passaic County,* 5 *N.J. Super.* 215 (1949)

Regarding petitioner's demand for placement on the appropriate step of the guide for high school principals, the record reveals that for several years past he has been compensated by the Board at a rate less than that indicated by the Board's adopted salary guide. A certified statement by the former Superintendent was accepted in evidence as Exhibit A and reads in pertinent part as follows:

> "***[A] report of the salaries paid Dr. Dominick DiNunzio since 1965 follows:
>
> | | |
> |---|---|
> | 1965-66 | $10,395.00 |
> | 1966-67 | $11,295.00 |
> | 1967-68 | $12,045.00 |
> | 1968-69 | $13,035.00 |
> | 1969-70 | $14,355.00 |
> | 1970-71 | $14,355.00 |
> | 1971-72 | $15,500.00 |
> | 1972-73 | $16,000.00 |
> | 1973-74 | $17,325.00 |
> | 1974-75 | $18,000.00 |
>
> "During the years 1965-66 through 1969-70 the salary was determined by taking the salary of a teacher with comparable training and experience, adding one month for August and multiplying that figure by 1.5. That became the salary figure for the high school principal. This method is documented beginning with the 1968-69 school year.
>
> "For the school year 1970-71 the salary was kept constant by school board action. Dr. DiNunzio apparently accepted this decision and the stated salary.
>
> "On April 12, 1971, an increase in the amount of $1,145. was granted for the 1971-72 school year. A memo on file dated August 10, 1971 indicates that Dr. DiNunzio asked for a meeting with the Personnel Committee of the Board of Education to discuss what he considered an "inappropriate salary." It is my understanding that the meeting did take place and no further salary adjustment was recommended to the board.
>
> "The 1972-73 through 1974-75 salaries also were determined by official board action.

You are viewing an archived copy from the New Jersey State Library.

"It must be noted that in September 1972, I recommended that Dr. DiNunzio be reassigned to the central office to assist with the planning for the new high school. Salary increases have been approved by the Board of Education since that time. It should be further noted that the duties assigned to Dr. DiNunzio since September 1972 do not carry the magnitude of responsibility assigned an administrator managing a building that is operational with students and faculty in daily attendance. The salary increases granted Dr. DiNunzio since the 1972-73 school year recognize this difference in assigned responsibilities.

"Finally, it must be recognized that a formal program for the evaluation of all administrators was non-existent until the 1972-73 school year."

(Exhibit A)

Thus, it can be seen that, except for one year, petitioner received an increase in salary in each and every year while employed by the Board. The Board readily admits that his increases were not the same as those granted the high school principal, and his salary now is significantly below that of the high school principal. The record reveals also that petitioner knew as early as June 19, 1973, that his salary for the 1973-74 school year would again be less than that which he considered proper for a high school principal in the district. Yet, after his protest to the Board (P-7), he obviously acquiesced and accepted the Board's salary offers until his formal appeal to the Commissioner in December 1974, six months after the close of the school year on June 30, 1974.

The Board maintains, therefore, that this fact alone requires that petitioner's claim be rejected on the equitable grounds of laches.

In support of its affirmative defense of laches, the Board cites *Crowder v. Terhorst,* 21 *N.E.2d* 141, 146; *Burton v. Ryan,* 165 *N.E.* 260, 261; *Kennedy v. Denny,* 36 *S.W.2d* 41, 42; *Dorothy L. Elowitch v. Bayonne Board of Education, Hudson County,* 1967 *S.L.D.* 78, aff'd State Board of Education 86, aff'd New Jersey Superior Court, Appellate Division, 1968 *S.L.D.* 260; *John Sousa et al. v. Board of Education of the City of Rahway, Union County,* 1970 *S.L.D.* 140; and *E. Gordon Johnston v. Board of Education of the Township of Wayne, Passaic County,* 1966 *S.L.D.* 180, aff'd New Jersey Superior Court 182.

The hearing examiner finds in the Board's argument sufficient support for its contention that petitioner should be barred from seeking any monetary claims except for the school year 1974-75. The hearing examiner recommends, therefore, that the Commissioner consider only the year 1974-75 in determining whether or not petitioner is entitled to additional salary.

The Board's Brief readily admits that salary increments have been withheld from petitioner (at p. 6), and Exhibit A states clearly that petitioner's salary has previously been set by official Board action. Nothing in the record shows that the Board has been arbitrary, capricious or discriminatory, nor has petitioner sustained his burden of such proof. The record shows, also, that the salary guide adopted by the Board for July 1, 1974, provides that "[i]ncrements or partial increments may be withheld for Performance Evaluated to be inadequate, as

You are viewing an archived copy from the New Jersey State Library.

substantiated by written Evaluation Procedures." (P-2) The very history of petitioner's salary increments which he admits are below those to which he believes he is entitled, evidences dissatisfaction by the Board with his performance. (Exhibit A) Particularly, the Superintendent stated that he was disappointed

> "***that you apparently do not see that very possibly the reason you have not been selected for some of the positions for which you have applied may be the same reasons that generated the desire to replace you as high school principal.***" (R-3)

Other documents in evidence show that petitioner discussed his evaluations with the Superintendent. (R-2; R-5) The Superintendent also reacted by letter to petitioner's self-appraisal of September 3, 1974. (R-6)

The hearing examiner finds, therefore, that the Board has met its obligation to petitioner as stated in its salary guide (P-2), and there is no further relief to which petitioner is entitled. In *Westwood Education Association v. Board of Education of the Westwood Regional School District,* Docket No. A-261-73, New Jersey Superior Court, Appellate Division, June 21, 1974, the Court held that "***a local board of education, pursuant to *N.J.S.A.* 18A:29-14, has sole discretion to withhold a member's salary increment for inefficiency or other good cause***."

This concludes the report of the hearing examiner.

* * * *

The Commissioner has read the report of the hearing examiner and the exceptions filed thereto by petitioner pursuant to *N.J.A.C.* 6:24-1.17(b).

The Commissioner finds that the record adequately supports petitioner's contention that he vigorously pursued what he believed to be his proper salary entitlement and he protested his involuntary transfer in the 1973-74 school year. (P-7; Petitioner's Statement of Facts, at p. 1) The Commissioner will therefore modify that portion of the hearing examiner's report which recommends that the 1974-75 year alone be considered in determining what relief, if any, petitioner may be entitled to receive. The Commissioner finds that petitioner made a timely protest to the Superintendent regarding his transfer to the position of administrative assistant; therefore, he cannot conclude that petitioner is guilty of laches. There is no showing of an inexcusable delay combined with prejudice to the Board as a result of that delay. *Auciello v. Stauffer,* 58 *N.J. Super.* 522 (*App. Div.* 1959)

The Commissioner determines that petitioner was illegally transferred from his tenured position as a principal in April 1974, and that the illegal transfer continued in effect until June 1975. During that time petitioner should have been continued in the position to which he had previously been assigned, that of principal of Pemberton Township High School #2, or to another principalship in the district. (It should be noticed, however, that petitioner

You are viewing an archived copy from the New Jersey State Library.

served as an acting elementary school principal in the district beginning in January 1975.) The record reveals specifically that petitioner's salary was increased by $1,325 for the 1973-74 school year; his resultant salary was still less than the minimum salary shown on the high school principal's salary guide. (P-1) During school year 1974-75, when illegally assigned to the administrative assistant position, petitioner again received a lesser salary than he would have received on the minimum step of the high school principal's salary guide. (P-2) The Commissioner concludes that petitioner was a high school principal during the 1973-74 school year and he was entitled to be paid on the minimum step of the Board's Administrative Staff Salary Schedule in the amount of $18,200. (P-1) Likewise, petitioner was entitled to be compensated on the next step of the salary schedule for the 1974-75 school year at the high school principal's rate, or $18,800. (P-2) The authority for this conclusion is clearly stated in *N.J.S.A.* 18A:29-4.1 which reads as follows:

> "A board of education of any district may adopt a salary policy, including salary schedules for all full-time teaching staff members which shall not be less than those required by law. Such policy and schedules shall be binding upon the adopting board and upon all future boards in the same district for a period of two years from the effective date of such policy but shall not prohibit the payment of salaries higher than those required by such policy or schedules nor the subsequent adoption of policies or schedules providing for higher salaries, increments or adjustments. Every school budget adopted, certified or approved by the board, the voters of the district, the board of school estimate, the governing body of the municipality or municipalities, or the commissioner, as the case may be, shall contain such amounts as may be necessary to fully implement such policy and schedules for that budget year."

Accordingly, the Board's stated salary for petitioner cannot be supported for the 1973-74 nor the 1974-75 school years. The salary schedules adopted by the Board are binding upon the Board; therefore, petitioner must be paid according to the provisions of those salary schedules. *N.J.S.A.* 18A:29-4.1

The Commissioner held in *James McCabe v. Board of Education of the Township of Brick, Ocean County,* 1974 *S.L.D.* 299, aff'd State Board of Education 311, aff'd as *Board of Education of Brick Township v. James McCabe,* Docket No. A-3192-73 New Jersey Superior Court, Appellate Division, April 2, 1975, as follows:

> "***The Commissioner has in numerous instances been called upon, in his quasi-judicial capacity, to make determinations regarding the reasonableness of the actions of local boards of education. The Commissioner will, in determining controversies under the school laws, inquire into the reasonableness of the adoption of policies, resolutions, or bylaws, or other acts of local boards of education in the exercise of their discretionary powers, but will not invalidate such acts unless unreasonableness clearly appears.***" (at 307-308)

In the instant matter, the record shows that for several years, the Board

You are viewing an archived copy from the New Jersey State Library.

had set petitioner's salary at a level lower than he might have received, and that petitioner accepted his salary for each of those years until he protested his 1973-74 designated salary.

It is well established that a board of education may withhold a salary increment or any part thereof, or an adjustment increment or both. *N.J.S.A.* 18A:29-14; *Westwood, supra; Clifton Teachers Association, Inc. v. Board of Education of Clifton,* 136 *N.J. Super.* 336 (*App. Div.* 1975) Similarly, such determinations are within a board's discretionary authority, absent a finding of arbitrary, unreasonable, capricious, or illegal actions. *Boult v. Board of Education of Passaic,* 136 *N.J.L.* 521 (*E.&A.* 1948)

In summary, the Commissioner determines that, except for the school years 1973-74 and 1974-75, petitioner has been paid his proper salary as determined by the several actions of the Board (Exhibit A) and that he has not suffered any reduction in salary contrary to the protections offered by *N.J.S.A.* 18A:28-5. Nor is there support for petitioner's claim to tenure as a high school principal. It has been properly established that petitioner has tenure in the district as a principal and that he may be reassigned within the scope of his certificate. *Greenway, supra; Cheeseman, supra*

The Commissioner directs the Board, therefore, to pay petitioner the difference between the salaries he received for the 1973-74 and the 1974-75 school years and the salaries he would have received in those years if he were paid as a high school principal on the zero (0) and first (1) steps of the administrators' salary schedule. If petitioner is serving now as an elementary school principal, he is entitled to placement on the third (3) step of the salary schedule for the 1976-77 school year in the elementary principal category, except that his salary of $18,800, as determined herein by the Commissioner, may not be reduced by the Board. (P-2) *N.J.S.A.* 18A:29-4.1

Except for the additional salary entitlement as set forth herein, there is no further relief to which petitioner is entitled, therefore, in all other respects, the Petition of Appeal is dismissed.

COMMISSIONER OF EDUCATION

January 21, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Black Horse Pike Regional School District,

Petitioner,

v.

Borough Councils of the Boroughs of Runnemede and Bellmawr and the Township Committee of the Township of Gloucester, Camden County,

Respondents.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Black Horse Pike Regional School District, hereinafter "Board," Hyland, Davis & Reberkenny (William C. Davis, Esq., of Counsel), which challenges the reductions imposed upon its 1976-77 school budget by the Borough Councils of the Boroughs of Runnemede and Bellmawr and the Township Committee of the Township of Gloucester, hereinafter "governing bodies," Kmiec & Palumbo (Charles G. Palumbo, Esq., of Counsel). The principal facts of the matter are these:

At the annual school election held March 2, 1976, the Board submitted to the electorate the following proposal for the amount to be raised by local taxation for the 1976-77 school year:

Current Expense	$3,310,318

The proposal was defeated. Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation as follows:

	Board's Proposal	Governing Bodies' Resolution	Reduction
Current Expense	$3,310,318	$2,924,268	$386,050

Subsequently, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the sum of $286,050 for current expense would be added to the amount previously certified to be raised for expenses of the Black Horse Pike Regional School District for the 1976-77 school year so that the total levy shall be $3,210,318 for current expenses.

As a result of the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, unbudgeted State aid moneys are available to the Board in excess of the amount previously reduced by the governing bodies. Therefore, an additional tax certification is unnecessary and the governing bodies are directed to so notify the Camden County Board of Taxation immediately.

You are viewing an archived copy from the New Jersey State Library.

The Stipulation of Settlement and Dismissal which provided that the sum of $286,050 for current expense costs would be added to the amount previously certified to be raised by taxes for current expenses of the Black Horse Pike Regional School District for the 1976-77 school year is hereby set aside.

The Commissioner concurs with the amount of money found necessary for utilization by the Board in the litigants' agreement. (See letter of November 4, 1976.) The amount of $286,050 will be made available to the Board from unbudgeted State aid. There will be no additional tax certification for school purposes for the 1976-77 school year.

The Petition of Appeal is hereby dismissed this 21st day of January 1977.

COMMISSIONER OF EDUCATION

Board of Education of the City of Lambertville,

Petitioner,

v.

Mayor and Commission, City of Lambertville, Hunterdon County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the City of Lambertville, hereinafter "Board," Robert Durst II, Esq., which challenges the reductions imposed upon its 1976-77 school budget by the Mayor and Commission of the City of Lambertville, hereinafter "governing body," Philip J. Faherty, Jr., Esq. The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposal for the amount to be raised by local taxation for the 1976-77 school year:

Current Expense	$290,735

This proposal was defeated. Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that lesser amounts were necessary to be raised by local taxation as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$290,735	$271,446	$19,289

You are viewing an archived copy from the New Jersey State Library.

Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $19,289 for current expense available to it as unbudgeted current expense State aid. The Commissioner observes that this authorization for increased expenditure by the Board has no effect on the local tax levy for school purposes in the community of Lambertville.

The Commissioner of Education concurs with the Stipulation of Settlement. The Petition of Appeal is hereby dismissed this 21st day of January 1977.

COMMISSIONER OF EDUCATION

Board of Education of the Borough of Pine Hill,

Petitioner,

v.

Mayor and Council of the Borough of Pine Hill, Camden County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Maressa, Daidone & Wade (Ronald N. Manos, Esq., of Counsel)

For the Respondent, E. Allen Nickerson, Esq.

Petitioner, the Board of Education of the Borough of Pine Hill, hereinafter "Board," appeals from an action of the Mayor and Council of the Borough of Pine Hill, hereinafter "Council," taken pursuant to *N.J.S.A.* 18A:22-37 certifying to the Camden County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The facts of the matter were adduced at a hearing conducted on September 22, 1976 at the office of the Burlington County Superintendent of Schools, Mount Holly, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

At the annual school election, held March 9, 1976, the Board submitted to the electorate a proposal to raise $474,213.50 by local taxation for current expense costs of the school district. This item was rejected by the voters and,

You are viewing an archived copy from the New Jersey State Library.

subsequent to the rejection, the Board submitted its budget to Council for its determination of the amount necessary for the operation of a thorough and efficient school system in the Borough of Pine Hill in the 1976-77 school year, pursuant to the mandatory obligation imposed on Council by *N.J.S.A.* 18A:22-37.

After consultation with the Board, Council made its determination and certified to the Camden County Board of Taxation an amount of $374,213.50 for current expense, a reduction of $100,000 from the amount originally proposed to the voters by the Board.

The Board contends that Council's action was arbitrary, unreasonable, and capricious and asserts that the moneys recommended by Council to be reduced from its current expense budget are necessary for a thorough and efficient educational program. Council maintains that it acted properly and after due deliberation and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system. As part of its determination, Council suggested specific line items of the budget in which it believed economies could be effected as follows:

Account Number	**Item**	**Amount of Reduction**
CURRENT EXPENSE:		
J231.1	Sals., Tchrs.	$ 23,400
J214A	Sals., Sch. Lib.	16,050
J215C	Sals., Lib. Aides	6,400
J216	Sals., Tchr. Aides	15,000
J230A	Sch. Lib. Books	3,000
J240	Tchng. Supls.	4,500
J410A,B	Sals., Sch. Nurse	12,000
J820B	Emp. Ins.	1,582
	Surplus	18,068
	TOTAL	$100,000

There appears no necessity to deal *seriatim* with each of the areas in which Council recommended reduced expenditures. As the Commissioner said in *Board of Education of the Township of Madison v. Mayor and Council of the Township of Madison, Middlesex County,* 1968 *S.L.D.* 139:

> "***The problem is one of total revenues available to meet the demands of a school system***. The Commissioner will indicate, however, the areas where he believes all or part of Council's reductions should be reinstated. It must be emphasized, however, that the Board is not bound to effect its economies in the indicated items but may adjust its expenditures in the exercise of its discretion as needs develop and circumstances alter.***"
>
> (at p. 142)

It is noted that the Board has an appropriation of $93 in unbudgeted State

You are viewing an archived copy from the New Jersey State Library.

aid, all of which is categorical aid for compensatory and bilingual programs pursuant to *N.J.S.A.* 18A:7A-20.

It is also noted that the Board's audit report for 1975-76 reflects an unappropriated current expense balance of $194,452 as of July 1, 1976. The Superintendent testified that $30,000 of the $100,000 controverted herein has since been absorbed by the unappropriated balance and that a $70,000 reduction in program areas was made. (Tr. 59, 71) The Board Secretary testified that its remaining unappropriated current expense balance of $164,452 is necessary to be carried by the Board because of cash flow problems caused by Council's irregular payments of taxes to it for school purposes. (Tr. 45) Council admits that its payments to the Board have been irregular but that the situation was caused by its own cash flow problems resulting from uncollected taxes and tax refunds resulting from litigation. (Tr. 82) The Mayor testified that Council has already adopted a resolution by which payments would be made to the Board on a strict monthly basis, even if Council must borrow the money.

The hearing examiner finds that the Board's cash flow problem will be corrected by Council making prompt monthly payments to it which, in turn, will allow the Board to have its $70,000 program reductions absorbed by its unexpended current expense balance of $164,452.

The hearing examiner has found no basis upon which to recommend the restoration of the $100,000 reduction imposed upon the Board's 1976-77 current expense budget by Council.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner and observes that neither party has filed written exceptions or objections thereto.

The Commissioner adopts as his own the findings and recommendations of the hearing examiner. Specifically, the Commissioner finds that the Board's cash flow problem will be corrected by Council's timely transfer of school tax receipts to it.

The Commissioner having found no basis herein upon which to grant any relief hereby dismisses the Petition of Appeal.

COMMISSIONER OF EDUCATION

January 21, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Borough of National Park,

Petitioner,

v.

Borough Council of National Park and the Gloucester County Board of Taxation, Gloucester County,

Respondents.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Borough of National Park, hereinafter "Board," Shpeen and Weber (Alvin G. Shpeen, Esq., appearing), which challenges the reductions imposed upon its 1976-77 school budget by the Borough Council of the Borough of National Park, hereinafter "governing body." The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the amount of $277,866 as its proposed expenditure for current expense purposes for the 1976-77 school year. This proposal was defeated by the voters and, subsequent to a meeting with the Board, the governing body adopted a resolution certifying to the Gloucester County Board of Taxation the amount of $252,866, a reduction of $25,000 from the amount originally proposed by the Board.

Thereafter, the parties entered into a Stipulation of Settlement by which the governing body certified to the Gloucester County Board of Taxation an additional amount of $22,500 for current expense purposes for the 1976-77 school year.

The enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, makes available to the Board an amount of unbudgeted current expense State aid in excess of the amount originally reduced by the governing body.

Therefore, the additional certification of $22,500 for current expenses for the 1976-77 school year to be raised by local taxation during the 1977 calendar year is no longer necessary. The Commissioner authorizes the Board to expend the amount of $22,500 from its unbudgeted current expense State aid and further directs the Gloucester County Board of Taxation to set aside the governing body's additional certification of $22,500.

It is so ordered this 21st day of January 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

COMMISSIONER OF EDUCATION

AMENDED ORDER

In an order of the Commissioner of Education dated January 21, 1977, the Commissioner consented to a Stipulation of Dismissal in the above-entitled matter on the basis of appropriate resolutions adopted by the Board and by the municipal governing body.

The Commissioner's order stated that the additional certification of $22,500 agreed upon by the parties should be expended from the unbudgeted State aid provided by the enactment of *c.* 113, *L.* 1976 (Senate Bill No. 1503) on November 9, 1976.

Subsequent to the issuance of the order, however, the Commissioner was notified that certification of the additional $22,500 to be raised by local taxes had already been forwarded to the Gloucester County Board of Taxation prior to the enactment of *c.* 113, *L.* 1976. Such certification prevented the use of unbudgeted State aid.

Accordingly, the Commissioner's order of January 21, 1977 is hereby set aside and the Commissioner accepts the governing body's resolution to the Gloucester County Board of Taxation for the additional sum of $22,500 to be raised by local taxation for current expenses.

The Commissioner, having found the aforementioned resolution and the Stipulation of Settlement to be in order and properly dispositive of the dispute, now therefore

IT IS ORDERED that the matter be and is hereby dismissed.

Entered this 31st day of March 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Township of Gloucester,

Petitioner,

v.

Mayor and Council of the Township of Gloucester, Camden County.

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Township of Gloucester, hereinafter "Board," John D. Wade, Esq., which challenges the reductions imposed upon its 1976-77 school budget by the Mayor and Council of Gloucester Township, hereinafter "governing body," Charles Palumbo, Esq. The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposal for the amount to be raised by local taxation for the 1976-77 school year:

Current Expense	$4,820,564

This proposal was defeated. Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$4,820,564	$4,556,063	$264,501

Subsequently, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the sum of $264,501 for current expense would be added to the amounts previously certified to be raised for expenses of the Gloucester Township School District for the 1976-77 school year so that the total levy shall be $4,820,564 for current expenses.

As a result of the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, unbudgeted State aid moneys are available to the Board in excess of the amount previously reduced by the governing body. Therefore, an additional tax certification is unnecessary and the governing body is directed to so notify the Camden County Board of Taxation immediately.

The Stipulation of Settlement and Dismissal which provided that the sum of $264,501 for current expense costs would be added to the amount previously certified to be raised by taxes for current expenses of the Gloucester Township School District for the 1976-77 school year is hereby set aside.

You are viewing an archived copy from the New Jersey State Library.

The Commissioner concurs with the amount of money necessary for utilization in the litigants' agreement. The amount of $264,501 will be made available to the Board from unbudgeted State aid. There will be no additional tax certification for school purposes for the 1976-77 school year.

The Petition of Appeal is hereby dismissed this 26th day of January 1977.

COMMISSIONER OF EDUCATION

Board of Education of the City of Elizabeth,

Petitioner,

v.

City Council of the City of Elizabeth, Union County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the City of Elizabeth, hereinafter "Board," Raymond D. O'Brien, Esq., which challenges the reductions imposed upon its 1976-77 school budget by the Mayor and Council of Elizabeth, hereinafter "Council," John R. Weigel, Esq. The principal facts of the matter are these:

At a meeting on February 25, 1976, the Board adopted a resolution which certified the sum of $26,307,836.81 as the total amount required for the operation of a thorough and efficient school system in the City of Elizabeth in the 1976-77 academic year. It was proposed that $20,760,308.81 of the total sum be raised by local taxation. Subsequent thereto the Board forwarded such proposal to the Board of School Estimate pursuant to law and that body determined that budgetary reductions totaling $1,668,495.15 could be effected without harm to the educational program of the school district. The Board of School Estimate, and ultimately the Council, further determined that of such total reduction an expenditure of $100,000 might be programmed by the Board to be expended from unappropriated balances and that expenditures could be reduced by $1,568,495.15. The respective determinations of the Board and Council may be shown as follows with respect to local taxation:

Board's Proposal	$20,760,308.81
Council's Proposal	$19,091,813.66
Reduction	$ 1,668,495.15

You are viewing an archived copy from the New Jersey State Library.

Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $1,200,000 for current expenses of the school district in the 1976-77 year. Such sum is available to the Board in its entirety as unbudgeted current expense State aid. The Commissioner observes that this stipulation and authorization by Council for increased expenditure by the Board has no effect on the local tax levy for school purposes in the City of Elizabeth.

The Commissioner of Education concurs with the Stipulation of Settlement. The Petition of Appeal is hereby dismissed this 31st day of January 1977.

COMMISSIONER OF EDUCATION

Board of Education of the Borough of Magnolia,

Petitioner,

v.

Mayor and Borough Council of the Borough of Magnolia, Camden County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Borough of Magnolia, hereinafter "Board," Hyland, Davis & Reberkenny (William D. Hogan, Esq., of Counsel), which challenges the reduction imposed upon its 1976-77 school budget by the Council of the Borough of Magnolia, hereinafter "governing body," Isaiah Steinberg, Esq. The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposal for the amount to be raised by local taxation for the 1976-77 school year:

Current Expense	$537,570

This proposal was defeated. Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation as follows:

You are viewing an archived copy from the New Jersey State Library.

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$537,570	$515,070	$22,500

Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend an additional amount of $22,500 available to it as unbudgeted current expense State aid. The Commissioner observes that this authorization for increased expenditure by the Board has no effect on the local tax levy for school purposes in the community of the Borough of Magnolia.

The Commissioner of Education concurs with the Stipulation of Settlement. The Petition of Appeal is hereby dismissed this 31st day of January 1977.

COMMISSIONER OF EDUCATION

Board of Education of the Township of Evesham,

Petitioner,

v.

Township Committee of the Township of Evesham, Burlington County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Township of Evesham, hereinafter "Board," (Moss, Powell & Powers, William R. Powers, Esq., of Counsel) which challenges the reductions imposed upon its 1976-77 school budget by the Mayor and Council of the Township of Evesham, hereinafter "governing body," (Hartman, Schlesinger, Schlosser & Faxon, Barbara Van Horn Colsey, Attorney at Law, of Counsel). The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposal for the amount to be raised by local taxation for the 1976-77 school year:

Current Expense	$3,122,946

You are viewing an archived copy from the New Jersey State Library.

This proposal was defeated. Thereafter the Board and governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$3,122,946	$2,658,783	$464,163

Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $464,163 for current expense available to it as unbudgeted current expense State aid. The Commissioner observes that this authorization for increased expenditure by the Board has no effect on the local tax levy for school purposes in the community of Evesham Township.

The Commissioner of Education concurs with the Stipulation of Settlement. The Petition of Appeal is hereby dismissed this 31st day of January 1977.

COMMISSIONER OF EDUCATION

Board of Education of the City of Trenton,

Petitioner,

v.

City Council of the City of Trenton, Mercer County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Merlino & Andrew (Michael A. Andrew, Esq., of Counsel)

For the Respondent, George T. Dougherty, Esq.

Petitioner, the Board of Education of the City of Trenton, hereinafter "Board," appeals an action of the Mayor and Council of the City of Trenton, hereinafter "Council," certifying to the Mercer County Board of Taxation a lesser amount of appropriation for current expenses of the school district than the amount proposed by the Board in its budget which was defeated by the voters.

You are viewing an archived copy from the New Jersey State Library.

A hearing in this matter was held on December 22, 1976 at the State Department of Education, Trenton, before a hearing examiner appointed by the Commissioner of Education.

The report of the hearing examiner is as follows:

At the annual school election held March 9, 1976, the voters rejected the Board's proposal to raise $15,043,775 in local taxes for current expenses of the Trenton schools in the 1976-77 school year. The budget was then sent to Council for its determination of the amount to be raised to provide a thorough and efficient program of education, pursuant to *N.J.S.A.* 18A:22-37.

After a review of the budget and consultation with the Board, Council made its determination and certified the sum of $7,601,513 to the Mercer County Board of Taxation. Such certification was a reduction of $7,442,262 from the amount proposed by the Board and may be shown as follows:

Board's Proposal	$15,043,775
Council's Proposal	7,601,513
Reduction	$ 7,442,262

The reduction from the tax levy which Council determined to be appropriate resulted from the appropriation of an expected addition to revenues totaling $5,133,684 and a delineated list of itemized deductions totaling $2,308,578. At this juncture, however, Council supports its determination only with respect to itemized deductions totaling $2,308,578 and further concedes that, of this sum, a total of $60,050 is required to be expended by the Board for reading programs (E-3), overtime for office personnel (E-57) and for contracted services. (E-72) The concessions with respect to these line items are documented as follows:

Reading Programs	$30,050
Office personnel	5,000
Contracted services	25,000
Total	$60,050

(See Tr. 6-7.)

The Board concedes that certain proposed expenditures totaling $33,000 are not now required for an Artist-In-School-Program (E-1), Summer School Supplies (E-26), Summer Music Program (E-27), Secretarial Help for Summer Program (E-28) and Summer Crossing Guards. (E-30)

Thus, the actual amount in contention herein is $2,308,578, less Council and Board concessions of $93,050, or a total of $2,215,528.

The hearing examiner has carefully reviewed the well delineated documentation of the parties with respect to such deductions and will recommend, *post,* that a sum of $792,163 be added to the concessions of

You are viewing an archived copy from the New Jersey State Library.

$60,050 made by Council and restored for use by the Board in the 1976-77 school year. Such recommendation is set in the context of the delay with respect to the apportionment of State aid in the current year and within the parameters of existing law. The specific reductions which the hearing examiner finds are necessary to be restored are set forth as follows:

Salaries and Fringe Benefits – Reduction	$702,163 (Exhibit 76)

The reductions deemed appropriate by Council herein consists of $544,153 for salary increments and other increases, $50,000 for the fringe benefits cost to the Board of staff positions which Council eliminated, and $108,010 which it is alleged was an "***unexplained difference between the amount for 1975-76 fringe benefits***" and the amount the Board actually used in a calculation of the effect of 1976-77 increased fringe benefit costs as an addition to those of the preceding year. (See documentation of the Board and Council, E-76.) Council avers, with respect to the major salary increment item, that it had allowed for approximately half of the total salary and increment package proposed by the Board and that such allowance was, in comparison with Council's treatment of its own employees, discriminatory in favor of the Board. Council maintains that the Board "***could, and should, have either granted smaller salary increases (5.2% instead of 8%), or reduced its staff to pay for the difference between the 8% proposed and the 5.2% allowed by the City Council***." (Council's Response to E-76)

The Board avers that the eight percent increase in its 1976-77 budget for all employees includes salary increments, fringe benefits improvements and a salary adjustment of approximately four and one half per cent. It further states that as of October 20, 1976, it was anticipated that "***the $1,199,088 provided in the 1976-77 budget for fringe benefits will be short of the actual amount required by $248,712." (E-76) Most of such shortage is detailed as attributable to an average increase exceeding 63 percent in Blue Cross/Blue Shield rates and in increased costs for major medical insurance.

The hearing examiner concludes from a review of such arguments that the total sum in contention herein must be restored if the Board is to meet its contractual obligations for the salaries and fringe benefits of its employees. The Board negotiated such benefits in good faith. They are required to be given effect with respect to teaching staff members. *N.J.S.A.* 18A:29-4.1 provides:

> "A board of education of any district may adopt a salary policy, including salary schedules for all full-time teaching staff members which shall not be less than those required by law. Such policy and schedules shall be binding upon the adopting board and upon all future boards in the same district for a period of two years from the effective date of such policy but shall not prohibit the payment of salaries higher than those required by such policy or schedules nor the subsequent adoption of policies or schedules providing for higher salaries, increments or adjustments. Every school budget adopted certified or approved by the board, the voters of the district, the board of school estimate, the governing body of the

You are viewing an archived copy from the New Jersey State Library.

municipality or municipalities, or the commissioner, as the case may be, shall contain such amounts as may be necessary to fully implement such policy and schedules for that budget year."

The statutory mandate has been held by the courts to include fringe benefits such as those at issue herein. *Board of Education of the Borough of Cliffside Park, Bergen County v. Mayor and Council of Cliffside Park, Bergen County,* 100 *N.J. Super.* 490 (*App. Div.* 1968); *Newark Teachers Association v. Board of Education of Newark, Essex County,* 108 *N.J. Super.* 34 (*Law Div.* 1969), aff'd 57 *N.J.* 100 (1970) The Court also held in *Cliffside Park* that a council's claim to bar other than "teaching staff members" from the benefits of the statute could not be given effect absent a showing of the precise amount of the budgetary provision for non-teaching personnel. There is no such showing herein and it is clear that the Board's salary commitments were firm at the time of Council's reductions.

The hearing examiner recommends full restoration with respect to this reduction.

Summary:	Amount of Restoration	$702,163
	Amount Restored	702,163
	Amount not Restored	–0–

Special Stipends – Reduction $30,000
(Exhibit 16)

The proposed expenditures are for extra services performed by scores of teaching staff members during the school year. Such services include work performed as advisors to elementary patrols, clubs, grade groups, drama and music activities, newspapers, yearbooks, and student government activities. Compensation ranges from $150 to $400 and the Board's obligations are well documented.

Council now avers that such evidence was not available to it at the time it made its reduction and indicates that this lack of documentation was the principal reason for it. Council still maintains that the need for "several" of the stipends is questionable.

The hearing examiner has reviewed the arguments and concludes that the proposed expenditures are required to insure the safety and supervision of school pupils. He recommends full restoration.

Summary:	Amount of Reduction	$30,000
	Amount Restored	30,000
	Amount not Restored	–0–

Substitute Teachers – Reduction $94,725
(Exhibit 15)

Council proposes that the Board effect additional savings in its expenditure for substitute teachers through an administrative transfer of money

You are viewing an archived copy from the New Jersey State Library.

accrued during the school year as the result of vacancies in regular staff positions. Additionally, Council avers that it reduced the proposed expenditure for substitute teachers in special classes because of a lack of detailed proposals.

The Board maintains that its budget of $340,000 is already inadequate even with a programmed transfer of $150,000 estimated savings in regular staff costs to the substitute teachers line item. It projects a deficit of $60,000 for the school year which would become a deficit of approximately $154,000 if Council's reduction is permitted to stand.

The hearing examiner regards the budgeting procedure outlined by both the Board and Council as speculative in the extreme. The Board actually overspent a $490,000 line item for substitute teachers by $47,026 in the 1975-76 year and yet reduced the proposed expenditure to $340,000 for 1976-77. The Board predicates the reduction on "savings to be realized" in its teacher salary accounts because of teacher retirements and lower cost teacher replacements. While such reductions and savings may indeed be realized, an early commitment of them, entirely speculative in nature, precludes an application of such savings to deficit line items which are equally as probable. Accordingly, the hearing examiner recommends that such practice be abandoned in the future. He recommends a $60,000 restoration in this line item at this juncture.

Summary:	Amount of Reduction	$94,725
	Amount Restored	60,000
	Amount not Restored	34,725

In summary, the hearing examiner sets forth the reductions and recommended restorations to the Board's proposals as follows:

Total Reduction of Council	$7,442,262
Stipulated Restoration – Unbudgeted State Aid	$5,133,684
Subtotal in dispute	$2,308,578
Additional Restorations:	
Concessions by Council	$ 60,050
Salaries and Fringe Benefits	702,163
Stipends	30,000
Substitute Teachers	60,000
Subtotal Restored	$ 852,213
Amount Not Restored	1,456,365
Grand Total	$2,308,578

The recommended restoration may be funded in part from additional unbudgeted State aid funds and in part from local tax revenues as follows:

Unbudgeted State Aid	$303,047
Local Taxation	549,166
Total Restoration	$852,213

You are viewing an archived copy from the New Jersey State Library.

Finally, the hearing examiner has refrained from recommending the necessity for new programs proposed by the Board, particularly in special education, although many such programs appear meritorious. The question at this juncture is one of timelines.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner and concurs with the recommendations contained therein. He takes notice that both parties have waived receipt of the report of the hearing examiner and the right to file exceptions, objections and comments thereto in accordance with *N.J.A.C.* 6:24-1.17(b). Accordingly, the Commissioner authorizes expenditure by the Board of $5,436,731 in unbudgeted State aid funds which are now available to the Board and directs the Mercer County Board of Taxation to raise an additional sum of $549,166 for the maintenance of a thorough and efficient program of education in the City of Trenton in the 1976-77 school year. This latter sum when added to the previously certified tax levy of $7,601,513 shall result in a total tax levy of $8,150,679.

COMMISSIONER OF EDUCATION

February 1, 1977

In the Matter of the Tenure Hearing of Robert Felmey,
School District of the City of Bridgeton, Cumberland County.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Casarow, Casarow & Kienzle (A. Paul Kienzle, Jr., Esq., of Counsel)

For the Respondent, Goldberg, Simon & Selikoff (Joel S. Selikoff, Esq., of Counsel)

Charges of insubordination and conduct unbecoming a teacher were filed with the Commissioner of Education on May 15, 1975, by the Board of Education of the City of Bridgeton, hereinafter "Board," certifying that the charges would be sufficient, if true in fact, to warrant respondent's dismissal or a reduction in salary. Respondent was suspended without pay.

Hearings were conducted on November 25, 1975, and February 5, 1976, in the office of the Cumberland County Superintendent of Schools, Bridgeton, before a hearing examiner appointed by the Commissioner. The report of the hearing examiner follows:

You are viewing an archived copy from the New Jersey State Library.

CHARGE NO. ONE

"On Friday, May 3, 1974, Robert Felmey called the Secretary in charge of absences and notified her that he would be absent that day from teaching at Bridgeton High School due to illness. Later that day, Robert Felmey arrived in Williamsburg, Virginia with a Miss ["M.M."]. Prior to May 3, 1974, the Bridgeton Board of Education directed the deletion of Robert Felmey and ["M.M."] as chaperones from the application submitted on behalf of the Bridgeton High School Honor Society, which organization requested permission to spend Friday, Saturday and Sunday, May 3, 4, and 5, 1974 in Williamsburg, Virginia.

"At Mr. Felmey's request, the Board of Education met with Mr. Felmey and specifically instructed Mr. Felmey that he was not to serve as a chaperone for the Williamsburg trip.

"Notwithstanding a specific directive from the Bridgeton Board of Education, Mr. Felmey stated illness as an excuse for absenting himself from his school duties on May 3, 1974 and traveled to Williamsburg, Virginia at a time coincidental with the Honor Society trip. Such actions constitute direct insubordination, disregard for Board policy, disregard for Board directive, and conduct unbecoming a teacher."

The record reveals that respondent and M.M., a substitute teacher in the Bridgeton School District, were initially approved by the Board as chaperons, along with two married couples, for the weekend trip to Williamsburg. (R-2; Tr. II-111) The teacher in charge of the trip was subsequently notified by the high school principal that the Board had reviewed his field trip application and decided that only married couples could accompany the pupils as overnight chaperons. (R-3) Respondent admits that the Board specifically directed him not to be a chaperon. He denies that he acted as such or that he had done anything improper regarding his visit to Williamsburg on May 3, 4, and 5, 1974.

The secretary in charge of taking calls from teachers and arranging for substitutes testified that respondent called her early on the morning of Friday, May 3, 1974, and reported that he was ill. (Tr. II-3-8; C-1) She testified that as teachers called her, she wrote their names and the reason given for their absence on a form and later typed this information for use by the business office. (C-1)

Respondent denies that he stated illness as the reason for his absence. He testified that he called and only asked the secretary to arrange for a substitute for the day and that he felt that he had met his obligation. (Tr. II-66, 91) He testified, further, that he was not absent for the purpose of going to Williamsburg. He said he received a call from a friend on the evening of May 2, 1974, and was asked to serve as a pallbearer at a funeral the next day. (Tr. II-24-29) The record supports respondent's testimony in that he acted as a pallbearer on May 3, 1974 and was involved with the family of the deceased (who was a friend) until 2:30 in the afternoon of May 3, 1974. (R-8, R-9, R-10; Tr. II-27)

Board policy provides for two days' personal leave when requested

You are viewing an archived copy from the New Jersey State Library.

forty-eight hours in advance. (R-5, at p. 15) Advance notice was not possible in this instance; however, the record indicates that in emergency situations, the Superintendent had the authority to grant a leave of absence for one day. (Tr. II-97-100) The record shows that a day off with pay was given to teachers for absences other than illness (C-1; Tr. II-98) and that the Superintendent, also, exercised his prerogative to give a one day leave of absence. (Tr. II-128) Teachers' pay is withheld for any day in which an absence is not approved (as happened in the matter herein controverted) (Tr. II-106), and respondent seeks back pay for his absence on May 3, 1974.

The hearing examiner finds that the record and the testimony of the secretary supports the Board's contention that respondent called on the morning of May 3, 1974 and stated illness as the reason for his absence. It is not believable that any teacher can merely call for a substitute and expect to be paid for the day without giving a reason. If such a practice existed, the Board would have no record of teachers' sick days, which accounting is a statutory requirement. (*N.J.S.A.* 18A:30-2)

The hearing examiner finds, also, that the Board has failed to prove that respondent absented himself from school on May 3, 1974, for the purpose of going to Williamsburg. Respondent testified that he went for the purpose of taking pictures to make slides for his classes and that he subsequently made such presentations. (Tr. II-39, 82) This testimony is not refuted by the Board. Respondent admitted wanting to be with his teacher friends who were chaperons on that weekend, and he did, in fact, have dinner with them on one evening in Williamsburg; however, at no time did he act as a chaperon, and he had practically no contact with pupils. (Tr. II-31-36) The Superintendent conceded, also, that respondent did not act as a chaperon. (Exhibit E) While the Board clearly has the discretionary authority to approve field trips and chaperons for those trips (*N.J.S.A.* 18A:11-1), the hearing examiner knows of no authority by which a board of education can forbid anyone from traveling. The hearing examiner finds further that respondent had used his two days' personal leave; therefore, he reported illness as the reason for being absent on May 3, 1974, even though he attended a funeral on that day. (Tr. II-93) Respondent, therefore, should not be entitled to pay for that day. The hearing examiner recommends that the remainder of Charge No. One be dismissed.

CHARGE NO. TWO

> "On April 23, 1975 at approximately 9:42 a.m. Robert Felmey violated New Jersey Law, Board policy and endangered the safety of his second period classroom students by failing to follow Fire Drill regulations in that he failed to and refused to take his second period students out of the High School building when the Fire Alarm sounded. This decision by Mr. Felmey not to remove his students from the building during the Fire Drill is a serious act of insubordination, a direct violation of Board policy, and a direct violation of New Jersey Law."

Respondent admits that he did unwisely decide not to take his pupils out of the building during the fire drill. He testified that he sent a letter to the

You are viewing an archived copy from the New Jersey State Library.

Board, the Superintendent, and the high school principal stating his "remorse and *** stupidity with the action that [he] took." (Tr. II-104) Corroboration is found in R-11 which reads as follows:

> "I wish to take this opportunity to make a formal and sincere apology for my inexcusable and unquestionable poor judgement on April 23, 1975. I want to assure you that my error was not an act of defiance nor in any way symbolic of any feelings regarding rules or administration. Simply, it was an act of ignorance.
>
> "My action was rash and was motivated, however poorly, by my desire to complete my testing of students. As a teacher, I know that every experience, good or bad, is a learning experience. Rest assured that this is no exception. However, there is no one else to blame, no justification that has logic.
>
> "It is my hope that this letter will be considered as a sincere effort on my part to demonstrate my sorrow for such action. Thank you."
>
> [signed, Respondent]

The hearing examiner finds that respondent did in fact endanger the safety of the pupils in his classroom in violation of *N.J.S.A.* 18A:41-1 which requires a minimum of two fire drills each month. He clearly knew he should have left the building with his class and he cannot claim ignorance since he admitted that the secretary told him to leave the building when he called her to see if there had been a mistake in the ringing of the fire bell. (Tr. II-102) The hearing examiner recommends, however, that the Commissioner give special attention to respondent's statement of remorse and his letter of apology. (R-11)

Finally, respondent is entitled to his full salary pursuant to *N.J.S.A.* 18A:6-14 beginning subsequent to a period of one hundred twenty days after the certification of these charges by the Board if, in the interim, no determination has been made by the Commissioner. His salary was resumed including certain fringe benefits (Respondent's Brief, Appendix A); however, respondent avers that the Board is in violation of *N.J.S.A.* 18A:6-14 in that his full salary includes all fringe benefits and that the Board has steadfastly refused to pay him for courses taken at Fairleigh Dickinson University which is provided as a benefit by Board policy. (Respondent's Brief, unp; R-5, at pp. 12-13) The Board agrees that respondent is entitled to his full salary and it also kept in effect his medical coverage; however, his request for pay for courses was denied. (Board's Brief, at p. 3) Prior approval to take courses for which the Board will pay is required by Board policy. (R-5, at p. 13)

The other question to be decided then is whether or not the Board is obligated to pay for courses taken by respondent while he is suspended from his teaching duties.

In the hearing examiner's judgment, such an obligation by the Board is not within the intent of *N.J.S.A.* 18A:6-14 which reads as follows:

You are viewing an archived copy from the New Jersey State Library.

> "Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is made, with or without pay, but, if the determination of the charge by the Commissioner of Education is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made. Should the charge be dismissed, the person shall be reinstated immediately with full pay from the first day of such suspension. Should the charge be dismissed and the suspension be continued during an appeal therefrom, then the full pay or salary of such person shall continue until the determination of the appeal. However, the board of education shall deduct from said full pay or salary any sums received by such employee or officers by way of pay or salary from any substituted employment assumed during such period of suspension. Should the charge be sustained on the original hearing or an appeal therefrom, and should such person appeal from the same, then the suspension may be continued unless and until such determination is reversed, in which event he shall be reinstated immediately with full pay as of the time of such suspension."

It would appear that the legislative intent of this statute is to protect teaching staff members and others eligible for its benefits, during periods of protracted litigation when their income has been terminated. In the matter herein controverted, respondent is receiving his full salary less the first one hundred twenty days' pay, and it appears that he is also enrolled in the Teachers' Pension and Annuity Fund. Respondent admits that his medical and hospital insurance has been resumed by the Board. (Respondent's Reply Brief, at p. 2)

The hearing examiner does not find any of the case law cited by respondent on point with his demand for pay for courses taken. Nor can he agree that the Board is in violation of *N.J.S.A.* 18A:6-10, *N.J.S.A.* 18A:6-14, or *N.J.S.A.* 18A:29-4.1. Neither can the hearing examiner find that the Board's refusal to pay for courses constitutes a reduction in salary as respondent suggests. Such a finding would place the Board in violation of the tenure statutes and the Court decision *In re Fulcomer,* 93 *N.J. Super.* 404 (*App. Div.* 1967). Rather, the Board has elected not to approve his applications for course work and its determination is properly grounded on respondent's suspension from his duties and this pending litigation.

The final determination of this entire controversy is now before the Commissioner who has the ultimate responsibility to assess a penalty, if one is found as necessary to be imposed.

It would appear that one of the remedies available to the Commissioner would be reinstatement of respondent with all back pay and privileges, including payment for courses taken, if the Board's denial is grounded solely on this litigation. On the other hand, the Commissioner could decide that respondent's acts, individually or in combination, are so gross that he should forfeit his tenure protection. In that case it would have been unwise for the Board to expend public money for courses from which it could not later benefit. It must also be

You are viewing an archived copy from the New Jersey State Library.

recognized that the Commissioner might assess any penalty between these two extremes. The hearing examiner finds, therefore, that the Board has the discretionary authority to approve or not approve courses for which it will pay. (*N.J.S.A.* 18A:11-1) Therefore, it would be anomalous to demand that the Board pay for the requested courses taken by an employee suspended without pay who is now on full salary.

In summary, the hearing examiner finds that respondent called and reported that he was ill on May 3, 1974. He later attended a funeral and was involved there until approximately 2:30 p.m. at which time he arrived at home. He thereafter motored to Williamsburg and arrived there on the evening of May 3, 1974. The hearing examiner recommends a determination that respondent is not entitled to pay for May 3, 1974, because he improperly reported the reason for his absence. The hearing examiner finds, further, that the Board has failed to sustain its burden of proof that respondent acted as a chaperon during the weekend trip to Williamsburg; therefore, he recommends that the remainder of Charge No. One be dismissed.

The hearing examiner finds with respect to Charge No. Two, that respondent did improperly remain in his classroom with his pupils during a fire drill and he has no excuse for that action.

The hearing examiner finds, also, that the Board has not abused its discretion, nor has it acted in violation of any law, rule, or decision, in reaching its determination not to approve the courses for which respondent seeks pay.

The hearing examiner finds finally that the charges in the aggregate, even if true, are not sufficiently grave to warrant respondent's dismissal. Respondent's choice of Williamsburg for that weekend trip may have been unwise, but it was not improper. He recommends, therefore, that the Commissioner consider some penalty lesser than dismissal, as a result of the findings of the hearing examiner and the admissions of respondent.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record, the report of the hearing examiner, and the exceptions filed thereto by counsel pursuant to *N.J.A.C.* 6:24-1.17(b).

Regarding Charge No. One, the hearing examiner found that respondent had in fact notified the Board, by calling a secretary, that he would be absent on May 3, 1974 because he was ill. It has also been shown that he did serve as a pallbearer in a funeral on that same day, and later traveled to Williamsburg. The Commissioner concurs with these findings of fact.

Respondent's exceptions are critical of the hearing examiner's finding of fact that illness was given as the reason for his absence on May 3, 1974. He

You are viewing an archived copy from the New Jersey State Library.

testified that he had reported only that he would be absent and stated that the secretary had no clear recollection of their conversation.

It is understandable that a person, receiving many calls in the morning when teachers report their absences, would not recall a particular conversation. Exhibit C-1 is explicit, clear, and believable as to the reason for respondent's absence. That document contains the handwritten notes of the calls received by the secretary from a number of teachers and other Board personnel. Reasons given by teachers for absences on May 3, 1974 include illness and fire fighting. Other reasons appearing on the typed portion of Exhibit C-1 may have been approved in advance since they include "vacation," "personal day," "field trip," and "excused without pay."

The Commissioner adopts the hearing examiner's findings and determines that respondent did state illness as the reason for his absence on May 3, 1974, when in fact he attended a funeral and later traveled to Williamsburg. There was no finding that he acted improperly or in violation of a Board directive.

Regarding Charge No. Two, respondent admits that he did not take his pupils out of the schoolhouse during the fire drill as required by *N.J.S.A.* 18A:41-1. When he questioned the authenticity of the fire drill, a secretary confirmed the fact that a fire drill was in progress and that respondent should take his pupils out of the schoolhouse. (Tr. I-94) He refused to do so.

There remains the penalty to be assessed for respondent's improper absence from his teaching duty on May 3, 1974, and his refusal to exit his class of pupils during a fire drill on April 23, 1975.

The Commissioner determines that respondent's stated reason of illness on May 3, 1974 was dishonest. He should have given the secretary the real reason which was the funeral he planned to attend. *In the Matter of the Tenure Hearing of William Fleming, School District of the Borough of Hawthorne, Passaic County,* 1974 *S.L.D.* 246, the Commissioner commented as follows:

> "***On June 18, 1973, respondent absented himself from his place of employment*** contrary to the policies of the Board. Such premeditated contravention of policy is reprehensible. Yet this act, standing alone ***[is] insufficient reason for dismissal. *In the Matter of the Tenure Hearing of William Megnin, School District of the Township of Wayne, Passaic County,* 1973 *S.L.D.* 641***" (at 252)

The Commissioner determines similarly in the instant matter. Therefore, respondent shall be reinstated in his position as a teacher; however, he shall forfeit one day's salary for his unauthorized absence on May 3, 1974, already withheld by the Board, together with sixty days' salary, which the Commissioner deems reasonable for his unbecoming conduct. This will be accomplished by paying respondent for only sixty days of the one hundred twenty days' pay previously withheld from him pursuant to *N.J.S.A.* 18A:6-14.

The Commissioner finds, also, contrary to the hearing examiner's report,

You are viewing an archived copy from the New Jersey State Library.

that the Board's refusal to approve respondent's academic study and to reimburse him according to its policy, is an improperly assessed penalty. *N.J.S.A.* 18A:6-14 Therefore, the Board is directed to reimburse respondent for academic courses taken according to its policy.

A teacher's refusal to direct pupils out of a school building during a fire drill is a serious and dangerous infraction which may endanger the lives of pupils. The seriousness of respondent's inaction cannot be diminished by his contrite letter to the Board. (R-11) In this regard *N.J.S.A.* 18A:41-3 reads as follows:

> "Any principal, teacher, or janitor failing to comply with the provisions of this chapter shall be guilty of a misdemeanor, and shall be punishable by a fine of not to exceed $100.00 for each offense."

The Commissioner will refer this matter to the Attorney General so that respondent's penalty for knowingly violating *N.J.S.A.* 18A:41-1 may be assessed by a court of proper jurisdiction.

COMMISSIONER OF EDUCATION

February 1, 1977

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, February 1, 1977

For the Petitioner-Appellant, Casarow, Casarow, & Kienzle (A. Paul Kienzle, Jr., Esq., of Counsel)

For the Respondent-Appellee, Goldberg, Simon & Selikoff, Esqs. (Joel S. Selikoff, Esq., of Counsel)

The decision of the Commissioner of Education is affirmed for the reasons expressed therein.

June 1, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the City of Hackensack,

Petitioner,

v.

Board of School Estimate of the City of Hackensack, and the Mayor and Council of the City of Hackensack, Bergen County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the City of Hackensack, hereinafter "Board," Stephen Moses, Esq., which challenges the reduction imposed upon its 1976-77 school budget by the Board of School Estimate and the Mayor and Council of the City of Hackensack, hereinafter "governing body," Seymour Chase, Esq. The principal facts of the matter are these:

The Board submitted to the Board of School Estimate the following proposal for amounts to be raised by local taxation for the 1976-77 school year:

Current Expense	$10,830,935

Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$10,830,935	$9,338,291	$1,492,644

Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $1,460,660 for current expense from the total amount available to it as unbudgeted current expense State aid. The Commissioner observes that this authorization for increased expenditure by the Board has no effect on the local tax levy for school purposes in the community of the City of Hackensack.

The Commissioner of Education concurs with the Stipulation of Settlement. The Petition of Appeal is hereby dismissed this 2nd day of February 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

Mountain View Residents Association,
a non-profit corporation of the State of New Jersey,
Kathleen Carr, *et al.*,

Petitioners,

v.

Board of Education of the Township of Wayne, Passaic County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

For the Petitioners, Gavenda, Rubin & Connelly (A. Michael Rubin, Esq., of Counsel)

For the Respondent, Williams, Caliri, Miller, Otley & Horn (Victor C. Otley, Jr., Esq., of Counsel)

This matter having been opened before the Commissioner of Education on June 9, 1976 by the filing of a Verified Petition of Appeal by certain residents of the Township of Wayne and the Mountain View Residents Association, a non-profit corporation composed of persons living in that section of Wayne served by the Mountain View Elementary School, which in 1975-76 enrolled kindergarten through fifth grade pupils and was operated under the authority of the Board of Education of the Township of Wayne, hereinafter, "Board"; and

The aforementioned Petition of Appeal having charged that a resolution of the Board on May 24, 1976 to close the Mountain View School, effective September 1976, and to authorize its sale or long-term lease was an untimely, arbitrary, capricious, discriminatory act of bad faith and an unlawful abuse of the Board's powers; and

Petitioners having moved for interim relief, *pendente lite*, whereby they seek an order of the Commissioner temporarily restraining the Board from entering into a long-term lease or sale agreement or from closing the school in September 1976; and

Oral argument on the Motion for Interim Relief having been heard and exhibits marked into evidence by the Commissioner's representative at the State Department of Education, Trenton, on August 4, 1976; and

The Commissioner having considered those arguments of petitioners wherein it is contended that irreparable harm would be worked upon petitioners if, prior to the Commissioner's determination of the matter, the Board were to enter into a sale or long-term lease agreement, thus rendering the matter moot; and

The further arguments of petitioners having been considered wherein it is

You are viewing an archived copy from the New Jersey State Library.

contended, *inter alia,* that the Board's resolution is not in the best interests of the community and that irreparable harm would be worked in the form of unfair, unreasonable uprootings if teachers and pupils are reassigned and the Mountain View School is closed in September 1976 (P-2); and

The Commissioner having considered those arguments of the Board which assert that the Board's act was a legal and reasonable exercise of its discretionary authority and entitled to a presumption of correctness in the light of *Boult and Harris v. Board of Education of the City of Passaic,* 1939-49 *S.L.D.* 7, aff'd State Board of Education 15, aff'd 135 *N.J.L.* 329 (*Sup. Ct.* 1947), aff'd 136 *N.J.L.* 521 (*E.*& *A.* 1948); and

The Commissioner having considered those other arguments of the Board wherein it is contended that the reduction in pupil enrollment fully justifies the closing of one elementary school and that the Board has engaged in an orderly process of feasibility studies over many months to determine which school should be closed (R-1-22); and

The Commissioner having considered the arguments of the Board wherein it is contended that an order directing that the Mountain View School not be leased, sold or closed would cause loss of revenue and disrupt plans already largely completed preparatory to the beginning of the 1976-77 school year; and

The Commissioner having carefully considered the exhibits in evidence and weighed the arguments of counsel set forth in the pleadings and at the oral argument; and

The Commissioner having determined that irreparable harm could be worked to petitioners if the Board enters into a long-term lease or sale agreement; and

The Commissioner having further determined that no irreparable harm will be worked upon petitioners or the pupils of Wayne if the Mountain View School is closed in September 1976, *pendente lite,* but that confusion and inefficiency would result if the Board were ordered to reopen Mountain View School in September 1976 without sufficient advance notice to prepare for such reopening; now therefore

IT IS ORDERED that the Board enter into no long-term lease of or agreement to sell the Mountain View School until a determination is rendered following a hearing on the controverted matter; and

IT IS FURTHER ORDERED that petitioners' request that an order be issued preventing the closing of the Mountain View School in September 1976 be and is hereby denied.

Entered this 18th day of August 1976.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioners, Gavenda, Rubin and Connelly (A. Michael Rubin, Esq., of Counsel)

For the Respondent, Williams, Caliri, Miller, Otley and Horn (Victor C. Otley, Jr., Esq., of Counsel)

Petitioners, resident citizens in the Mountain View area of the Township of Wayne, allege that an action on April 26, 1976 by the Board of Education of Wayne, hereinafter "Board," closing its neighborhood Mountain View Elementary School, hereinafter "Mountain View," effective September 1976 was an act of bad faith, arbitrary, capricious, discriminatory, and an abuse of the Board's powers. Conversely, the Board maintains that its action was none other than a legal exercise of its discretionary authority.

Pursuant to the filing by petitioners of a Motion for Interim Relief, *pendente lite,* oral argument was heard by a representative of the Commissioner of Education on August 4, 1976 at the State Department of Education, Trenton. By an interlocutory Order dated August 18, 1976, the Commissioner denied petitioners' request that the Board be enjoined from closing Mountain View in September 1976 but restrained the Board from entering into any long term lease or sale agreement of the school pending a determination of the dispute.

A hearing was conducted on September 29, 30 and October 14, 1976 at the offices of the Morris County Superintendent of Schools, Morris Plains, by a hearing examiner appointed by the Commissioner. The hearing examiner reports as follows:

Mountain View, a neighborhood school with ten classrooms and an enrollment of 249 pupils, in grades kindergarten through five, was a building in good repair, albeit one of the two oldest of eleven elementary schools operated by the Board during 1975-76. (P-5; Tr. I-135) The Board, which had experienced a dramatic decrease of thirty percent in elementary school enrollment from 6,109 in 1968 to 4,276 in 1976 (R-24), voted 5-4 on April 26 to close Mountain View effective the beginning of the 1976-77 school year. (R-25)

Petitioners contend that this action was defective and should be set aside as an act of bad faith in that the Board had stated publicly that per capita pupil costs in Mountain View were the highest in the district. Petitioners aver that such was false and in error. (Petition of Appeal, First Count) Petitioners further contend that the Board's action was arbitrary, capricious, discriminatory and repugnant to educational progress in that it was an action taken contrary to the advice of its professional administrators. (*Id.*, Second Count) Additionally, it is alleged that the rationale of the Board that it was closing a school because of empty classrooms and low class size had no pertinence to Mountain View where class size was not low and where no empty classrooms existed. (*Id.*, Third Count) Similarly, it is argued that the Board's stated reason to upgrade grounds

You are viewing an archived copy from the New Jersey State Library.

and facilities could not logically apply to Mountain View where no extensive structural repairs or renovations were required. (*Id.*, Fourth Count)

Petitioners also fault the Board for stating as another of its reasons that the school premises were not actively utilized by the community. Petitioners contend rather that the school is actively used by community groups, associations and Little League teams. (P-6; Petition of Appeal, Fifth Count) Petitioners contend further that the Board acted on "***whim, ignorance and/or political expediency***" and without reliable data when it assumed that the closing of Mountain View would result in the least relocation of enrolled pupils. (*Id.*, Sixth Count) Petitioners contend that, if a school were to be closed, the choice of an alternate school would not only disrupt fewer children, but would effect greater economies. (*Id.*, Seventh Count)

Petitioners also charge that the Board's decision to close Mountain View was politically motivated and prompted by an opinion that "***political back-lash from the Mountain View area would not be as severe *** as it might be from other school areas***." (*Id.*, Eighth Count)

Petitioners level a charge that one Board member who voted to close Mountain View, and who is a principal and officer in the REM Corporation which operates the area's only non-secular private school, the Wayne Country Day School, "***occupies a mutually inconsistent position as it affects public school matters***." It is argued that the Board member is in conflict of interest and therefore his participation renders null and void the Board's action to close the Mountain View School. (*Id.*, Ninth Count)

Finally, petitioners argue that the closing of Mountain View, wherein there is the greatest concentration of free lunch and special services, would be contraindicated because of dispersal of those special services which were effectively utilized at Mountain View. (*Id.*, Tenth Count)

In support of these contentions, petitioners elicited from witnesses testimony which is succinctly summarized as follows:

One parent whose children were enrolled in Mountain View in 1975-76 testified that she had conducted studies on comparative costs per pupil in the Board's elementary schools and concluded that the Mountain View per pupil costs were second lowest in the district. (Tr. I-15; P-3, 4) She related that she had so informed the Board which had considered her data but refused to rescind its action to close Mountain View. She testified further that upon the closing of Mountain View she had considered sending her children to Wayne Country Day School, but because of prohibitive costs had chosen rather to enroll them in a parochial school. (Tr. I-40)

Another parent similarly testified that she had, to no avail, met with the Board in an attempt to dissuade it from its action of April 26. She stated that her studies showed that Mountain View, when compared to other schools in the district, in no instance had the lowest class size in 1975-76 and that its classroom utilization was complete. (P-5) She further testified that she had advised that the

You are viewing an archived copy from the New Jersey State Library.

closing of the school would result in redistricting of a greater number of pupils than the enrollment at Mountain View because of a "domino effect." (Tr. I-49-59)

Yet another petitioning parent who had also enrolled her children in a non-public school when Mountain View was closed testified that she was convinced that the Board acted without complete data on redistricting, busing and class sizes when it closed Mountain View. (Tr. I-61, 68) She further stated that she considered the reference by one Board member to Mountain View as "the other side of the tracks" to be derogatory and not well received. (Tr. I-65) She also testified that Mountain View served the oldest and least affluent area in Wayne entitling the school to a disproportionately high share of free school lunches and Title I remedial aid. (Tr. I-66, 83)

Two remaining witnesses were called by petitioners on the third day of hearing to substantiate charges by petitioners of political motivation, influence and control of members of the Board. A careful analysis of the testimony of these politically active persons leads the hearing examiner to conclude that not a shred of competent testimony was elicited from them in support of petitioners' charges that the Board was subjected to improper political intervention or control. (Tr. III-1-36)

The Board, as previously stated, denies the validity of each and every count set forth by petitioners and adduced the following testimony from witnesses:

The Superintendent testified that numerous studies had been ordered by the Board from 1973 through 1976 regarding its declining elementary pupil enrollment. He stated that he had recommended on April 26 to the Board that all schools be kept open for 1976-77 but that the Board closed Mountain View and utilized the resultant savings to reduce class sizes in its secondary school program. (Tr. I-88-91, 94, 99-100) The Superintendent further testified that on April 26 the Board was aware of all important aspects of the closing of Mountain View except the ultimate redistricting of a limited number of pupils. (Tr. I-103)

The director of elementary education testified that over the past three years he had completed and provided to the Board at its request numerous plans of reorganization. He corroborated the testimony of the Superintendent that the Board had knowledge on April 26 of the essential information required to make a considered determination. (Tr. I-108, 119, 132) He averred that approximately $130,000 in savings was realized by the closing as compared to an advance estimate of $91,000. (Tr. I-121) The director stated that, although he had concurred in the Superintendent's recommendation that all schools remain open in 1976-77, he found nothing educationally unsound resulting from the Board's decision to close Mountain View. (Tr. I-142) In this regard he stated that elementary class size has in fact declined from 22.5 in 1975-76 to 21.7 in 1976-77. He further stated that he had found Mountain View to be the Board's least flexible educational facility since it lacked rooms for special programs such as art and remediation. (Tr. I-121-122) Finally, the director testified that only

You are viewing an archived copy from the New Jersey State Library.

those pupils already being bused would have to be transported as a result of the redistricting. (Tr. II-3-4)

One Board member testified that the Board's studies supplied ample data and involved as many alternate plans as it has elementary schools. (Tr. II-20, 24) He averred that he was aware of no consideration of possible public outcry or of statements by political figures which may have influenced his decision or that of other Board members. (Tr. II-14, 18) He affirmed that he was conversant with sufficient data and studies to make his decision which was predicated on the following:

> "***Mountain View School is a very small school, ten rooms. It had the least flexibility of any of the schools in the district, particularly in gym, art, supplemental [help]. And the physical education facilities were lacking in comparison to the other schools, media center, et cetera.
>
> "***[I]t had to bear higher administrative costs than the other schools. So you would still have to pay for one principal even though you could only put 220 or 240 children in the school. You'd still have to put in a custodian, nurse***." (Tr. II-12-13)

This Board member, who was also a regional director of REM, *ante*, testified that REM operates five non-sectarian schools one of which serves twenty-five communities in the Wayne area. He stated that only nine pupils from Wayne are enrolled in the Wayne Country Day School in grades kindergarten through three and that the only one currently from the Mountain View area was enrolled prior to the closing of Mountain View. (Tr. II-26, 32) He further testified that his work is with REM's summer recreation program only and that he has nothing to do with enrollment in the REM day schools. (Tr. II-26, 29)

Another Board member, one who voted against closing Mountain View, testified that certain data on redistricting was not received until after April 26 but averred that she had no knowledge of political pressure or influence that had bearing on her decision or that of the Board. (Tr. I-33, 35, 38)

Yet another Board member testified that the Board had considered numerous proposals even to the extent of reorganizing the district's educational pattern by moving the sixth grades from secondary to elementary control. (Tr. II-39-40) He averred that his vote was cast to close Mountain View because of regularly defeated budgets and the large number of empty rooms in the district. He testified that he believed the Board was provided with ample information in spite of one comment on April 26 by a Board member that he did not know what he was voting on. (Tr. II-40, 44) He further stated that he was unaware of either political pressure on the Board or consideration of political outcry which might ensue upon closing a school. (Tr. II-45)

The hearing examiner, having considered the pleadings, the testimony of witnesses and documentary evidence makes the following findings of fact:

1. The Board and its administrative officers, prior to April 26, made and

You are viewing an archived copy from the New Jersey State Library.

discussed reliable, detailed studies and revised studies over a three year period considering in depth the closing of various elementary schools, the closing of no school, and the revision of the existing 5-3-4 grade organization of the Wayne public schools. (R-1 through R-10, R-12 through R-16, R-21)

2. Final aspects of redistricting of pupils resulting from the closing of Mountain View were not finalized until two days after the April 26 decision to close the school. (R-11)

3. The elementary enrollment decline from 1968 reached 2,170 elementary pupils in September 1976, a diminution of 32.2 percent. During this period, until September 1976, the Board had closed no elementary school. (R-24)

4. Resultant savings approximating $130,000 from closing Mountain View were utilized by the Board to reduce class size in its secondary school program.

5. There has been no conclusive showing of an adverse effect on elementary school class size or on educational opportunity or effectiveness resulting from the closing of Mountain View.

6. Petitioners have failed to carry their burden of credible evidence in proof of allegations that the Board abused its discretionary authority or acted in bad faith or was politically controlled or influenced when it voted on April 26 to close Mountain View.

7. Both before and after April 26 the Board in open meetings informed the public and entertained opinions from the public concerning the closing of Mountain View and/or other considered school closings.

8. The Board's lengthy study of alternatives to cope with declining enrollment, its ordered revisions of studies, and the opportunity provided to its administrative staff and to the public for expression of opinions are contrary to petitioners' charges that the Board acted arbitrarily, capriciously or in bad faith. This finding is made in full recognition that the action was taken contrary to administrative recommendation. (P-1)

9. While it is factual that Mountain View had the highest concentration of free lunches and Title I services, there is in the record a dearth of proof that any pupil who continues to be eligible for such is deprived of essential services.

It is noted that Memoranda of Law have been filed on the matter of the charge of conflict of interest of that Board member who is affiliated with REM. The hearing examiner leaves to the Commissioner the consideration of such legal arguments as may be relevant in consideration of the above findings of fact. This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record of the controverted matter and

You are viewing an archived copy from the New Jersey State Library.

adopts as his own the findings of fact set forth in the report of the hearing examiner. It is noted that both litigants have waived receipt of a hearing examiner report pursuant to the provisions of *N.J.A.C.* 6:24-1.17 (b) and *N.J.A.C.* 6:24-1.18.

Petitioners do not argue that the Board member who is an official of REM in fact acted in his own self-interest by voting to close Mountain View. Instead, they contend that the potential for aiding his own self-interest by so voting was abundantly present, and that his participation under such conditions fatally flaws and renders null and void the Board's action. (Petitioners' Brief, at pp. 4-8) In support of this contention petitioners cite, *inter alia, Piggott v. Borough of Hopewell,* 22 *N.J. Super.* 106 (*Law Div.* 1952); *Driscoll v. Burlington-Bristol Bridge Co.,* 8 *N.J.* 433 (1952). Similarly cited is *Drake v. Elizabeth,* 69 *N.J.L.* 190 (*Sup. Ct.* 1903) wherein it was said that:

> "***A determination of this nature, confined to a specific case and based upon the finding of a body in which a discretionary judgment is reposed, is so far judicial in character as to be voidable if any one of such *quasi* judges who participated was at the time disqualified by reason of private interests at variance with the impartial performance of his public duty.***" (*Emphasis in text.*) (at 191-192)

Petitioners do not argue that the Board member who is an official in REM is incompatible with general Board duties, but that he was compelled to refrain from voting on a school closing which could cause parents to become disillusioned with the public schools and thereafter enroll their children in the Wayne Country Day School in which he had an interest. (Petitioners' Rebuttal Brief)

The Board argues that petitioners have "***failed to demonstrate, either factually or legally, that [the Board Member's] vote in this matter was improper and that it renders the resolution invalid.***" (Respondent's Brief, at p. 4) In this regard is cited *Van Itallie v. Franklin Lakes,* 28 *N.J.* 258 (1958) wherein the Supreme Court addressed the matter of determining when a conflict of interest exists, as follows:

> "***The decision as to whether a particular interest is sufficient to disqualify is necessarily a factual one and depends upon the circumstances of the particular case. *Aldom v. Borough of Roseland,* *** 42 *N.J. Super.* at *page* 503. No definitive test can be devised. The question will always be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty.***" (at 268)

Thus, the Board reasons that it would be completely frustrated and unable to act if such speculative interests as charged herein by petitioners were allowed to force members into inaction. (Respondent's Brief, at p. 5) *Jones et al. v. Kolbeck et al.,* 119 *N.J. Super.* 299 (*App. Div.* 1972)

The Board asserts further that petitioners' argument is not only tortured

You are viewing an archived copy from the New Jersey State Library.

but shows no improper motive of the Board member whose interest is in a corporation which has operated at capacity the Wayne Country Day School for at least four years. Thus, it is contended that his interest is so remote and speculative as to be implausible as a reason for conflict of interest. *Wilson v. Long Branch,* 27 *N.J.* 360 (1958)

The Commissioner has considered the respective legal arguments relevant to the conflict of interest charge and finds for the Board. In *Wilson, supra,* at pp. 395-396 the Supreme Court determined that the votes of municipal officials, who were also stockholders and directors of banks holding mortgages in an area designated by a municipal agency to be blighted, were not invalidated by so remote an interest.

The Commissioner similarly views as remote and speculative the possible conflict of interest between the Board member's interest in REM affairs and his vote which was cast to close Mountain View. Absent a factual showing of more direct interest, his vote remains valid. The Commissioner so holds. *Van Itallie, supra; Fredericks v. Wanaque,* 95 *N.J.L.* 165 (*E.&A.* 1920); *Wilson, supra*

Petitioners fault the Board for acting to close Mountain View before all aspects of the redistricting of its pupils were known. As was said in *Green Village Road School Association et al. v. Board of Education of the Borough of Madison, Morris County,* 1976 *S.L.D.* 700:

> "***While it would have been desirable for the Board to have completed, prior to its décision [to close a school], all of its subsequent inspections, studies and consultations relating to redistricting, *** the Board's action may not be voided because of the absence of some particular information. The Board, in fact, had available *** a number of studies and substantial relevant data. That these were utilized in sufficient form and amount to reach an intelligent determination is sufficient to negate petitioners' charge of bad faith.***" (at 713-714)

"***The Commissioner in the instant matter imputes no fault to the Board for making its determination absent a knowledge of final details of redistricting. Nor does he find reason for invalidating its action because the Board did not act in accord with petitioners' advice or that of its administrative staff. As was stated in *Green Village Road, supra*:

> "***The Commissioner finds no evidence of bad faith emanating from the Board's use of or refusal to use such relevant data as was ordered by the Board or as was supplied gratuitously by *** citizen groups either prior to or following the decision to close [the school].***" (at 713)

The Board acted within its statutory authority when it determined to close Mountain View. *N.J.S.A.* 18A:11-1 A careful scrutiny of the record of three days of hearing reveals no flaw justifying the invalidation of its discretionary act. The record shows that the Board's review of numerous feasibility studies disproves petitioners' charge of arbitrary and capricious action. Absent such finding of illegality or evidence of bad faith, the Commissioner may not

You are viewing an archived copy from the New Jersey State Library.

substitute his judgment for that of the Board whose determination is entitled to a presumption of correctness. As was said by the New Jersey Supreme Court in *Boult and Harris v. Board of Education of Passaic,* 135 *N.J.L.* 329 (*Sup. Ct.* 1947), aff'd 136 *N.J.L.* 521 (*E.&A.* 1948):

> "***The reviewing officer was not empowered to substitute his discretion for that of the local board. The offer of proof, as it is described in the Commissioner's opinion, amounted to nothing more than an offer to establish that the local board's determination was based upon erroneous factual material. Discretionary municipal action may not be judicially condemned on that basis.***" (136 *N.J.L.* at 523)

The legality of the Board's authority is sufficiently expounded in *John J. Caffrey, Jr. et al. v. Board of Education of the Township of Millburn, Essex County,* 1975 *S.L.D.* 630; *Mrs. John Engle et al. v. Board of Education of the Township of Cranford, Union County,* 1974 *S.L.D.* 787, aff'd State Board of Education 1975 *S.L.D.* 1085; *Green Village Road, supra; Boult, supra.* Further enunication thereof would serve no useful purpose.

Absent a finding that the Board acted in bad faith, illegally, or contrary to the discretionary authority with which it is vested by statute, the Commissioner determines that the Petition of Appeal in the instant matter is without merit. Accordingly, it is dismissed.

COMMISSIONER OF EDUCATION

February 4, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Borough of Milltown,

Petitioner,

v.

Mayor and Council of the Borough of Milltown, Middlesex County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Borough of Milltown, hereinafter "Board," (Russell Fleming, Esq., appearing) which challenges the reductions imposed upon its 1976-77 school budget by the Mayor and Council of the Borough of Milltown, hereinafter "governing body." (Charles V. Booream, Esq., appearing) The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate a proposal to raise $1,662,624 by local taxation for current expense costs of the schools for 1976-77.

This proposal was defeated subsequent to which the Board and governing body consulted and the governing body adopted a resolution determining a lesser amount of $1,390,398 was necessary to be raised by local taxation. This amount is $272,226 less than that proposed by the Board.

Subsequent to the enactment of *c.* 113, *L.* 1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $154,727 for current expense available to it as unbudgeted current expense state aid. The Commissioner observes that this authorization for increased expenditure by the Board has no effect on the local tax levy for school purposes in the community of Milltown.

The Commissioner of Education concurs with the Stipulation of Settlement. The Petition of Appeal is hereby dismissed this 8th day of February 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Borough of Totowa,

Petitioner,

v.

Mayor and Council of the Borough of Totowa, Passaic County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Borough of Totowa, hereinafter "Board," Jacob Green, Esq., Allan P. Dzwilewski, Esq., appearing, which challenges the reductions imposed upon its 1976-77 school budget by the Mayor and Council of Totowa, hereinafter "governing body," Amos Saunders, Esq., appearing. The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate a proposal in the amount of $1,800,545 as the sum to be raised by local taxation for current expense costs of its schools for the 1976-77 school year. This proposal was rejected by the voters and subsequent to its rejection, the governing body determined that the lesser amount of $1,652,545 was sufficient as the sum to be raised by local taxation. The governing body certified this lesser amount, a reduction of $148,000 from the Board's proposal, to the Passaic County Board of Taxation as the sum necessary for a thorough and efficient program of education in the Totowa schools for the 1976-77 school year.

The parties of interest executed a Stipulation of Settlement and Dismissal (C-2) on December 23, 1976, which provides that (1) the sum of $43,000 for current expense costs would be added to the amount previously certified to be raised for expenses for Totowa School District for the 1976-77 school year and (2) that of the remaining $105,000 reduction imposed by the governing body, $40,094 was the amount budgeted by the Board as its anticipated expenditure for a twenty-five percent local share of the employer's contribution to the Teachers' Pension and Annuity Fund.

As a result of the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, unbudgeted State aid moneys are available to the Board in excess of the amount restored by the governing body in the form of the supplemental certification to the Passaic County Board of Taxation. Therefore, such supplemental certification is unnecessary and the governing body is directed to so notify the County Board of Taxation immediately.

The Stipulation of Settlement and Dismissal which provided that the sum of $43,000 for current expenses would be added to the amount previously certified to be raised by local taxation for current expenses of the Totowa School District for the 1976-77 school year is hereby set aside.

You are viewing an archived copy from the New Jersey State Library.

The Commissioner concurs with the amount of money found necessary for utilization by the Board in the parties' agreement. The amount of $43,000 will be made available to the Board from unbudgeted State aid. Accordingly, there will be no additional tax certification for school purposes for the 1976-77 school year.

The Commissioner further observes that the enactment of *c.*113, *L.*1976 on November 9, 1976, particularly section 3, paragraphs a, b and c, has provided the following adjustments to the Board's 1976-77 school budget as proposed as a total current expense budget for the district:

Proposed Current Expense Expenditures	$1,846,045
Less Proposed TPAF Expenditure	40,094
Subtotal	$1,805,951
Reduction by Governing Body	148,000*
Adjusted 1976-77 School Budget	$1,657,951

* Includes Proposed TPAF Expenditure

It may be seen that the adjustments required in accordance with *c.*113, *L.*1976 accomplished the reduction of the proposed TPAF expenditure, which was the stated intention of the governing body. The Commissioner observes that the result is a dual reduction of the amount intended for reduction by the governing body.

Accordingly, the Commissioner hereby authorizes the expenditure of the amounts of $43,000 and $40,094 for a combined total of $83,094 of unbudgeted current expense State aid by the school district of Totowa for the 1976-77 school year.

It is so ordered this 7th day of February 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

Patricia Peters,

Petitioner,

v.

Board of Education of the Township of North Brunswick, Middlesex County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Mandel, Wysoker, Sherman, Glassner, Weingartner & Feingold (Jack Wysoker, Esq., of Counsel)

For the Respondent, Borrus, Goldin & Foley (Jack Borrus, Esq., of Counsel)

Petitioner, a nontenured mathematics instructor, had been employed for two academic years by the Board of Education of the Township of North Brunswick when she was notified by letter dated April 16, 1974, that her contract would not be renewed for the ensuing school year. (J-20) Petitioner alleges that the Board's action constituted personal harassment and reprisal in retaliation against her for exercising both her constitutional right of free speech and her right to engage in employee organization activity pursuant to *N.J.S.A.* 34:13A-5.3.

The Board denies that its determination not to reemploy petitioner was an act of illegal retaliation or reprisal and states that the nonrenewal of her contract was the result of her failure to meet professional teaching standards required in the school district.

Ten days of hearing were conducted at the East Brunswick Vocational School, Rues Lane, and at the office of the Middlesex County Superintendent of Schools, New Brunswick, from February 25 through October 16, 1975 by a hearing examiner appointed by the Commissioner of Education. Briefs were filed subsequent to the hearing. The Board's Motion to Dismiss at the end of petitioner's case was held in abeyance awaiting action by the Commissioner upon completion of the record. (Tr. IV-10) The report of the hearing examiner follows, setting forth first a recital of those uncontroverted actions which form a factual context to the dispute:

Petitioner taught mathematics to pupils in grades seven, eight and nine in the Board's Linwood Junior High School during the 1972-73 school year. During the 1973-74 school year she taught seventh grade pupils at the Board's newly opened North Brunswick High School. On April 9, 1974, the Board resolved not to reemploy petitioner and, pursuant to *N.J.S.A.* 18A:27-10, notified her of its decision. (J-20)

You are viewing an archived copy from the New Jersey State Library.

Following the issuance on June 10, 1974 of the Supreme Court's opinion in *Donaldson v. Board of Education of North Wildwood,* 65 *N.J.* 236 (1974), the Board, on June 26, furnished petitioner with a written statement listing the following reasons for nonrenewal of her contract:

> "1. Your lesson plans did not present the range of challenge to meet the needs of students.
>
> "2. You demonstrated an inability to work effectively with the slow learner.
>
> "3. Your classroom organization and discipline were lax and inadequate.
>
> "4. You were non-responsive to constructive criticism.
>
> "5. You often demonstrated a rapid speech pattern which made it difficult for students to follow.
>
> "6. Your lessons tended to be teacher dominated.
>
> "7. It is the professional judgment of our administrative team that you not be offered employment for the 1974-75 school year." (J-22)

Therein, the Board also advised petitioner that she could request an informal appearance before the Board. (R-3) She did so and was granted an appearance on July 30, after which the Board notified her that it had "***carefully reviewed the entire matter and voted to reaffirm its original decision." (R-4; J-23)

Petitioner testified that in 1972-73 she was never advised by her supervisors or administrators that she was deficient in regard to those items listed in J-22 as reasons for her nonrenewal with the exception of one suggestion on disciplinary procedures which she adopted and found successful in the ensuing school year. Petitioner averred that her lesson plans were prepared in advance, that she accepted and acted on constructive criticism, that she had been complimented for working well with slow learners, and that she worked cooperatively with staff, pupils and parents. (Tr. I-33-36, 115, 131, 137, 139-140; Tr. II-4, 7, 11)

Petitioner related that in the spring of 1973, preparatory to moving to the North Brunswick High School, the mathematics instructors met with the new principal and harmoniously agreed on changing to heterogeneous grouping provided that suitable new instructional materials were made available. (Tr. I-37) Petitioner stated that her past experience caused her to be outspoken at those meetings in her insistence upon appropriate materials and that although the principal appeared unhappy about her insistence, it was agreed that the department should proceed to select new materials. (Tr. I-38-51) Petitioner stated that when school opened in September no new texts and workbooks were provided, leaving instructors to devise their own plans to adapt the old materials to the heterogeneous classes. She testified that she voiced strong protest to the principal and the newly appointed mathematics area coordinator, which

You are viewing an archived copy from the New Jersey State Library.

protests, she believed, were taken as personal effrontery by the coordinator. (Tr. I-53-57)

Petitioner related that, although in January 1974 she objected to a requirement of her coordinator that behavioral objectives be thereafter included in all lesson plans, she acceded to the change. She stated that she kept her plan book and supplementary lesson cards faithfully, but that from October to January she did not turn in her plan book weekly because the coordinator seemed uninterested and was frequently not in her office. She stated that only later did she learn that the coordinator's office had been relocated. (Tr. I-59-61; Tr. II-23-24, 41, 121)

Petitioner also testified of disputes with her superiors over their failure to procure a desk and blackboard erasers for her classroom, over difficulty in getting extra books returned to the supply room, and over a seating plan which resulted in confusion at the first assembly in the new auditorium. She related that, in regard to the auditorium seating episode, the vice-principal and coordinator told her they were unhappy with her attitude. Petitioner admitted that she did, in fact, apologize for the manner in which she screamed and yelled at the vice-principal. (Tr. I-63-65, 73-77, 83, 93; Tr. II-63, 68)

Petitioner testified that after she received the principal's summary evaluation (J-13) he told her that:

> "***[W]e don't consider you a bad teacher; if you notice, we say you have admirable traits; you can explain a concept; you have command of the subject matter; you determine the needs of your students***. [O]ur complaint with you is your attitude.***" (Tr. I-95)

Petitioner stated that she was given opportunity but declined to resign. She averred that no one could or would tell her of the "small things" of which the principal complained in her summary evaluation. (Tr. II-96-97) She related that she objected strongly to the contents of a subsequent classroom visitation report, and that she refused to confer with the coordinator and the principal over its contents but wrote, instead, a lengthy rebuttal concerning the report. (J-17, J-18; Tr. II-102; Tr. X-17, 24)

Fellow teachers called as witnesses by petitioner variously testified that they had observed petitioner to be indeed outspoken in opposition to certain curricular changes and related school problems. They further testified that friction was apparent between petitioner, the area coordinator and the principal. They stated, however, that they believed that petitioner as a teacher maintained good discipline and that she was well prepared, conscientious, friendly, patient and challenging. (Tr. II-151-152, 166, 168; Tr. III-32, 44, 47, 99-104, 119-123, 157; Tr. IX-53, 68, 70, 77) (See also J-15.)

Pupils from petitioner's classes, called as witnesses, testified that they had observed that petitioner challenged both slow learners and rapid achievers and that she was instrumental in assisting her pupils to progress scholastically by her classroom techniques and individual help. Those five pupils who were called to

You are viewing an archived copy from the New Jersey State Library.

testify stated that they were not aware of problems in the learning process or of anything other than the usual discipline problems in petitioner's classes. (Tr. III-57, 59, 63-64, 69-70, 73-7~, 87, 90-93)

It is argued in the Brief on Behalf of Petitioner, hereinafter "BP," that petitioner, in the performance of her duties, exhibited the zeal of a competent and dedicated teacher and that her readiness to criticize "the system" cannot be a proper basis for nonrenewal of her teaching contract. In this regard petitioner cites, *inter alia, Winston v. Board of Education of South Plainfield,* 64 *N.J.* 582 (1974); *Pickering v. Board of Education of the Township High School District 205, Will County, Ill.,* 391 *U.S.* 563 (1968); *Perry v. Sindermann,* 408 *U.S.* 593 (1972). Petitioner argues that even though her complaints and criticisms may have been abrasive, nonrenewal on those grounds is invalid and must be reversed. (BP, at pp. 6-8) Petitioner contends that her good faith criticisms of educational procedures and conflicts with administrators arising therefrom may not legally be punished by nonrenewal. *In the Matter of the Tenure Hearing of Elinor Larson, School District of Scotch Plains-Fanwood Regional, Union County,* 1975 *S.L.D.* 309; *Marilyn Stein v. Board of Education of the Township of North Bergen, Hudson County,* 1975 *S.L.D.* 524 In this regard petitioner avers that:

> "***The attempt***to thwart open discussion, throttle constructive criticism, and still suggestions***cannot be tolerated if the free exchange of ideas, and the right to speak one's mind, are to remain valued ingredients in the educational process.***" (BP, at pp. 11-12)

Petitioner similarly argues that the Board relied exclusively on the judgments of its administrative agents rather than making an independent investigation of her teaching performance. (BP, at pp. 13-14) Petitioner contends that, when the Board granted her an informal appearance, the members merely listened and asked no questions, thus limiting her ability to respond in a meaningful manner. Petitioner characterizes the Board's decision as mere "rubber stamping" of the recommendations of its administrators which she alleges were tainted by their personal animosity toward her. *Stein, supra* (BP, at pp. 15-17)

Petitioner avers that such a drastic deterioration of teaching performance as is reflected in her evaluations of 1973-74 as compared to those of the prior year is neither logical nor believable. (BP, at pp. 13-24) Petitioner charges that the Superintendent's testimony on the matter was permeated by "***slanted *comments, distortions* and *gross exaggerations****" in an attempt to deprecate her competence. (BP, at p. 24) (*Emphasis in text.*) Petitioner alleges that a fairer evaluation of her teaching competence is to be found in the testimony of her mathematics department coordinator during the 1972-73 school year at Linwood Junior High School who testified favorably of her team cooperation, planning, teaching performance, dedication and competence. (BP, at pp. 26-28)

Petitioner maintains that the record is replete with evidence that the principal and her coordinator for 1973-74 were adversely biased, hostile and resentful of her presence. She argues that the Board's determination not to

You are viewing an archived copy from the New Jersey State Library.

renew her contract, being based upon their recommendations, was tainted thereby and should be set aside. (BP, at pp. 28-42)

Finally, petitioner asserts that the Board's action was unreasonable, capricious, arbitrary and discriminatory. *Donaldson, supra; Elizabeth Rockenstein v. Board of Education of the Township of Jamesburg, Middlesex County,* 1974 *S.L.D.* 260 and 1975 *S.L.D.* 191, aff'd State Board of Education 199; *North Bergen Federation of Teachers, Local 1060, AFT, AFL-CIO, and Beth Ann Prudente v. Board of Education of the Township of North Bergen,* 1975 *S.L.D.* 138 Petitioner maintains that the Board's action was based on subterfuge and fabrication and prays for an order of the Commissioner directing the Board to make her whole by reinstatement to her teaching position with lost salary and attendant emoluments. (BP, at pp. 43-48)

The principal, when called as a Board witness, testified that it was his experience with petitioner that:

> "***[W]hen certain things didn't happen that she expected to happen and happen instantly, she would become emotional to the point where it was very difficult to even converse with her***. That's a constructive concern. How you deal with people when there is a particular problem***."
> (Tr. V-32)

In regard to an instance in which petitioner's suggestion about the placement of a pupil was not followed, the principal testified that:

> "***Mrs. Peters' reaction was totally critical of everything we were doing; that the process and procedures were wrong because we didn't take her recommendation***." (Tr. V-46)

The principal testified that on March 19, 1974, he recommended to the Board that petitioner not be rehired. He stated that her abrasive attitude was the basis for reason number four and one contributing factor to his unfavorable recommendation. (Tr. V-68, 114-115)

The mathematics area coordinator testified that she was employed by the Board during the summer of 1973 and that she chose a textbook other than that selected by the mathematics teachers to serve the heterogeneously grouped classes. She stated that this text arrived in late September and was promptly distributed to the teachers. (Tr. V-119-125) She testified that until the new text arrived teachers had the use of their former texts and materials. She further stated that she found that petitioner was definitely opposed to heterogeneous grouping. The coordinator testified that she sought to assure petitioner of her empathy by pointing out her strengths and successes but that she also had occasion to criticize her for aspects of both her teaching and planning, as well as her extremely negative attitude toward her fellow teachers and administrators. She stated that when she criticized petitioner for speaking too rapidly, petitioner sought to remedy this but, in fact, slowed down too much. (Tr. V-134, 138, 142-155; Tr. VI-4, 7-11, 106-108)

You are viewing an archived copy from the New Jersey State Library.

In regard to a proposed follow-up conference of her classroom observation of petitioner on March 27, 1974, the coordinator stated that petitioner was very emotional and that:

> "***She had nothing to say to me, was what she said, but I really think she may have meant that she had nothing to hear from me because she had very much to say to me.*** I was not given a chance to respond to any of [her] comments. She was coming on very rapidly, very loud and any attempt that I made to answer any of the comments were simply cut off and more comments thrown in.***" (Tr. VI-15-16)

The coordinator also testified that on occasion she had observed in the classroom that slower pupils were confused by petitioner's lessons and that brighter pupils appeared bored. (Tr. VI-38-41, 55-56) In regard to petitioner's classroom management, the area coordinator testified that she had advised petitioner to revise her seating plan, that she observed a pupil at one time not working for twenty minutes, that on another occasion there was confusion in choosing teams for a math contest and that she found inappropriate petitioner's reference to certain pupils working at their own rate as "individuals." (Tr. VI-56, 60, 71-72) She characterized petitioner's response to her as her area coordinator as follows:

> "***What I remember from the whole thing is the attitude of coldness; aloofness; curtness; answering only when she has to; not being greeted by a 'Goodmorning'*** unless being forced when I greeted her first.***" (Tr. VI-80)

The coordinator testified that, in her opinion, petitioner's attitude expressed itself in the rejection and "***high level of criticism of every directive that came from the administration.***" (Tr. VI-85)

Called as a Board witness, the vice-principal testified that it was his observation that petitioner came across negatively to her pupils, that she was lacking in classroom discipline, control and management and that she did not foster a high degree of self direction in her pupils. (Tr. VI-135-141; Tr. VII-7, 16, 64, 72) He also stated that he found that petitioner resisted his suggestions and those of her other superiors. As illustrative thereof he related that when petitioner needed erasers for her room, she had not followed school policy by submitting a written request for them. (Tr. VII-18-19, 25, 33) He testified, however, that in his observations of petitioner he found that she was hard working, conscientious and desirous of improving her classroom management, control and teaching effectiveness. (Tr. VII-52, 54, 59)

The Superintendent testified that he relied on the recommendations of the principal in arriving at his recommendation to the Board not to reemploy petitioner. He stated that when the Board, in June, directed that written reasons be supplied to her, he met with the principal and the Assistant Superintendent and, after reviewing her classroom observations and summary evaluations, drew up the list of seven reasons in J-22. (Tr. VII-83-91) He testified that, in his opinion, her observations and evaluations which had indicated to him that she was

You are viewing an archived copy from the New Jersey State Library.

"***a mediocre teacher, and I felt that we certainly could do better.***I did not get any enthusiastic recommendations from any administrator or coordinator***. And we had two years experience. And based on the data that I had, I felt that [nonrenewal] was the appropriate course of action.***" (Tr. VII-122)

The Assistant Superintendent testified that as early as December 1973 he had, in the normal course of his duties, reviewed petitioner's classroom observation reports and that these reports gave him cause for concern over her voice pattern, classroom control and management. He stated that on the basis of his studies when he was detailed by the Board in July to make a full review of the matter, he fully concurred with the reasons given in J-22 for petitioner's nonrenewal and that he so reported to the Board. (Tr. VII-155, 166, 168, 173; Tr. VIII-8, 48, 54-55)

The Board President testified that the Board relied heavily on the recommendation of the principal and the Superintendent when it determined not to reemploy petitioner on March 19, 1974, and that it was in no way an act of reprisal. (Tr. VIII-63-67) She further stated that, after the Board heard petitioner and the witnesses who spoke on her behalf at the July 30 informal appearance, she directed the Assistant Superintendent to further investigate the matter to see if there were further information either favorable or adverse to petitioner which should be considered by the Board before its final decision was rendered. (Tr. VIII-72-75) The Board President related that she personally read all of the material on petitioner, discussed it with the Superintendent, and considered the additional report of the Assistant Superintendent (R-2) which was unfavorable to petitioner. She testified that the Board, after further discussion at a conference meeting on August 6, 1974, reaffirmed its prior decision not to reemploy petitioner and so notified her in writing. (J-23; Tr. VIII-79-87)

Other members of the Board corroborated the Board President's testimony with the exception that not all of those who testified stated that they made a similar personal investigation of the matter between July 30 and August 6. (Tr. VIII-10, 15, 111, 116, 119, 136, 148, 155, 177; Tr. IX-48, 52)

The Board argues in its Brief on Behalf of Respondent, hereinafter "BR," that it did not violate petitioner's constitutional or statutory rights as a nontenure teacher when it determined not to reemploy her for the 1974-75 school year. In this regard, the Board contends that petitioner was notified in writing of nonrenewal of her contract in timely fashion pursuant to *N.J.S.A.* 18A:27-10. The Board asserts that in doing so it properly exercised its wide discretionary powers by relying upon the professional judgment of its supervisory agents. *Frederick J. Procopio v. Board of Education of City of Wildwood, Cape May County,* 1975 *S.L.D.* 805, aff'd State Board of Education, April 17, 1976; *Donaldson, supra; Sallie Gorny v. Board of Education of City of Northfield et al., Atlantic County,* 1975 *S.L.D.* 669; *Donald Banchik v. Board of Education of the City of New Brunswick, Middlesex County,* 1976 *S.L.D.* 78

The Board argues that, although *Donaldson, supra,* was in no way

You are viewing an archived copy from the New Jersey State Library.

retroactive, it proceeded in good faith in accord with the spirit of *Donaldson* to provide petitioner with a statement of reasons. It is further argued that, when petitioner asked for an informal appearance, the Board granted it to her, conscientiously considered her request for continued employment, directed the Assistant Superintendent to seek further information, but ultimately voted to reaffirm its prior decision not to reemploy her. The Board avers that these actions were fully in accord with that which was enunciated by the Court in *Donaldson* and by the Commissioner in *Barbara Hicks v. Board of Education of the Township of Pemberton, Burlington County,* 1975 *S.L.D.* 332.

The Board denies petitioner's charge that her informal appearance was nothing more than a sham and asserts that petitioner was accorded all due process to which she as a nontenure teacher was entitled by law. (BR, at pp. 20-23)

The Board further argues that, absent proof of arbitrary, unreasonable, or capricious action, its determination is entitled to a presumption of correctness pursuant to *Thomas v. Board of Education of Morris Township,* 89 *N.J. Super.* 327 (*App. Div.* 1965), aff'd 46 *N.J.* 581 (1966) and *Quinlan v. Board of Education of North Bergen,* 73 *N.J. Super.* 40 (*App. Div.* 1962). In this regard the Board asserts that petitioner has failed to present convincing proof of any impropriety. The Board contends that the record indicates clearly that petitioner's freedom of speech was not suppressed and that its decision not to reemploy was properly based on the professional judgment of its qualified and certificated supervisors. (BR, at pp. 23-30) In support of its contention the Board cites *Gorny, supra; Phebe Baker v. Board of Education of the Lenape Regional High School District et al., Burlington County,* 1975 *S.L.D.* 471; and *Porcelli et al. v. Titus et al.,* 108 *N.J. Super.* 301 (*App. Div.* 1969), *cert.* denied 55 *N.J.* 310 (1970), wherein the Superior Court stated:

> "***We endorse the principle, as did the court in *Kemp v. Beasley,* 389 *F.2d*, 178, 189 (8 Cir. 1968), that 'faculty selection must remain for the broad and sensitive expertise of the School Board and its officials'***."
> (108 *N.J. Super.* at 312)

The Board, contending that petitioner's claims are shown by the hearing to be merely bare allegations which should be dismissed, cites, *inter alia, George Ruch v. Board of Education in the Greater Egg Harbor Regional High School District, Atlantic County,* 1968 *S.L.D.* 7, dismissed State Board of Education 11, affirmed New Jersey Superior Court, Appellate Division, 1969 *S.L.D.* 202, wherein the Commissioner held that:

> "***To hold that every employee of a school district, whose employment is not continued until he acquires tenure status, is automatically entitled to an adversary type hearing such as petitioner demands, would vitiate the discretionary authority of the Board of Education and would create insurmountable problems in the administration of the schools. It would also render meaningless the Teacher Tenure Act for the reason that the protections afforded thereby would be available to employees who had not yet qualified for such status.***

You are viewing an archived copy from the New Jersey State Library.

> "While petitioner has charged respondent with arbitrary, frivolous and discriminatory conduct with respect to his further employment, such a bare allegation is insufficient to establish grounds for action. *U.S. Pipe and Foundry Company v. American Arbitration Association,* 67 *N.J. Super.* 384 (*App. Div.* 1961) ***Petitioner's charge of unreasonable and arbitrary action rests on the unfavorable report of a superior. But examination of the report, which petitioner attached to his pleadings, reveals that it is nothing more than his supervisor's written evaluation of petitioner's classroom performance and teaching competence. Supervisory evaluations of classroom teachers are a matter of professional judgment and are necessarily highly subjective.***" (at 10)

The Board argues that, in addition to the unfavorable evaluations by her superiors, petitioner's constant criticism was:

> "***disruptive of a proper environment and the proper relationship between the administration and the teaching staff.***" (BR, at p. 34)

In this regard the Board cites *Zimmerman v. Board of Education of Newark,* 38 *N.J.* 65 (1962), *cert.* denied 371 *U.S.* 956, wherein it was said by the Court that:

> "***Inherent in the tenure legislation is the policy that a Board's duty to hire teachers requires more than merely appointing licensed instructors; it demands that permanent appointments be made only if the teachers are found suitable for the positions after a qualifying trial period. In essence this constitutes a 'proving out' period. In another context, we said in *Cammarata v. Essex County Park Comm'n.,* 26 *N.J.* 404, 412 (1958):
>
> > 'It is difficult to evaluate the character, industry, personality, and responsibility of an applicant from his performance on a written examination or through cursory personal interviews. Knowledge and intelligence do not alone [suffice] ***. The crucial test of his fitness is how he fares on the job from day to day when suddenly confronted by situations demanding a breadth of resources and diplomacy. Many intangible qualities must be taken into account, and, since the lack of them may not constitute good cause for dismissal under a tenure statute, the [employer] ***is entitled to a period of preliminary scrutiny, during which the protection of tenure does not apply, in order that it may make pragmatically informed and unrestricted decisions as to an applicant's suitability.'
>
> "The same thoughtful philosophy applies with manifold emphasis to the selection of school teachers.***" (at 72-73)

In this regard the Board also cites *Donaldson, supra,* wherein the Supreme Court stated that:

> "***The Legislature has established a tenure system which contemplates that the local board shall have broad discretionary authority in the granting of tenure and that once tenure is granted there shall be no

You are viewing an archived copy from the New Jersey State Library.

> dismissal except for inefficiency, incapacity, unbecoming conduct or 'other just cause'. *N.J.S.A.* 18A:28-5 *The board's determination not to grant tenure need not be grounded on unsatisfactory classroom or professional performance for there are many unrelated but nonetheless equally valid reasons why a board, having had the benefits of observation during the probationary period, may conclude that tenure should not be granted.****" (*Emphasis added.*) (65 *N.J.*, at 240-241)

Finally, the Board argues that petitioner, being nontenured, has no vested right to reemployment. *Gorny, supra; Banchik, supra* The Board also cites *Pietrunti v. Board of Education of Brick Township,* 128 *N.J. Super.* 149 (*App. Div.* 1974) wherein the Court stated that:

> "***A teacher is expected to exhibit loyalty to the district in which he or she is employed and to cooperate with the administration in seeking the educational goal.***A teacher is expected to show a reasonable respect for the authority of his or her employer and to maintain a civility commensurate with his or her professional status.***" (at 165)

The Board, in summary, contends that its decision to allow petitioner's contract to expire by its own terms and not to reemploy her was properly grounded on its supervisor's dissatisfaction with her teaching performance over a two-year period. The Board further maintains that petitioner's allegations of violations of constitutional rights are not supported by the facts and should be dismissed. *Board of Regents v. Roth,* 408 *U.S.* 564 (1972)

The hearing examiner, having carefully reviewed and considered the testimony of ten days of hearing and the documents in evidence, including petitioner's classroom observation and evaluation reports, makes the following findings of fact:

1. Petitioner was a conscientious teacher who prepared her lesson plans carefully and sought to make provision for the individual differences in ability and mathematical development of her pupils. For an extended period from October to January during the 1973-74 school year she did not submit her lessons for approval of her area coordinator. It should be noted, however, that the failure of some teachers to do so was neither uncommon in the mathematics department nor other departments of the school district at that time. (P-1; P-2 a, b, c; J-3, 4, 5, 8, 24, 25; Tr. VI-78, 127)

2. Certain of petitioner's supervisors, including her area coordinator, the vice-principal and the principal, reported that petitioner did not at all times teach in such manner as to meet the needs of slow learners and others. They were similarly convinced that her classroom control and management were in need of improvement and so reported to petitioner, to their superiors and to the Board. There is, however, no convincing evidence in the record that petitioner was so lax in her classroom organization and discipline as to render her an ineffective teacher. Nor is there within the record sufficient information to conclude that she dominated her classroom to an undue degree. (J-2, 8, 11, 12, 13, 18)

You are viewing an archived copy from the New Jersey State Library.

3. Petitioner was advised by her supervisors to slow down her pattern of speech in the classroom and made a conscientious attempt to do so to the point that she appeared to at least one supervisor to speak too slowly. (J-8, 13, 14, 17)

4. The record is barren of a showing that petitioner's right to engage in association activity, pursuant to *N.J.S.A.* 34:13A-5.3, was violated.

5. Petitioner was embroiled during 1973-74 in a number of emotionally charged confrontations with her vice-principal, principal and area coordinator. In each of these, involving, *inter alia,* her requests for blackboard erasers, a desk, texts and instructional materials and the auditorium seating episode, she expressed her opinions in a negative manner which was abrasive to her superiors. The hearing examiner, while sympathetic to petitioner's desire for smooth and efficient operation of the instructional program, finds that these problems, occurring as they did during the opening of a new high school building, did not call for such heated display of emotion as petitioner exhibited. The missing desk was needed only when pupils were in a carpeted homeroom for a six minute period daily. Petitioner could easily have temporarily improvised blackboard erasers by using a cloth. In any event she should have followed school policy by requisitioning the erasers in writing. Reason dictates that the choice of a new text should be deferred until its approval by the newly hired mathematics coordinator. The confusion of auditorium seating had a logical explanation and was, in any event, something that would not recur. However, petitioner's overemotionalism concerning these problems was disproportionate to their ultimate importance and engendered an unfortunate tension which was counterproductive to the normal interplay of functions between her and her superiors throughout the entire 1973-74 school year. It was this overreaction on petitioner's part which convinces the hearing examiner that there is substance to reason number four that petitioner was "***non-responsive to constructive criticism." (J-22) (See also J-13, 14.)

6. It was, without question, the unanimous opinion of the Board's administrative team that petitioner should not be reemployed in 1974-75. (J-19, 21, 22; R-1; Tr. V-68, 116; Tr. VI-102; Tr. VII-79, 173)

7. The Board afforded petitioner timely notice of non-reemployment pursuant to *N.J.S.A.* 18A:27-10 and, although not required to do so retrospectively by *Donaldson, supra,* granted both a statement of reasons and an informal appearance which complied in all aspects with due process requirements enunciated by the Commissioner and the courts in *Donaldson; Procopio, supra; Banchik, supra; Hicks, supra; and Gorny, supra.*

8. The hearing examiner finds insufficient competent evidence to conclude that petitioner's charge of bias and prejudice on the part of the area coordinator or the principal has any basis in fact. There is, instead, ample documentation within the record to conclude that both of these persons attempted unsuccessfully to establish and maintain a proper and empathetic relationship with her. (J-7, 8, 9, 10, 13, 14, 17)

9. Petitioner has failed to carry the burden of proof that the Board acted

You are viewing an archived copy from the New Jersey State Library.

in reprisal against her for exercising the right of free speech in criticizing certain operations of the school. Rather, it is found that the Board relied upon the recommendations of its administrators and supervisors who, for educational reasons as expressed in J-22, recommended non-reemployment of petitioner.

10. Petitioner's charge that her free expression of opinion was suppressed by actions of her superiors in the performance of her teaching duties is found to be groundless. The record is replete with instances of her having frequently expressed herself at length on numerous items of school policy, curriculum, instructional materials, grouping, evaluations, her non-retention and other matters. The record supports the conclusion that it was the abrasive manner of these criticisms, rather than the criticisms themselves which, in concert with other concerns, caused her superiors and the Board to question the advisability of her reemployment.

The hearing examiner recommends that the Commissioner determine that the actions of the Board and its agents which resulted in her non-reemployment, grounded as they were on numerous competent classroom observations and evaluations, were neither arbitrary, capricious, unreasonable, nor acts of reprisal or retaliation in violation of petitioner's constitutionally protected right of free speech.

The hearing examiner further recommends that the Commissioner determine that the Board's decision not to continue petitioner's employment was not violative of her statutory or constitutional rights and that the Petition of Appeal should be dismissed. *Donaldson, supra; Hicks, supra; Banchik, supra; Baker, supra; Procopio, supra; Zimmerman, supra; Ruch, supra*

This concludes the report of the hearing examiner.

* * * *

The Commissioner has carefully reviewed the record of the controverted matter including the hearing examiner report and the extensive exceptions filed thereto by petitioner pursuant to *N.J.A.C.* 6:24-1.17(b).

In the aforementioned exceptions it is argued that the Board failed to sustain its burden of proving the reasons it provided petitioner for her non-reemployment. The Commissioner is constrained to state that in a hearing pursuant to *N.J.S.A.* 18A:6-9 *et seq.* wherein it is alleged that a local board of education has violated a nontenured teacher's statutory or constitutional rights, it is not the burden of a board to prove its reasons for nonrenewal. Rather, it is the burden of the board to present evidence to counter such documentary evidence or testimony as is offered by the petitioning nontenured teacher in support of those allegations made against the board. Although, as herein, testimony and documentary evidence pertinent to such reasons are frequently revealed in presenting a defense, it may not be assumed that a board of education is under the same burden to prove its reasons as it bears in a hearing arising from tenure charges against a tenured employee. Reference in petitioner's

You are viewing an archived copy from the New Jersey State Library.

exceptions to such a burden is misplaced and without legal basis. The Commissioner so holds. *Banchik, supra*

A review of the record reveals that those findings set forth in the report of the hearing examiner in explicit detail are valid. The Commissioner, accordingly, adopts them as his own. No useful purpose would be served by their repetition at this juncture. As a nontenured employee, petitioner had no property right to continued employment. *Roth, supra; Gorny, supra* Faculty selection is a prerogative of the Board whose determination is entitled to a presumption of correctness, absent a showing of arbitrary, capricious or illegal action. *Porcelli, supra; Kemp, supra; Donaldson, supra; Quinlan, supra; Ruch, supra; Zimmerman, supra; Robert B. Lee v. Board of Education of Montclair, Essex County*, 1972 *S.L.D.* 5

It is abundantly evident that petitioner was allowed wide latitude by her supervisors and administrators in vocalizing and otherwise expressing her disagreement with their curriculum decisions and what she conceived to be faulty actions and evaluations. The Commissioner, however, finds relevant the statement set forth in a similar dispute over such outspoken criticism in *George Marotta v. Board of Education of the Borough of Sayreville, Middlesex County*, 1976 *S.L.D.* 767 as follows:

> "***Petitioner's mere surmise that his published letter must have antagonized the Board and the Superintendent does not constitute proof that the Superintendent or the Board acted illegally or in reprisal. Criticism by subordinates of school policy or administrative practice does not, *ipso facto*, create grounds for setting aside the official acts of administrators or boards of education, absent proof of impropriety, statutory violation or abrogation of constitutional rights.***" (at 771)

Similarly, the Commissioner finds pertinent that which was iterated in *Baker, supra,* as follows:

> "***It is not uncommon when divergent philosophies are present within a teaching and administrative staff that conflict situations emerge which are disruptive of the efficient functioning that is exemplified in a well-ordered school. This is not to say that no place may be given to differing philosophies or their manifestations in varying acceptable techniques and modes of instruction within a single school system. Such are frequently desirable and found in the most productive school systems. *They must, however, manifest themselves in an orderly, efficient and harmonious atmosphere in order that they may not be counter-productive.****" (*Emphasis supplied.*) (at 476)

In the instant matter there is little doubt that, among the reasons given by the Board for petitioner's non-reemployment, her unresponsiveness to constructive criticism loomed large. The testimony of administrators and supervisors discloses that they perceived her to be unable on numerous occasions to work in harmony with her superiors, especially during 1973-74. It is further evident from the Board's amply documented and complete classroom

You are viewing an archived copy from the New Jersey State Library.

observation reports and summary evaluations that other reasons advanced by the Board were not without basis.

Accordingly, the Commissioner concludes that the Board and its administrative officers, neither in whole nor in part, acted against petitioner in an arbitrary, capricious, or unreasonable manner, nor in illegal reprisal in violation of her constitutional right of free speech. Rather, the Commissioner finds the Board's determination a proper exercise of its discretionary authority conferred by statute. Absent a finding of illegal action or impropriety by the Board or its administrative staff, the Board's determination is entitled to a presumption of correctness. *Lee, supra; Quinlan, supra*

Petitioner has failed to sustain the burden of proof required to validate the authenticity of her allegations. Accordingly, the Petition of Appeal is found without merit and is dismissed.

COMMISSIONER OF EDUCATION

February 8, 1977

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, February 8, 1977

For the Petitioner-Appellant, Mandel, Wysoker, Sherman, Glassner, Weingartner & Feingold (Richard H. Greenstein, Esq., of Counsel)

For the Respondent-Appellee, Borrus, Goldin & Foley (Jack Borrus, Esq., of Counsel)

The State Board of Education denies the request for Oral Argument, and affirms the decision of the Commissioner of Education.

July 6, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Township of Pequannock,

Petitioner,

v.

Mayor and Council of the Township of Pequannock, Morris County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Township of Pequannock, hereinafter "Board," Joseph D. Donato, Esq., which challenges the reductions imposed upon its 1976-77 school budget by the Mayor and Council of Pequannock Township, hereinafter "governing body," Karl Z. Sosland, Esq. The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposals for amounts to be raised by local taxation for the 1976-77 school year:

Current Expense	$4,670,259
Capital Outlay	$ 24,000

Both proposals were defeated. Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that lesser amounts were necessary to be raised by local taxation as follows:

	Board's Proposal	**Governing Body's Resolution**	**Reduction**
Current Expense	$4,670,259	$4,570,259	$100,000
Capital Outlay	24,000	24,000	—0—
TOTAL			$100,000

Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $100,000 for current expense from the total amount available to it as unbudgeted current expense State aid. The Commissioner observes that this authorization for increased expenditure by the Board has no effect on the local tax levy for school purposes in the community of Pequannock Township.

The Commissioner of Education concurs with the Stipulation of Settlement. The Petition of Appeal is hereby dismissed this 9th day of February 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Borough of South Bound Brook,

Petitioner,

v.

Mayor and Council of the Borough of South Bound Brook, Somerset County,

Respondent.

COMMISSIONER OF EDUCATION

AMENDED ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Borough of South Bound Brook, hereinafter "Board," Elaine W. Ballai, Attorney at Law, which challenges the reductions imposed upon its 1976-77 school budget by the Mayor and Council of the Borough of South Bound Brook, hereinafter "governing body," Richard Mezzacca, Mayor. The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposals for amounts to be raised by local taxation for the 1976-77 school year:

Current Expense	$1,402,456
Capital Outlay	$ 2,950

Both proposals were defeated. Thereafter, the Board and the governing body consulted and the governing body adopted a resolution determining that lesser amounts were necessary to be raised by local taxation.

The Commissioner observes that in its Answer the governing body states its intention that its reduction includes the amount budgeted for an anticipated expenditure for a twenty-five percent local share of the employer's contribution to the Teachers' Pension and Annuity Fund. The Commissioner further observes that the enactment of *c.* 113, *L.* 1976 (Senate Bill 1503) on November 9, 1976, particularly section 3, paragraphs a, b and c, has provided the following adjustments to the Board's 1976-77 school budget as proposed to the voters of the district:

Proposed Current Expense Expenditures		$1,402,456
Less Proposed TPAF Expenditure		$ 19,749
	Subtotal	$1,382,707
Reduction by Governing Body		$ 40,000*
Adjusted 1976-77 School Budget		$1,342,707

*Estimate by Municipal Government for TPAF

It may be seen that the adjustments required in accordance with *c.* 113, *L.*

You are viewing an archived copy from the New Jersey State Library.

1976 accomplished the reduction of the proposed TPAF expenditure, which was the stated intention of the governing body. The Commissioner observes that the result is a dual reduction of the amount intended for reduction by the governing body.

Accordingly, the Commissioner hereby authorizes the expenditure of the amount of $19,749 of unbudgeted current expense State aid by the school district of the Borough of South Bound Brook for the 1976-77 school year.

Additionally, the Commissioner observes that by resolution of the governing body, passed July 13, 1976, an amount of $16,000 was restored to the budget for the 1976-77 school year. Therefore, the Commissioner authorizes the expenditure of an additional $16,000 of unbudgeted current expense State aid by the school district of the Borough of South Bound Brook for the 1976-77 school year. This addition shall increase the adjusted current expense budget to the total of $1,378,456.

The Commissioner observes that this authorization for increased expenditure by the Board has no effect on the local tax levy for school purposes in the community of South Bound Brook.

COMMISSIONER OF EDUCATION

February 10, 1977

Susan Welch and Long Branch Education Association,

Petitioners,

v.

Board of Education of the City of Long Branch, Monmouth County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioners, Chamlin, Schottland, Rosen & Cavanagh (Michael D. Schottland, Esq.)

For the Respondent, McOmber and McOmber (Richard D. McOmber, Esq.)

Petitioner, a nontenured teaching staff member in the employ of the Board of Education of the City of Long Branch, hereinafter "Board," avers that the Board's decision to nonrenew her contract of employment for the 1975-76 academic year was procedurally faulty and grounded on a constitutionally

You are viewing an archived copy from the New Jersey State Library.

proscribed reason; namely, her membership in and support of a labor organization. She requests reinstatement to her position by the Commissioner of Education. The Board maintains it has complied with all the rules and statutes pertinent to the nonrenewal of the contract of a nontenured teaching staff member and that there is no relief which the Commissioner may or can afford. It moves for dismissal of the Petition of Appeal.

A hearing was conducted in this matter on March 17, 1976 by a hearing examiner appointed by the Commissioner at the office of the Monmouth County Superintendent of Schools, Freehold. Subsequently, counsel filed Briefs. The report of the hearing examiner is as follows:

Petitioner was first employed by the Board as a teacher of a class for perceptually impaired children in the 1972-73 academic year and her contract of employment was renewed thereafter for each of the 1973-74 and 1974-75 years. She is fully certified as an elementary teacher and as a teacher in special education. (Tr. 6) The evaluation reports of her work during the first two years of her employment are without exception favorable to her. (See P-1(a) through (g).)

In late October 1974, however, there was a teacher strike of eight days in Long Branch, in which petitioner participated, and subsequent to that time the evaluation reports of petitioner's work were generally unfavorable. (See P-2-6.) They contain such comments as:

> "Pupil growth seems minimal***."
>
> "Attitudes have improved; teacher enthusiasm still low." (P-4, November 25, 1974)
>
> "***Work could have been more challenging. Children already knew this addition. On checking with 4 children none knew any of the words being written as a handwriting exercise. They could not identify or pronounce the words on two preceding pages. I have brought this to the attention of Mrs. Welch on a previous observation.***" (P-5, January 24, 1975)

Such comments, petitioner testified, resulted from a "change" in the attitude of her school principal toward her which she first noticed after she had returned to work from the teacher strike. (Tr. 11) She said:

> "***[H]e didn't seem to be as friendly toward me. He seemed that he was looking for something.***" (Tr. 11)

Petitioner testified that in January 1975 she was informed by her superiors that she would not be recommended for tenure although she said that prior to that time she had received no indication her contract would not be renewed. (Tr. 15) Subsequently, an evaluation report dated March 17, 1975, was favorable to her. (P-6) Nevertheless, on March 26, 1975, the Secretary of the Board addressed a letter to petitioner as follows:

You are viewing an archived copy from the New Jersey State Library.

"I have been authorized by the Board of Education to inform you that your teaching contract will not be renewed for the 1975-76 school year.

"The Board action has been based on administrative recommendations including evaluations and conferences with you by your building principal.

"On behalf of the members of the Board of Education, I would like to extend to you their best wishes for your future endeavors." (P-7)

(Note: The record is unclear with respect to whether or not the Board had the February 15, 1975 evaluation report (P-2) and/or the March 17, 1975 report (P-6) in hand prior to the time the Secretary forwarded his letter to petitioner. The report (P-2) contains the notation "received March 31, 1975" as part of a district office stamp. Petitioner's Brief avers P-6 was also forwarded to the district offices subsequent to the time of the Secretary's letter, *ante.*) (See Brief of Petitioner, at p. 11 and Tr. 18.)

Petitioner testified that in March 1975 she had asked to see her personnel file and that the school principal had brought it to her from his home. (Tr. 26-28) She testified that her inspection of the file showed it contained a letter saying she had participated in the strike but that such letter was removed at her request. (Tr. 29) She further testified that the file did not contain, on that occasion, a penciled note in the handwriting of the Superintendent of Schools which on a subsequent inspection she found. (P-9; Tr. 30) She said this note contained five negative comments about her. (Tr. 30) Petitioner testified her request to the principal for removal of the letter concerned with the strike action was premised on an agreement of the parties involved in the October strike action that there would be no "reprisals." (P-10) Petitioner testified that a specific example of the principal's changed attitude toward her subsequent to the strike was his statement to her in November 1974 as follows:

"***He said that I was not allowed out of my classroom at any time during the day and that he didn't want to see, you know, I couldn't go out of the room to go into the teachers' room, to go to the ladies' room. He said you are to stay with your class every minute during the day.***"
(Tr. 13)

On cross-examination, however, petitioner's testimony that reports of her work were uniformly favorable before the strike and unfavorable subsequent thereto was seriously impeached by the introduction of two documents for identification (R-1 and 2) which were subsequently admitted into evidence on the Motion to Dismiss. (Tr. 109)

The document R-1 is dated September 20, 1974, approximately one month before the strike action and is a record of a conference attended by petitioner, her principal and the Director of Pupil Personnel. The document, a letter to petitioner from the principal, states:

"This is to verify our conversation this date regarding problems of control,

You are viewing an archived copy from the New Jersey State Library.

motivation and academic achievement as outlined by Mrs. Peggy Lancton, Director of Pupil Personnel and myself.

"Suggestions include:

"1. Motivation of each of the 9 children through individual programs.

"2. Containment within the classroom except in seriously disruptive cases.

"3. Increased assistance from Mrs. Cargile, L.D.S. assigned to Elberon School.

"4. Teacher efforts to create a happier learning atmosphere based on good planning and increased pupil success.

"5. Team teach some of these children with Mrs. Hartung and Miss Kuhlthau.

"I will assist in any way I can but most of these problems must be solved in the classroom." (R-1)

The document R-2 is a similar summary of the conference written by the Director of Pupil Personnel in the form of a memorandum to the principal. It is dated September 24, 1974, and lists as the primary concerns allegations that "***so many children are being put out into the hall***" from petitioner's class and the "overall attitude" of the teacher toward the class. Additionally, the document contains a statement that the Director of Pupil Personnel had expressed her "***concerns regarding the overall functioning of the [petitioner's] class." (R-2) (Note: Petitioner did admit on cross-examination that she had placed pupils in the hall, out of the classroom, for disciplinary reasons or to "calm down." (Tr. 5))

Petitioner was the only witness called at the hearing in support of her Petition except that the Superintendent of Schools was called for limited testimony. He testified that Mr. Wilson, principal, was no longer with the district and had left the area. (Tr. 93) He further confirmed that some of the writing on P-9 was his own. (Tr. 93)

There were certain stipulations of importance, however, which emerged from the arguments at the hearing. It is stipulated that the Board did afford petitioner a written list of reasons for its failure to renew her contract although such list was not offered into evidence at the hearing. It is also stipulated that petitioner later requested and was granted an opportunity for an appearance before the Board but that the Board then reiterated its previous decision. Finally, it is stipulated that the Board's original decision not to renew petitioner's employment was made at a private conference meeting of the Board and was not ratified in a formal manner at a subsequent meeting.

Petitioner avers that such stipulations and evidence entitle her to a renewal

You are viewing an archived copy from the New Jersey State Library.

of her contract of employment since on May 21, 1975 in the absence of formal Board action at a public meeting she notified the Board by letter (P-8) that she accepted employment as a teacher in the 1975-76 school year. The Brief in support of such avowal lists two principal points.

The first point is a contention that petitioner's employment was never legally terminated by official Board action and in support thereof petitioner cites, *inter alia, Cullum v. Board of Education of the Township of North Bergen,* 15 *N.J.* 285 (1954); *Miner v. Larney,* 87 *N.J.L.* 40 (*Sup. Ct.* 1915); and certain statutes which require a formal action by a local board of education. *N.J.S.A.* 18A:27-1, 18-1, 10-6, 19-2 Point two is an avowal that petitioner has made a *prima facie* case that her nonrenewal was inspired by an anti-labor animus.

The Board maintains that there is no *prima facie* proof that petitioner's contract failed of renewal because she participated in a work interruption or strike and that she has been afforded every due process right as outlined by the Supreme Court in *Mary Donaldson v. Board of Education of North Wildwood,* 65 *N.J.* 236 (1974). The Board further avers that it was not required to formally resolve at a public meeting not to rehire petitioner and in support thereof it cites *Edward Collins v. Board of Education of the North Hudson Jointure Commission,* 1975 *S.L.D.* 641. The Board denies that any part of its negotiated agreement with its professional association was violated by a handwritten note (P-9) of the Superintendent of Schools which petitioner maintained had been removed from her file at the time of her first inspection of it in 1975 and that the total evaluation procedure followed in this instance was pursuant to the agreement.

The hearing examiner has reviewed all such evidence and argument in the context of the Motion to Dismiss and finds no reason to require a defense of the Board with respect to the merits of the principal complaint. Despite the lack of unfavorable remarks in the observation reports made prior to the strike action of October 1974, petitioner knew in September 1974 that her principal and supervisor were seriously concerned about certain facets of her teaching and the conduct of her class. They met with her in conference and a record of that conference was sent to her. (R-1) Thus, later criticisms and the oral notice of January 1975 that her contract would not be renewed (Tr. 15) did not stand alone in isolation as incidents after the strike action but in direct relationship to events which occurred prior thereto. Any attempt to compartmentalize favorable or unfavorable reports must, therefore, fail to be logically attributable to petitioner's participation in the strike. Further, it is clear that petitioner has been afforded all the due process rights to which she is entitled. *Donaldson, supra*

There remains only the procedural argument concerned with whether or not the Board was required to take formal action with respect to the non-rehire of a nontenure teacher. In this regard the hearing examiner observes that the Court in *Donaldson, supra,* commented favorably on the decision of the Commissioner in *George Ruch v. Board of Education of the Greater Egg Harbor Regional High School District, Atlantic County,* 1968 *S.L.D.* 7, dismissed State

You are viewing an archived copy from the New Jersey State Library.

Board of Education 11, aff'd New Jersey Superior Court, Appellate Division, 1969 *S.L.D.* 202 wherein the Commissioner had said:

> "***The Commissioner knows of no statute or rule which requires a board of education to take some *formal action* with regard to the nonrenewal of a probationary contract which has expired.***" (*Emphasis supplied.*) (at 9)

Such dicta has not been altered, as petitioner avers, in its efficacy by *N.J.S.A.* 18A:27-10 either explicitly by statutory direction or by recent interpretations of the statute by the Commissioner. The hearing examiner concludes, therefore, that a firm and final decision by a board of education with respect to the non-reemployment of a nontenure teacher may be made in private session and communicated in written form to the teacher without formal ratification in a public session. Such procedure would appear to be of benefit and not deleterious to the teacher and commensurate with the clear intent of the statutory terms. Accordingly, the hearing examiner recommends that the Motion be granted and the Petition be dismissed.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner and the exceptions pertinent thereto filed by petitioner. Such exceptions are principally directed toward an argument that a local board of education is or should be required to take some kind of formal action with respect to the non-reemployment of a nontenure teacher. Petitioner avers that the issue is whether or not in the context of *N.J.S.A.* 18A:27-10 "***it is incumbent upon a Board of Education to take some sort of formal action whether in private or at a public meeting to nonrenew a nontenured teacher.***" (See also Tr. 113.) At the time of hearing counsel for petitioner also averred that the "formal action" of reference must be one which is also "recorded." (Tr. 99)

At a later time, in a letter to the hearing examiner dated June 10, 1976, counsel maintained that a resolution not to employ a nontenured teacher was required to be "***submitted, voted upon, and passed at a public meeting.***" (Petitioner's Letter of June 10, 1976)

The Commissioner concurs in part and dissents in part with such exceptions. A firm decision of local boards of education is required with respect to the reemployment or non-reemployment of nontenured personnel. Such decision is not required or advised to be made in a public meeting of the board and the names of teaching staff members who will not be reemployed need not be inscribed in the minutes of the board. Indeed, the recommendations of the Commissioner with respect to procedures concerned with the non-reemployment of nontenured teaching staff members have already been set forth at length in *Patricia Bolger and Frances Feller v. Board of Education of the Township of Ridgefield Park, Bergen County,* 1975 *S.L.D.* 93, aff'd State Board of Education 98, aff'd New Jersey Superior Court, Appellate Division, April 21, 1976, Docket No. A-3214-74. Therein the Commissioner said:

You are viewing an archived copy from the New Jersey State Library.

"*** As was previously stated, the intention of the notice statute, *N.J.S.A.* 18A:27-10, is to provide timely written notice to teaching staff members who will not be reemployed for the subsequent academic year. In the judgment of the Commissioner, the requirements of the statute are met when local boards of education decide in public session *or executive conference session* that reemployment will not be offered to certain teaching staff members and directs the school administrator or board secretary to give notification to such teaching staff members in writing of this determination on or before April 30.

"In the instant matter, *the determination made by the Board did not deprive petitioners of any rights or any protection afforded by the school laws.*

"It is the Commissioner's considered opinion that problems regarding staff personnel *should not be discussed by local boards of education in public sessions.* Likewise, when a board discusses recommendations concerning the performance of nontenured teaching staff members with the purpose of determining who shall be offered reemployment, it is in the best interest of the teaching staff members, the board and the entire school system that *such deliberations not be public.* Conversely, when such final determinations have been made, the Commissioner strongly recommends that each local board of education inscribe in the minutes of a special or regular meeting, prior to April 30, that it has made a determination as to which nontenured teaching staff members will not be reemployed for the subsequent year, and that the school administrator or board secretary, as the case may be, has been directed to give a written notice of such determination to each affected teaching staff member prior to April 30. This procedure will ensure that a permanent record exists of the board's efforts to comply with the statutory requirements. The *names* of the teaching staff members who will not be reemployed *need not be inscribed in the minutes,* if the board deems that this might be harmful to the individuals in their efforts to secure employment elsewhere. In any event, a list of the names of those teaching staff members who will not be reemployed, containing the date upon which the board made its determination, should be retained in the files of the board or the school administrator, although not in the official board minutes.***" (*Emphasis supplied.*) (at 96-97)

It is noted that in *Bolger, supra,* as herein, the Board had considered the employment status of petitioners at a conference session of the Board and that thereafter they had been notified by the Superintendent that they would not be reemployed. The same notice was afforded petitioner in the instant matter after the Board's decision had been made (P-7) and thereafter she was afforded reasons in support of the decision and an opportunity for an appearance before the Board.

Here, as in *Bolger, supra,* the Commissioner finds that petitioner has not been deprived "***of any rights or any protection***" afforded by the school

You are viewing an archived copy from the New Jersey State Library.

laws and that there has been substantive compliance with statutory requirements. Accordingly, the Petition is dismissed.

COMMISSIONER OF EDUCATION

February 16, 1977

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, February 16, 1977

For the Petitioners-Appellants, Chamlin, Schottland, Rosen & Cavanagh (Michael D. Schottland, Esq., of Counsel)

For the Respondent-Appellee, Jacob Rand, Esq.

The decision of the Commissioner of Education is affirmed for the reasons expressed therein.

May 4, 1977
Pending before New Jersey Superior Court

**In the Matter of the Tenure Hearing of Harry I. Buch,
School District of the Township of Delanco, Burlington County.**

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Parker, McCay and Criscuolo (William V. Webster, Jr., Esq., of Counsel)

For the Respondent, Sever & Hardt (Ernest N. Sever, Esq., of Counsel)

The Board of Education of the Township of Delanco, hereinafter "Board," has certified a single charge against respondent, its Superintendent of Schools, who has acquired a tenure status in the district under the provisions of *N.J.S.A.* 18A:28-5, alleging that he committed an act of assault and battery upon a Board member. In its certification of the charge to the Commissioner of Education, the

You are viewing an archived copy from the New Jersey State Library.

Board states in its determination that the charge, if found true in fact, warrants dismissal of respondent from his position or a salary reduction. Respondent did not deny that an incident which involved physical contact with Richard W. Stockton, then president of the Board, did occur at an executive session of the Board on July 9, 1975. Subsequently, on October 10, 1975, before a Judge of the Municipal Court of the Township of Delanco, respondent pleaded guilty to being a disorderly person as set forth in *N.J.S.A.* 2A:170-26, which charges that a person committing an assault and battery is a disorderly person. The judgment against respondent was a fine of $100 and $10 court costs. (P-1)

In his Answer to the Petition of Appeal, respondent filed before the Commissioner a counterclaim against Complainant Stockton wherein respondent requested the intervention of the Commissioner to take such steps as might be necessary to curtail the improper activities of Complainant Stockton to achieve the proper operation and administration of the school district by the office of the Superintendent.

A stipulation of certain essential facts was filed by the parties, and testimony and additional documentary evidence was adduced at a hearing conducted on October 31, 1975 at the State Department of Education, Trenton, by a hearing examiner appointed by the Commissioner. Subsequently, each of the parties filed a Brief by April 2, 1976.

The report of the hearing examiner is as follows:

The single charge filed against respondent by the president of the Board in a letter to the Board dated July 14, 1975, states:

CHARGE

"As you are aware, during the Executive Session of the regular meeting of the Delanco School Board on Wednesday, July 9, 1975, Mr. Harry Buch, Superintendent of Delanco Schools, committed a most heinous act of assault and battery upon me without provocation or warning.

"Had it not been for the presence and assistance of those of you who came to my aid I would have sustained more serious injuries than were inflicted.

"This conduct and action cannot now or ever be condoned or justified in our society and certainly is unbecoming conduct of a superintendent.

"I request the Delanco School Board take stringent action concerning this matter."

(Exhibit A – Certification of Charges)

At its regular meeting held on August 13, 1975, the Board adopted a resolution to certify charges to the Commissioner against respondent, without suspension from his regular duties.

You are viewing an archived copy from the New Jersey State Library.

In its argument the Board states that the resolution of the instant matter depends upon an interpretation of the actual facts that occurred on July 9, 1975.

The Board presented the testimony of Complainant Stockton, as well as two members of the Board who witnessed the alleged incident. The testimony of Complainant Stockton with respect to the charge was extensive. The salient points are as follows:

Complainant Stockton testified the Board had recessed its regular monthly meeting to convene in executive session to discuss personnel appointments for the subsequent school year. He said a discussion with respect to the appointment of a sixth grade social studies teacher was continued from the regular meeting to the executive session "***and then a comment from Mr. Candy asked***what was it that the superintendent didn't like about this young lady from Delanco and the superintendent responded and gave his comments***." (Tr. 9) Complainant Stockton stated that the Superintendent then turned to him with a raised fist and "***he looked ashen or white *** and with a great deal of hate in his expression *** he said to me if you tell Mr. Olkiewicz any of this I'll cream you and he put his fist up and waved it and he said I mean with this***." (Tr. 9) Complainant Stockton stated that he told the Superintendent to "shut up" in a calm and moderate voice and felt that the incident was over. Complainant Stockton then detailed the incident in the following testimony:

> "***I then glanced up and I saw the superintendent coming toward me.***He was coming at me with his fist. There was nothing I felt that I could do to protect myself except to be defensive, which I did. When he came at me *** I put my hands up to block his punch and he missed me. His momentum carried him into me. I was seated in the chair and I was in a complete defensive posture. I didn't strike out. When he carried himself into me he was over me and I thought he was going to throw punches at me. So, I tried to defend myself. I didn't realize that he wasn't throwing punches, that he was choking me and I had difficulty breathing and he said to me I've got you now you [expletive deleted] ***." (Tr. 10)

Complainant Stockton continued that he felt himself thrust out of his chair while respondent still had him around the neck and while members of the Board attempted to separate respondent from Stockton. Subsequently, the meeting reconvened with all of those present returning to their original seating arrangement. Complainant Stockton testified that he retrieved his glasses and picked up some papers and returned them to respondent. (Tr. 11) The executive session continued for approximately ten minutes, whereupon the Board returned to the public portion of its regular meeting. (P-3) Complainant Stockton testified that the alleged incident between respondent and himself lasted for approximately fifteen seconds. (Tr. 24)

The two Board members called to testify with respect to the alleged incident of assault and battery, corroborated Complainant Stockton's testimony with only slight variations. (Tr. 30-38, 39-42) At the hearing the Board called other members of the Board, the building principal and the Secretary to the

You are viewing an archived copy from the New Jersey State Library.

Board, all of whom witnessed the alleged incident; however, they did not testify with respect to their observations. (Tr. 42)

The Board asserts that it had presented a *prima facie* case with respect to its charge against respondent. It leaves to the Commissioner the question of what penalty should be imposed upon a tenured superintendent of schools who has committed a physical attack on the president of the board. The Board avers that such conduct cannot be condoned by the Commissioner or the State Board of Education and it requests that an adequate penalty be assessed in this matter in order that a similar occurrence may be prevented.

In his Answer to the charge, respondent acknowledges that there was a brief physical encounter between himself and Complainant Stockton. He avers, however, that the physical encounter occurred only after extreme and extended provocation by complainant and could not be characterized as "a most heinous act of assault and battery." (Respondent's Answer and Counterclaim)

Respondent's Counterclaim alleges, *inter alia,* that:

> "(1) the Complainant, Richard W. Stockton, by a continuous course of constant harassment directed personally at the Respondent, Harry I Buch, attempted to effect the removal of a tenured Superintendent without just cause.
>
> "(2) The Complainant, Richard W. Stockton, willfully, deliberately, maliciously, and with planned intent goaded, humiliated, criticized, ridiculed and embarrassed the Respondent, Harry I. Buch, in order to promote and encourage and bring about an act of desperation on the part of the Superintendent, Harry I. Buch, contrary to his normal character in an effort to effect the removal of the Superintendent because of personal prejudice or otherwise.
>
> "(3) Complainant, Richard W. Stockton, a duly certified teacher in the school district of Riverside, appears to have transferred his hostilities against his own school administration to the administration and staff where he sits as a board member, to the great detriment of the educational system of the Township of Delanco.***"
>
> (Respondent's Answer and Counterclaim)

Respondent asserts that the incident which brought about the physical encounter was the result of proposed teacher employment. The record reveals that two applicants were vying for one teaching position in the district. Respondent had recommended Ms. Joan Becker to the Board as the better qualified individual for the position. A resident of Delanco, Ms. Joanne Olkiewicz, was the unsuccessful candidate for the position. Complainant Stockton presided at the regular monthly meeting held on July 9, 1975. He stated that he followed the Board's custom to provide those citizens in attendance with an opportunity to raise questions with respect to the items which appeared on the agenda.

You are viewing an archived copy from the New Jersey State Library.

The testimony reveals that the father of the unsuccessful candidate for a teaching position, was recognized by Complainant Stockton and proceeded to direct questions to respondent with respect to the educational background and qualifications of Ms. Becker, the successful candidate. (P-3; Tr. 53-54) Respondent testified that Mr. Olkiewicz appeared to have more information than would normally be expected of a community member with regard to a teacher applicant and feared that confidential personnel information had somehow been leaked to him. (Tr. 54)

On cross-examination, Complainant Stockton testified that he had indeed discussed the educational background and qualifications of Candidate Joan Becker with Mr. Olkiewicz on four separate occasions as follows:

Q. "Now, let's see. Getting back to your conversation with Mr. Olkiewicz you indicated that sometime in June he came to your office after office hours. That's one. Now, you said you recall at least four. So, we have three other private conversations. Do you recall where they were conducted, sir?

A. "They were on the phone. They were not a face to face conversation. They were over the phone.

Q. "The other three contacts with Mr. Olkiewicz were by telephone?

A. "Yes, sir.

Q. "Were they calls that you placed?

A. "I called him on one occasion and he had called me on perhaps the other two.

Q. "At any time did you discuss with him the qualifications of any other applicants for that specific job, namely the sixth grade social studies teacher position?

A. "Yes.

Q. "Did you discuss with him the qualifications of one Joan Becker who was an applicant for this same position?

A. "Yes.

Q. "And what did you tell him about Joan Becker's qualifications or application?

A. "My general comment was I felt his daughter had better qualifications than this young lady that was recommended by the superintendent.

Q. "Did you review the academic background of one Joan Becker to Mr. Olkiewicz?

A. "Yes, I had told him some of the schools that she had gone to, yes.***" (Tr. 19-21)

You are viewing an archived copy from the New Jersey State Library.

Respondent testified that he did not know how Mr. Olkiewicz received his information about candidate Joan Becker. (Tr. 56, 63) On examination by the hearing examiner, Complainant Stockton testified that he was aware that Mr. Olkiewicz had information about Candiate Becker when Mr. Olkiewicz questioned respondent at the meeting on July 9, 1975. Complainant Stockton testified further that he had not informed respondent that Mr. Olkiewicz had such information. (Tr. 68)

A member of the Board testified on behalf of respondent and stated that the questions directed to respondent by Mr. Olkiewicz were in the manner of unmerciful badgering and cross-examination. (Tr. 44, 48) It was his opinion that the badgering by Mr. Olkiewicz created the tension which subsequently led to the incident of the physical encounter between respondent and Complainant Stockton. (Tr. 47-48)

The Board member's account of the incident of the physical encounter varied from the testimony of the previous witnesses. He testified, however, that he could not see because of the seating arrangement of the room at the time of the incident (Tr. 46) He testified that as respondent approached Complainant Stockton, Mr. Winkie, a Board member, "***was right behind him, [respondent] and had him by his right hand." (Tr. 45) It was the opinion of the witness that respondent could not have choked complainant while a Board member was holding respondent's hand.

The Board member continued to testify that the incident took approximately fifteen seconds from beginning to end. (Tr. 47) After the incident all returned to their seats and the meeting continued. (Tr. 46)

Respondent testified that the president of the Board, Complainant Stockton, had refused to sign a contract to award Ms. Becker the teaching position on the grounds that the contract failed to stipulate a salary.

Respondent reported that it was the Board's procedure, while collective negotiations with the teachers were in process, to insert a statement on a teacher's contract, "***[salary] to be adjusted at completion of negotiations." (Tr. 55) The purpose of this procedure, he said, was to have the prospective teacher sign a commitment to the Board, before the Board made its commitment to employ. It was respondent's testimony that the Board accepted his recommendation for the employment of a music teacher under such conditions. Complainant Stockton refused to sign the contract of Ms. Becker, however, because it failed to stipulate a salary. (Tr. 55)

The minutes of the regular meeting of the Board held on Wednesday, July 9, 1975, read as follows:

> "***Motion by Mrs. Hamlin seconded by Mr. Candy that Mark Whitehead be hired at the first step of the Master Scale to teach 7 & 8 grade social studies and Joan Becker at the first step of the Bachelor Scale to teach 6 grade social studies. Salaries to be adjusted when negotiations are completed.

You are viewing an archived copy from the New Jersey State Library.

"Roll Call Vote: Yes - Mr. Candy, Mrs. Hamlin,
Mr. Mitchell and Mr. Price.

No - Mr. Lavenberg, Mrs. Mohrmann,
Mr. Queenan, and Dr. Stockton.***" (P-3)

Respondent continued to recite the events of the executive session of July 9, 1975. He stated that a Board member asked him the reasons for not employing Miss Olkiewicz for the social studies position. Respondent testified that since the Board was in executive session, with an understanding that personnel information should not be discussed outside of the executive session, he would state his reasons for not recommending Miss Olkiewicz for employment. He testified that as he stated his reasons to the Board he noted, "***Dr. Stockton was very furiously scribbling on his yellow sheet and the thought occurred to me whatever I'm saying is being taken down to be used against me at some later date by Mr. Olkiewicz.***" (Tr. 56) Respondent stated that it was at this juncture that he told Complainant Stockton, "***if you tell Mr. Olkiewicz this I'll cream you***." (Tr. 56) Respondent testified that when Complainant Stockton stated "***Oh shut up Harry***" he (respondent) had reached his breaking point. (Tr. 56)

During the course of cross-examination respondent testified with regard to the incident of the physical encounter with Complainant Stockton as follows:

Q. "Mr. Buch, you said you reached your breaking point and when you did what did you do?

A. "I went up from my chair. I went over to Mr. Stockton and the chair he was sitting in was a lounge type chair and I leaned forward into the chair. I guess I had both knees up against the chair. I grabbed him by his coat collar or shirt collar. I don't remember which, but I had my forearm across his neck and this arm cocked. I did not hit him. No time did I hit him.

Q. "You're indicating***your left forearm against his neck?

A. "I would assume I might have been choking him, but the chair was low. I was tilted forward. I had him like this.

Q. "What was the interval until Mr. Winkie came and grabbed your right arm that was raised up with a fist?

A. "It seems to me that it was almost immediately, because I didn't get a chance to do anything.

Q. "What were you going to do?

A. "I don't know. I can't answer that." (Tr. 58-59)

You are viewing an archived copy from the New Jersey State Library.

Respondent asserts that he has suffered the extreme mental anguish of a public appearance in municipal court and the imposition of a fine. He asserts his professional reputation has suffered damage that will require him to exert himself to reestablish his reputation and standing because of his error. Respondent states that the Commissioner has held that a municipal court conviction does not, *per se,* trigger an adverse action by the Commissioner. *In the Matter of the Tenure Hearing of William H. Kittell, School District of the Borough of Little Silver, Monmouth County,* 1972 *S.L.D.* 535; *In the Matter of the Tenure Hearing of Patrick Hill, School District of the Township of Pemberton, Burlington County,* 1974 *S.L.D.* 522 Respondent notes in *Hill* that the Board did not suspend respondent from his duties when the charges were certified to the Commissioner, but rather continued respondent as superintendent of schools.

Respondent asserts that Complainant Stockton, the cause of the incident of the physical encounter, is no longer a member of the Board by virtue of his defeat at the polls at the last school election.

Respondent argues that the single incident, which was the entire basis for the charge to be certified to the Commissioner, is the only instance alleged against him in his seventeen years of service with the Board, and there was no evidence that his action had any adverse effect upon the proper operation of the schools of the Township of Delanco.

Respondent avers that there was extreme provocation on the part of Complainant Stockton for the incident of the physical encounter on July 9, 1975. Respondent continues that it has long been recognized that the best interest of the school system, pupils, teaching staff and the community at large, requires that discussion of staff personnel by a board not be held in public. *Barbara Hicks v. Board of Education of the Township of Pemberton, Burlington County,* 1975 *S.L.D.* 322

Respondent maintains that the penalty must fit the offense. In the instant matter he avers the offense was private in nature, unpremeditated, and had no deleterious effect upon the school system or, for that matter, upon the Board which went about its normal business with hardly a break in stride following the incident between respondent and complainant. (P-3) Respondent further asserts that inasmuch as Complainant Stockton sought and achieved his redress in the Municipal Court of the Township of Delanco, further action by the Commissioner would subject respondent to additional penalties simply because he is the Superintendent of Schools.

The hearing examiner finds that the uncontroverted facts in the instant matter are as follows:

1. The Board held its regular monthly meeting on July 9, 1975.

2. Complainant Stockton as the duly elected president of the Board presided at the meeting.

You are viewing an archived copy from the New Jersey State Library.

3. Complainant Stockton permitted a member of the audience to question respondent with regard to personnel matters under consideration by the Board.

4. The Board recessed from its regular meeting, went into executive session and subsequently reconvened the regular monthly meeting on the same night.

5. During the course of the executive session there was a physical encounter between respondent and Complainant Stockton.

6. Subsequent to the physical encounter, the Board certified a single charge against respondent with respect to it.

7. Respondent did enter a plea of guilty to being a disorderly person as set forth in *N.J.S.A.* 2A:170-26 and was fined $100 and $10 court costs by a Judge of the Municipal Court of the Township of Delanco.

The hearing examiner further finds that Complainant Stockton held four private conversations with the father of an unsuccessful candidate for a teaching position in the district and revealed personnel information on those occasions which was generally regarded as confidential. Thereafter, the record shows that Complainant Stockton neglected to inform other Board members of his private conversations while permitting the father of the unsuccessful candidate to use them as the basis for attack on the recommendation of the Superintendent. Such conduct, though not strictly illegal, does attest to a lack of the kind of candor which is a prerequisite to harmonious relationships among members of boards of education. In the judgment of the hearing officer, respondent's reaction, regrettable as it was, was not unprovoked and must be viewed in this context by the Commissioner in determining the penalty, if any, to be imposed.

This concludes the report of the hearing examiner.

* * * *

The Commissioner, having reviewed the report of the hearing examiner and the record in the instant matter, concurs with the findings of fact as set forth therein.

It is clearly established, both by respondent's admission (Tr. 58-59) and by his conviction in a court of competent jurisdiction (P-1), that respondent is guilty of assault and battery upon a member of the Board on July 9, 1975. Respondent's action constituted misconduct sufficient to substantiate the Board's charge of conduct unbecoming a Superintendent. The Commissioner cannot in any sense condone the misconduct demonstrated by respondent in the actions and statements found in the charge sustained wholly or in part against him.

On the other hand, schools cannot operate effectively when individual board members ignore, disobey, or are indifferent to the rules and procedures

You are viewing an archived copy from the New Jersey State Library.

which have been designed for the good order of the school and the welfare and protection of all those individuals associated with the institution. Such misconduct is not tolerated among its employees and pupils, nor can it be tolerated among board members. When Complainant Stockton entered upon his duties as a member of the Delanco Board of Education he did take the official oath of public office as provided in *N.J.S.A.* 18A:12-2.1 and *N.J.S.A.* 41:1-1 *et seq.* Complainant Stockton did swear (or affirm) that he would, "***faithfully, impartially and justly perform all the duties of the office***." (*N.J.S.A.* 41:1-3). In addition to his membership on the Delanco Board of Education, he also became a member of the New Jersey School Boards Association (*N.J.S.A.* 18A:6-45 *et.seq.*) which promulgated a Code of Ethics for the conduct of its members. The New Jersey School Board Member Code of Ethics states, *inter alia,* that:

> "I will recognize that authority rests with the whole board assembled in public meeting and will make no personal promises nor take any private action which will compromise the board."

The Commissioner observes that Complainant Stockton violated his oath of office wherein he was not impartial and just in performing his duties and additionally violated the Code of Ethics by entering into a personal promise and private action without the knowledge of the full Board.

The Commissioner repeats his position with respect to the protection of tenure as previously articulated *In the Matter of the Tenure Hearing of Joseph A. Maratea, Township of Riverside, Burlington County,* 1966 *S.L.D.* 77, aff'd State Board of Education 106, aff'd Docket No. A-515-66 New Jersey Superior Court, Appellate Division, December 1, 1967 (1967 *S.L.D.* 351).

> "***The Commissioner is assiduous to protect school personnel in their employment when they are subjected to unfair or improper attacks or when they are unable to perform effectively because of conditions not of their own making or beyond their control.***" (1966 *S.L.D.* at 106)

The Commissioner observes that respondent's action, however inappropriate, was triggered by the questionable conduct of Complainant Stockton, wherein the Board member discussed and disclosed confidential personnel matters with an individual who was not a member of the Board.

The Commissioner notices in the instant matter that respondent has an unblemished record of performance in his seventeen years of service in the School District of the Township of Delanco. The single incident of this charge is the only clear instance of proven improper conduct by respondent. It must also be noted that there is no evidence that respondent's act was premeditated.

There is no evidence that respondent's action had any pervasive effect on the proper operation of the school, either by influencing or impeding the Board. It is significant that the Board did not keep respondent from his duties when the charge was certified but, rather, permitted him to continue as its chief

You are viewing an archived copy from the New Jersey State Library.

administrative officer until adjudication of the matter. Respondent's action appears to have been a mistake and a misguided impetuous effort to discipline a Board member in an overly forceful and totally improper manner; namely, by lunging at the seated Board member thus causing a physical contact to be made.

The Commissioner notices that respondent has suffered mental anguish of a trial and conviction in Municipal Court, a fine imposed by the Court, and a hearing which could result in the loss of his livelihood. In addition, respondent's professional reputation has been damaged, and he will be required to exert himself to reestablish his reputation and standing because of his lack of discretion.

The Commissioner concludes, after careful scrutiny, that summary dismissal of respondent for this single incident is an unnecessarily harsh penalty and is not warranted. A reduction in salary is the maximum penalty that is appropriate under all the circumstances of this case. The Commissioner holds that sufficient penalty will be effected by such a reduction in respondent's salary and is consonant with the Commissioner's authority to fix such a penalty as determined *In re Fulcomer*, 93 *N.J. Super.* 404 (*App. Div.* 1967).

The Commissioner finds and determines that Harry I. Buch inflicted assault and battery upon a member of the Board in violation of the law. He finds further that the total circumstances of this case do not dictate respondent's dismissal. The Commissioner orders, therefore, that respondent be continued in his tenure status as Superintendent of Schools for the Board of Education of the Township of Delanco, and that he be denied two month's salary for the 1976-77 school year.

COMMISSIONER OF EDUCATION

February 16, 1977

Common Council of the Borough of Hightstown and Council of the Township of East Windsor,

Petitioners,

v.

Board of Education of the East Windsor Regional School District, Mercer County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner Borough of Hightstown, Mason, Griffin & Pierson (Kester R. Pierson, Esq., of Counsel)

You are viewing an archived copy from the New Jersey State Library.

For the Petitioner Township of East Windsor, Warren, Goldberg & Berman (Ronald Berman, Esq., of Counsel)

For the Respondent, Turp, Coates, Essl and Driggers (Henry G. P. Coates, Esq., of Counsel)

This matter is before the Commissioner of Education in the form of a Petition for Reconsideration of the decision of the Commissioner in *Board of Education of the East Windsor Regional School District v. Common Council of the Borough of Hightstown and Council of the Township of East Windsor, Mercer County,* 1976 *S.L.D.* 416 (decided April 29, 1976). The petitioning governing bodies, hereinafter "Councils," allege that there is reason for the Commissioner to modify his April 29, 1976 decision certifying the restoration of $365,790 from local taxation to the 1975-76 budget of the Board of Education of the East Windsor Regional School District, hereinafter "Board." The Board avers that the Petition for Reconsideration is without validity.

The matter is before the Commissioner for Summary Judgment in the form of the pleadings, stipulated facts and Briefs of counsel. The facts are these:

On January 30, 1976, the hearing examiner issued his report in *East Windsor, supra,* recommending, *inter alia,* that the Commissioner restore $133,824 for instructional salaries as part of a total restoration to the Board's 1975-76 budget of $365,790. Exceptions to this request were filed by the parties during February 1976. On March 2, 1976 at the annual school election the voters approved the following public question:

> "Shall the Board of Education of the East Windsor Regional School District raise $87,772 for the purpose of payment of salaries and fringe benefits of nine (9) teachers who were employed by the Board in an emergency situation to maintain equal educational opportunities in the District for [the] 1975-76 school year; the employment having become effective October 6, 1975 and to terminate June 30, 1976?" (Exhibit A)

The certification of this supplemental appropriation was included in the tax rates struck on April 30, 1976.

On April 29, 1976, the Commissioner certified the additional amount of $365,790, as recommended by the hearing examiner, to be raised by local taxation and restored to the current expense portion of the Board's budget. This certification, however, was *not* included in the tax rates struck on April 30, 1976.

Councils argue that, considered *in pari materia,* the Commissioner's decision of April 29 and the voter referendum of March 2 provide for duplicative funding of salaries and fringe benefits for the nine teachers hired on October 6, 1975. Thus, it is argued that since the Board's obligation to pay them is incurred but once, the Commissioner should reduce the amount of his restoration by $87,772 to preclude receipt of that amount as a "windfall" by the Board. In this

You are viewing an archived copy from the New Jersey State Library.

regard, Councils aver that the record before the Commissioner on April 29, 1976, was devoid of information that voter approval had been given to raise $87,772 to compensate the nine teachers.

Councils contend that the Commissioner's determination that an additional $365,790 was necessary for the 1975-76 school year, having been made without knowledge of the voters' approval of $87,772 on March 2, should now be modified. Accordingly, Councils request that the Commissioner order that the amount of his restoration and certification be reduced by $87,772 to $278,018. Councils make no attack upon the raising of the supplementary appropriation of $87,772 approved by the voters on March 2, 1976.

The Board, conversely, contends that the Commissioner's opinion of April 29 was a reasoned decision based on all the then known facts in the record and that it should not be disturbed. In this regard, the Board maintains that certification of the controverted supplemental appropriation was made on March 3 to the Mercer County Superintendent of Schools who serves the Commissioner.

The Board maintains that since the voters approved the supplemental appropriation on March 2, 1976 with full awareness of the defeat of the Board's 1975-76 budget and the appeal before the Commissioner for restoration of funds, any modification of the determination of that appeal would thwart the expressed will of the electorate.

The Board, in conclusion, states in its Brief filed December 6, 1976, that no portion of the voter approved supplemental appropriation of $87,772 has yet been transferred by Councils for its use and that as a result it has been required to incur the interest expense of a loan.

The Commissioner has carefully examined the record and decision of *East Windsor, supra,* the instant pleadings, affidavit, stipulated facts, and arguments set forth in Briefs of counsel. The Commissioner has no predilection or authority to disturb the expressed will of the electorate in approving a supplemental appropriation of $87,772 for nine teachers' salaries for the 1975-76 school year. A review of the record of *East Windsor, supra,* makes it plain that the hearing examiner, although aware of the impending public question, could not have known in January of its approval many weeks later on March 2. (See Tr. II-24-25.) Accordingly, the obligation and action of the hearing examiner was to recommend restoration of the entire amount he found necessary both for instructional salaries and the remaining portions of the budget.

At no time subsequent to March 2, 1976, did either Councils, the Board, the Mercer County Superintendent of Schools, or any other person advise the Commissioner of the voters' approval of the supplemental appropriation of $87,772. Consequently, upon review of the matter, the Commissioner, on April 29, determined that the amount of necessary restoration to the instructional salaries line item, *including that for the aforementioned nine teachers,* was $133,824 and that the entire amount necessary to be restored to the Board's current expense budget was $365,790.

You are viewing an archived copy from the New Jersey State Library.

The Commissioner determines that duplicative funding of salaries and fringe benefits for the nine teachers has resulted by reason of passage of the supplemental appropriation of $87,772 by the voters on March 2 and, through nescience, the inclusion of that same amount in the Commissioner's restoration of April 29, 1976. Such duplicative funding is neither necessary to a thorough and efficient education nor in the public interest. The Commissioner so holds. Nor is the duplicative funding compatible with a harmonious interpretation of statutes and case law. As was said by the Court in *Board of Education of the City of Plainfield v. Plainfield Education Association,* 144 *N.J. Super.* 521 (*App. Div.* 1976):

> "***[T]he authority delegated to an administrative agency should be construed so as to permit the fullest accomplishment of the legislative intent. *Cammarata v. Essex Cty. Park Comm'n,* 26 *N.J.* 404, 411 (1958). Moreover, when construing a statutory enactment it is fundamental that the general intention of the act controls the interpretation of its parts. *Hackensack Water Co. v. Ruta,* 3 *N.J.* 139, 147 (1949). All statutory provisions are to be related and effect given to each if such be reasonably possible. *Jamouneau v. Harner,* 16 *N.J.* 500, 513 (1954).***" (at 524)

An examination of the official audit of the Board's records of June 30, 1976 (at pp. 14, 53) reveals, *inter alia,* under Accounts Receivable, the following anticipated revenue from local tax levy:

Voters Supplemental Appropriation for Salaries	$ 87,772
Restoration by the Commissioner	365,790
Total	$453,562

It is further revealed that the Board's current expense free balance of $30,110 on June 30, 1975 increased on June 30, 1976 to $618,990, of which $45,400 was appropriated to revenue in the 1976-77 budget.

In consideration of the above findings, the Commissioner determines that the controverted funding of the nine teachers salaries, being duplicative, must be adjusted. Accordingly, it is determined that the April 29, 1976 restoration by the Commissioner of $365,790 must be reduced by $87,772 to $278,018.

Consistent with this determination, the Mercer County Board of Taxation is directed to disregard the Commissioner's April 29, 1976 certification of additional current expense appropriations in the amount of $365,790. Instead, in addition to Councils' original certification of $6,378,658 for current expenses, the additional sum of $278,018 must be added, so that the total tax levy for current expenses for the East Windsor Regional School District for the 1975-76 school year shall be $6,656,676.

Finally, the Commissioner directs the Board to apply for and Councils to transfer to the Board such funds from the aforementioned $87,772 as have been raised by tax levy to date pursuant to the voter approved supplemental

You are viewing an archived copy from the New Jersey State Library.

appropriation in the event they have not yet been transferred to the Board. *Board of Education of the Borough of Fair Lawn v Mayor and Council of the Borough of Fair Lawn,* 143 *N.J. Super.* 259 (*Law Div.* 1976)

COMMISSIONER OF EDUCATION

February 16, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Borough of Oakland,

Petitioner,

v.

Mayor and Council of the Borough of Oakland, Bergen County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Parisi, Evers & Greenfield (Irving C. Evers, Esq., of Counsel)

For the Respondent, Losche & Losche (Kent A. Losche, Esq., of Counsel)

Petitioner, the Board of Education of the Borough of Oakland, hereinafter "Board," appeals from an action of the Mayor and Council of the Borough of Oakland, hereinafter "Council," taken pursuant to *N.J.S.A.* 18A:22-37, certifying to the Bergen County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The facts of the matter were adduced at a hearing conducted on November 29, 1976 at the State Department of Education, Trenton, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

At the annual school election held March 9, 1976, the Board submitted to the electorate proposals to raise $3,441,090 by local taxation for current expenses and $7,445 for capital outlay costs of the school district. These items were rejected by the voters and, subsequent to the rejection, the Board submitted its budget to Council for its determination of the amounts necessary for the operation of a thorough and efficient school system in the Borough of Oakland for the 1976-77 school year, pursuant to the mandatory obligation imposed on Council by *N.J.S.A.* 18A:22-37.

After consultation with the Board, Council made its determinations and certified to the Bergen County Board of Taxation an amount of $3,223,490 for current expense and $5,045 for capital outlay. The pertinent amounts in dispute are as follows:

	Current Expense	Capital Outlay
Board's Proposal	$3,441,090	$7,445
Council's Proposal	3,223,490	5,045
Amount Reduced	$ 217,600	$2,400

You are viewing an archived copy from the New Jersey State Library.

The Board contends that Council's action was arbitrary, unreasonable, and capricious and documents its need for restoration of the reductions recommended by Council with written testimony and a further oral exposition at the time of the hearing. Council maintains that it acted properly and after due deliberation and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system. Council also supports its position with written and oral testimony. As part of its determination, Council suggested specific line items of the budget in which it believed economies could be effected as follows:

CHART I

Account Number	Item	Board's Proposal	Council's Proposal	Amount Reduced
CURRENT EXPENSE:				
J100 Series	Sal., Adm.	$ 166,049	$ 158,908	$ 7,141
J200 Series	Sal., Instr.	3,078,761	2,980,424	98,337
J400 Series	Sal., Health Servs.	86,591	84,491	2,100
J600 Series	Operation of Plant	–	–	(5,603)*
J700 Series	Maint. of Plant	85,570	85,370	200
J810A	Tchrs. Pension Fund	99,425	–0–	99,425
J870	Fixed Charges	119,500	105,500	14,000
J1000 Series	Student Body Activs.	16,295	14,295	2,000
	TOTALS	$3,652,191	$3,428,988	$223,203
				(5,603)*
				$217,600

*Council recommended an increased expenditure in the amount shown.

CAPITAL OUTLAY:			
L1200 Series - Bldg. Alterations	$9,445	$7,045	$2,400

An analysis of the reductions made by the governing body and the findings and recommendations of the hearing examiner are as follows:

J100 Series
J200 Series
J400 Series

These line items represent salaries for administration, instruction, and health services which are encompassed by a salary policy pursuant to *N.J.S.A.* 18A:29-4.1 and, therefore, must be funded. The Board concedes that it can absorb a $4,000 reduction in the J200 series because no leaves of absence were authorized this school year.

The hearing examiner recommends that $7,141 be restored in the J100 series. that $2,100 be restored to the J400 series and that a $4,000 reduction be effected in the J200 series.

You are viewing an archived copy from the New Jersey State Library.

J870 - Fixed Charges
L1200 Series

The Superintendent testified that the Board now finds that these expenditures are not absolutely necessary; therefore, the hearing examiner recommends that Council's reductions be sustained.

J700 Series
J1000 Series

The reductions in these line items were nominal when the entire series was considered. Further, the Board offered no compelling evidence that a thorough and efficient education in the district would be impaired if these reductions were sustained.

The hearing examiner recommends that Council's reductions be sustained.

J810A Teachers' Pension Fund

The Commissioner observes that the governing body states its intention that its reduction equal the amount budgeted for an anticipated expenditure for a twenty-five percent local share of the employer's contribution to the Teachers' Pension and Annuity Fund. The Commissioner further observes that the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, provides for an automatic reduction of the proposed TPAF expenditure. If Council's reduction were allowed to stand, the result would be a dual reduction. Accordingly, the Commissioner must restore Council's reduction in this line item.

A recapitulation follows:

CHART II

Account Number	Item	Amount of Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
J100 Series-Sal., Adm.		$ 7,141	$ 7,141	$–0–
J200 Series-Sal., Instr.		98,337	94,337	4,000
J400 Series-Sal., Health Servs.		2,100	2,100	–0–
J600 Series-Operation of Plant		(5,603)*	–	–
J700 Series - Maint. of Plant		200	–0–	200
J810A Tchrs. Pension Fund		99,425	99,425	–0–
J870 Fixed Charges		14,000	–0–	14,000
J1000 Series-Student Body Act.		2,000	–0–	2,000
TOTALS		$223,203 (5,603)* $217,600	$203,003	$20,200

*See notation, Chart I.

CAPITAL OUTLAY:			
L1200 Series-Bldg. Alterations	$2,400	–0–	$2,400

You are viewing an archived copy from the New Jersey State Library.

In summary the hearing examiner recommends that $203,003 be restored to the budget for expenditures during the 1976-77 school year as shown, and that $20,200 in reductions be sustained. The hearing examiner further recommends that the recommended reduction of $2,400 in line item L1200, Building Alterations, be sustained.

The Commissioner's records in the Division of Administration and Finance show that the school district is eligible for $427,074, now available as unbudgeted State aid. The hearing examiner recommends that the restoration of moneys be effected through available State aid. No additional tax certification is required if these recommendations are adopted by the Commissioner.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner and has been informed that counsel have verbally waived the filing of a hearing examiner's report. The Commissioner hereby adopts the report of the hearing examiner as his own.

The Commissioner finds it necessary to restore $203,003 to the Board's budget so that the State's mandate to provide a thorough and efficient system of public schools may be met. *Board of Education of East Brunswick v. Township Council of East Brunswick,* 48 *N.J.* 94 (1966) The Commissioner directs that this restoration be made with available unbudgeted current expense State aid so that no additional certification of taxes will be required for this school year. The adjustments required in accordance with *c.*113, *L.*1976 accomplished the reduction of the proposed TPAF expenditure, which was the stated intention of the governing body. There will be no restoration of unbudgeted capital outlay moneys.

COMMISSIONER OF EDUCATION

February 17, 1977
Dismissed State Board of Education July 6, 1977
Pending New Jersey Superior Court

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Borough of Island Heights,

Petitioner,

v.

Mayor and Council of the Borough of Island Heights, Ocean County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

Petitioner, the Board of Education of the Borough of Island Heights, hereinafter "Board," appeals from an action of the Mayor and Council of the Borough of Island Heights, hereinafter "Council," taken pursuant to *N.J.S.A.* 18A:22-37 certifying to the Ocean County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The matter is referred directly to the Commissioner of Education for adjudication on the record including the pleadings and exhibits filed by the parties in support of their respective positions. The facts of the matter are these:

At the annual school election held March 9, 1976, the Board submitted to the electorate a proposal to raise $284,061 by local taxation for current expense costs of the school district. This item was rejected by the voters and subsequently the Board submitted its budget to Council for its determination of the amount necessary for the operation of a thorough and efficient school system in Island Heights for the 1976-77 school year, pursuant to the mandatory obligation imposed on Council by *N.J.S.A.* 18A:22-37.

After consultation with the Board, Council made its determination and certified to the Ocean County Board of Taxation an amount of $279,261 for current expense, a reduction of $4,800 from the amount originally proposed by the Board.

The Commissioner observes that Council's reduction is intended to eliminate the following line items:

J910	Salaries for Food Services	$3,700
J930	Deficit-Food Service Account	1,100
	Total	$4,800

The Commissioner notices that Council's action with respect to its reduction was grounded upon the refusal of the New Jersey Superior Court, Chancery Division, Honorable Thomas L. Yaccarino, J.S.C. to issue a Preliminary Order on April 9, 1976 (C-1) by which the Board would have been required to continue its school lunch program. Consequently, Council reasoned that the Board had no educational need for these funds.

Judge Yaccarino did enter an Order (C-2) on August 4, 1976 which

You are viewing an archived copy from the New Jersey State Library.

declared the statute, *N.J.S.A.* 18A:33-5, unconstitutional; severed it from *N.J.S.A.* 18A:33-4 which requires school lunch to be made available to all pupils attending public schools in this State; and ordered the Board to make school lunches available to its pupils.

Consequently, the Board has established its need for the $4,800 reduction imposed on its current expense proposal by Council.

The Commissioner finds that the amended audit report (C-4A) of the Board's financial accounts for 1975-76 discloses that the amount of $28,019 remains as an unappropriated current expense free balance. This amount, while not substantial in relation to the total gross budget of the Board, is sufficient to offset the amount controverted herein. Accordingly, the Board of Education of the Borough of Island Heights is hereby directed to appropriate the additional amount of $4,800 from its unappropriated current expense free balance in order to implement its obligation to provide its pupils with a school lunch program consistent with law.

In all other respects, the Petition of Appeal is dismissed.

COMMISSIONER OF EDUCATION

February 17, 1977

Kenneth Ludviksen,

Petitioner,

v.

Board of Education of North Arlington, Bergen County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Kenneth Ludviksen, *Pro Se*

For the Respondent, Glen T. Leonard, Esq.

Petitioner, a citizen resident of North Arlington, requests the North Arlington Board of Education, hereinafter "Board," to admit him to North Arlington High School by accepting his transfer from Southern Regional High School. Petitioner is twenty-five years of age. The Board avers that it has no responsibility to accept petitioner as a full-time day pupil at North Arlington High School.

You are viewing an archived copy from the New Jersey State Library.

Cross-Motion for dismissal was made by the Board and oral argument on the matter was held at the State Department of Education, Trenton, on October 20, 1976.

Petitioner requests that the Board accept his transfer from Southern Regional High School (P-1) to enable him to be a continuing full-time pupil in the North Arlington school system. (Petition of Appeal) Petitioner contends that having been enrolled in Southern Regional High School makes him a member of the New Jersey public school system and perforce the Board should not have denied him an opportunity to complete his high school education. (Tr. 49)

Petitioner expresses a sincere desire to continue school and complete his high school education, interrupted as it was by his managership of several businesses in his prior residence (Tr. 5) and subsequent duress generated by a conflict between earning a livelihood and school attendance. (P-3) He stresses his sincerity of purpose as a respectable citizen of North Arlington, with good habits. (Petition of Appeal) He further emphasizes this sincerity by enumerating other individuals and agencies he has contacted. (Tr. 50)

Additionally, petitioner contends that courses at night school lack sufficiency of content to meet his needs. (Tr. 39) He decries the refusal of the Board to grant him a hearing in light of the Board's prior admittance to high school of an alleged similarly situated pupil. (Tr. 23)

The Board contends that pursuant to *N.J.S.A.* 18A:38-4 it has sole discretion to admit or deny petitioner's application to attend North Arlington High School and in the proper exercise of that discretion refuses to grant petitioner's application for good and sufficient reason. (Board's Answer; P-1)

The Board admits the prior enrollment of an adult pupil but alleges disparate circumstances governed this enrollment. (Tr. 30) The Board further points to its consistent adherence to the policy of the past ten years of not admitting adult pupils. (Tr. 28) The Board also contends that petitioner can complete his high school education by adequate alternatives (Tr. 30) and expresses concern regarding the disparate ages of petitioner and regular high school pupils. (Tr. 29) Petitioner argues that when he first applied to North Arlington High School it was on split session and he would have attended with the older group. (Tr. 45)

The Commissioner observes that petitioner has passed the age where the statutes require that he be given a free public school education. *N.J.S.A.* 18A:38-1 reads in part as follows:

> "Public schools shall be free to the following persons over five and under 20 years of age:
>
> "(a) Any person domiciled within the school district***."

Thus, the intent of the Legislature is clear and apparent but is still further buttressed by *N.J.S.A.* 18A:38-4 herewith set down in its entirety:

You are viewing an archived copy from the New Jersey State Library.

> "The public schools of any district shall be free also to such persons, over the age of 20 years, who, except for age, would be entitled to free education in the district, as the board of education of the district shall determine."

It is evident to the Commissioner that the Legislature clearly defined in *N.J.S.A.* 18A:38-1 the span of years during which a free public school education is mandated for a properly domiciled resident. It is also evident that the Legislature in *N.J.S.A.* 18A:38-4 empowered boards to consider free education for such persons, over the age of 20 years, as the board of education shall determine.

The Commissioner holds that such language clearly gives a local board of education discretionary authority in considering the entrance to the public schools of its district of persons over the age of 20 years. Such determinations must be reached in light of the circumstances surrounding the application of each individual as related to prevailing conditions in the school district.

The Commissioner has previously said in *Boult and Harris v. Board of Education of the City of Passaic,* 1939-49 *S.L.D.* 7 (1946), aff'd State Board of Education 15, 135 *N.J.L.* 329 (*Sup. Ct.* 1947), aff'd 136 *N.J.L.* 521 (*E.& A.* 1948):

> "***[I]t is not the function of the Commissioner***to substitute his judgment for that of the board members on matters which are by statute delegated to the local boards.***" (at 13)

The Commissioner notices, however, that the Board did not grant a hearing to petitioner and avers that the basic tenets of fair play and due process would emphasize the exigency of such a hearing. He therefore directs the Board to accord petitioner an opportunity to be heard in his attempts to persuade the Board to agree with his request. To this limited extent the Commissioner remands the proceeding to the Board, but in all other respects the Board's Motion for Dismissal is granted.

COMMISSIONER OF EDUCATION

February 22, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Borough of Lawnside,

Petitioner,

v.

Mayor and Council of the Borough of Lawnside, Camden County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Theodore Z. Davis, Esq.

For the Respondent, Joseph Tomaselli, Esq.

Petitioner, the Board of Education of the Borough of Lawnside, hereinafter "Board," appeals from an action of the Mayor and Council of the Borough of Lawnside, hereinafter "Council," taken pursuant to *N.J.S.A.* 18A:22-37, certifying to the Camden County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The matter is referred directly to the Commissioner of Education for adjudication on the record, including the pleadings and documentary evidence of the parties in support of their respective positions.

At the annual school election held March 9, 1976, the Board submitted to the electorate a proposal to raise $655,202 by local taxation for current expense costs of the school district. This item was rejected by the voters and subsequently the Board submitted its budget to Council for its determination of the amounts necessary for the operation of a thorough and efficient school system in Lawnside for the 1976-77 school year, pursuant to the mandatory obligation imposed on Council by *N.J.S.A.* 18A:22-37.

After consultation with the Board, Council made its determinations and certified to the Camden County Board of Taxation an amount of $614,449 for current expenses, a reduction of $40,753 from the amount proposed by the Board.

The Board contends that Council's action was arbitrary, unreasonable, and capricious and documents its need for restoration of the reductions recommended by Council with its written testimony. Council maintains that it acted properly and after due deliberation and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system. Council also supports its position with written testimony. As part of its determination, Council suggested specific line items of the budget in which it believed economies could be effected as follows:

You are viewing an archived copy from the New Jersey State Library.

Account Number	Item	Reduction
CURRENT EXPENSE:		
J213	Sal., Tchrs.	$ 11,000
J213	Tchrs. Aides	9,010
J240	Tchng. Supls.	2,000
J250B	Oth. Exp., Prin.	300
J250C	Misc. Exp.	700
J510	Field Trips	3,000
J660D	Misc. Exp.	1,000
J720	Contr. Servs.	1,000
J810A	TPAF	12,243
J850	Fixed Costs	500
	TOTAL	$ 40,753

The Commissioner observes that as part of its total reduction, Council reduced the amount of $12,243 the Board had budgeted for an anticipated expenditure for a twenty-five percent local share of the employer's contribution to the Teachers' Pension and Annuity Fund. The Commissioner further observes that the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, particularly section 3, paragraphs a, b and c, has provided the following adjustments to the Board's proposed 1976-77 school budget as a total current expense budget for the district:

Proposed Current Expense Expenditures		$ 1,104,105
Less Proposed TPAF Expenditure		12,243
	Subtotal	$ 1,091,862
Reduction by Governing Body		40,753*
Adjusted 1976-77 School Budget		$ 1,051,109

*Includes proposed TPAF Expenditure

It may be seen that the adjustments required in *c.*113, *L.*1976 accomplished the reduction of the proposed TPAF expenditure, which was the stated intention of the governing body. The Commissioner observes that the result is a dual reduction of the amount intended for reduction by the governing body.

There appears no necessity to deal *seriatim* with each of the areas in which Council recommended reduced expenditures. As the Commissioner said in *Board of Education of the Township of Madison v. Mayor and Council of the Township of Madison, Middlesex County,* 1968 *S.L.D.* 139:

> "***The problem is one of total revenues available to meet the demands of a school system***. The Commissioner will indicate, however, the areas where he believes all or part of Council's reductions should be reinstated. It must be emphasized, however, that the Board is not bound to effect its

You are viewing an archived copy from the New Jersey State Library.

economies in the indicated items but may adjust its expenditures in the exercise of its discretion as needs develop and circumstances alter.***"
(at 142)

The Commissioner has reviewed the documentation and the arguments of the parties in support of their positions with respect to the current expense reductions to the 1976-77 school budget presented to the voters of the Lawnside School District. The Commissioner finds that the line item reductions totaling $40,753 effected by the governing body in the current expense budget cannot be sustained in view of the needs set forth by the Board to implement a thorough and efficient program of education for its pupils during the 1976-77 school year.

Accordingly the Commissioner authorizes that the amount of $40,753 previously reduced from the Board's 1976-77 current expense budget be restored in that amount from the portion of unbudgeted State aid available to the school district for such purposes.

This authorization has no effect upon the local school tax levy in the Borough of Lawnside.

COMMISSIONER OF EDUCATION

February 22, 1977

John Gregg,

Petitioner,

v.

**Board of Education of the
Camden County Vocational and Technical School District,
Camden County,**

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Ruhlman and Butrym (Edward J. Butrym, Esq., of Counsel)

For the Respondent, Hyland, Davis & Reberkenny (William C. Davis, Esq., of Counsel)

Petitioner, a tenured teaching staff member in the employ of the Board of Education of the Camden County Vocational and Technical School, hereinafter

You are viewing an archived copy from the New Jersey State Library.

"Board," alleges that the Board illegally withheld a salary increment due him for the 1975-76 academic year. He requests restoration of the increment by the Commissioner of Education. The Board denies that petitioner's increment was withheld illegally and maintains that its controverted action was properly taken as an exercise of discretion pursuant to law.

The dispute is submitted to the Commissioner on the Board's Motion to Dismiss the Petition of Appeal and on Briefs. The primary facts necessary for consideration of the Motion are not in dispute.

Petitioner is a tenured teacher, with long service in the employ of the Board, who in the 1975-76 academic year was at the fifteenth or maximum step of the Board's salary guide for teachers with a bachelor's degree. His salary for the year was $14,090.

On April 17, 1975, the Board acted at a regular meeting to establish the employment status of petitioner, and thirty-six other teachers, for the 1976-77 academic year and did approve his employment "***with full salary increment***" for such year. (PR-1) Thereafter, however, there arose an incident between petitioner and school administrators wherein it is alleged he refused to perform a work assignment and, on June 26, 1975, the Board did consider such alleged refusal. After consideration the Board moved by resolution to withhold the salary increment which it had approved in April and petitioner was notified of the action by the Superintendent of Schools. Neither the April approval nor the June resolution set forth a specific dollar amount with respect to the increment since the applicable salary scale for the 1975-76 academic year had not been established and was not finally negotiated and adopted until January 14, 1976.

In the interim between the Board's resolution of June 26, 1975 to withhold petitioner's increment and January 14, 1976, when a new salary scale was adopted retroactive to September 1, 1975, petitioner took no action to appeal the Board's decision. No grievance was filed and he did not appeal to the Commissioner.

Subsequent to the January salary guide adoption, petitioner did file a grievance on March 12, 1976, which was rejected by school administrators as untimely in the context of the Board's grievance policy. Thereafter, petitioner filed the instant Petition on May 17, 1976, a period of approximately eleven months from the Board's action of June 26, 1975. Such Petition alleges not only that the salary increment was illegally withheld for the 1975-76 academic year, but also that petitioner's salary level for 1976-77 was incorrectly and illegally established.

The facts with respect to salary paid or being paid to petitioner in the three year period here in question may be set forth succinctly in the context of applicable salary guides: (PR-3)

You are viewing an archived copy from the New Jersey State Library.

Year	Petitioner's Salary	Guide Step for Years of Experience
1974-75	$14,090	$14,090 (Step 15)
1975-76	$14,090	$15,050 (Step 12)
1976-77	$15,050	$15,550 (Step 12)

It is observed that the established salary for petitioner in the 1976-77 year was the maximum step of the prior year's guide but that the guide for 1976-77 contains no such salary level. Similarly, petitioner's salary for the 1975-76 year is one which does not appear in the guide and is in fact $210 below the salary level established at the eleventh step as applicable to that year. (PR-3)

The issues developed from such facts were set forth at the conference of counsel as:

1. Whether the Board's action in April 1975 to grant petitioner's salary increment for the school year 1975-76 was a final act which could not be set aside except pursuant to the statutory prescription of *N.J.S.A.* 18A:28-5 and

2. The issues of laches as applicable to the filing of the Petition in May 1976.

The Board maintains that petitioner's salary was not reduced in June 1975 since, in the absence of a salary agreement, it was not definitively established in April 1975 and that therefore the provisions of *N.J.S.A.* 18A:28-5 which prohibit the reductions of salary except in the prescribed manner are not applicable. In its Brief the Board cites decisions of the Commissioner and the Courts in support of this contention. *Marion S. Harris v. Board of Education of Township of Pemberton, Burlington County,* 1939 *S.L.D.* 164; *Robert Anson et al. v. Board of Education of the City of Bridgeton, Cumberland County,* 1972 *S.L.D.* 638; *Agnes D. Galop v. Board of Education of the Township of Hanover, Morris County,* 1975 *S.L.D.* 358, aff'd State Board of Education 366 and *Kopera v. West Orange Board of Education,* 60 *N.J. Super.* 288, 297 (*App. Div.* 1960). The Board further avers that even assuming, *arguendo,* that the salary of petitioner for the 1975-76 year was "fixed" by the Board's action of April 17, 1975, the latter action of June 26, 1975, must be viewed as one "***prompted solely and entirely by petitioner's disruptive and insubordinate conduct***" and as a proper cause for re-evaluation and correction. (Board's Brief, at p. 12) The Board also avers that there is no requirement in law that a local board of education must restore a withheld salary increment in a future year and it cites *N.J.S.A.* 18A:29-14 wherein it is provided that:

> "***It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment."

Finally the Board invokes the equitable doctrine of laches as a bar to petitioner's claim and cites *Dorothy L. Elowitch v. Bayonne Board of Education, Hudson County,* 1967 *S.L.D.* 78, aff'd State Board of Education 86, as the basis for such invocation.

You are viewing an archived copy from the New Jersey State Library.

Petitioner disputes this latter claim of the Board on the basis of an argument that passage of time alone is not sufficient reason for an application of laches and he cites *Arthur Ringele v. Board of Education of the City of Garfield, Bergen County,* 1975 *S.L.D.* 261; *Howard J. Whidden v. Board of Education of the City of Paterson, Passaic County,* 1976 *S.L.D.* 356, modified Docket No. A3305-75, New Jersey Superior Court, Appellate Division, January 28, 1977; and *Philip Fischer et al. v. Board of Education of the Township of Woodbridge, Middlesex County,* 1965 *S.L.D.* 40. He defends the delay because of the fact that the amount of reduction in petitioner's salary was not finally delineated until January 1976 and avers it was only then "***that petitioner initially experienced the effects of the board's action.***" (Petitioner's Brief, at p. 8) Petitioner's primary argument is that the Board's action of April 17, 1975, was a "final act" from which the Board could not withdraw as it resolved to do on June 26, 1975. He avers that the Commissioner has consistently held that even administrative error poses no reason for a reduction in the salary of a tenured employee "***once it is fixed by proper resolution.***" (Petitioner's Brief, at p. 5) He cites in support of such avowal *James Docherty v. Board of Education of West Paterson, Passaic County,* 1967 *S.L.D.* 297; *Galop, supra,* and *Harris, supra.* Petitioner also avers that even assuming, *arguendo,* that the Board had proper cause for withholding an increment from petitioner for the 1975-76 year the penalty was "compounded" by its placement of him on a salary level appropriate only to the 1974-75 salary guide ($14,090) and compounded additionally by placing his salary for the 1976-77 year at a level specifically set forth only in the 1975-76 guide (PR-3) ($15,050).

The Commissioner has reviewed all such facts and arguments and observes that the principal thrust of this Petition is not concerned with the merits of the reasons which impelled the Board to act as it did on June 26, 1975 to withhold petitioner's increment. The thrust is, instead, that the Board had already committed itself in April 1975 to a course of action with respect to the increment and that such commitment could not be reversed for cause in June. Thus, if the argument were to be given effect there could be only one categorization of alleged delinquencies subsequent to April 1975; namely, an application of them to the next succeeding academic year of 1976-77, since it can hardly be argued that actions of employees during the months of May or June are exempt from scrutiny by boards of education. Stated differently, absent a denial of the merits of the Board's action, such action was a proper exercise of discretion pursuant to law (*N.J.S.A.* 18A:29-14; *Kopera, supra*) but a question remains, namely, to which year should the action have been made applicable? Petitioner maintains it was barred in the 1975-76 year, but such avowal cannot be logically held, even if sustained, to remove the alleged infraction as the causative factor in a withholding of increment for 1976-77.

The Board, through petitioner's silence in the approximately eleven month period from June 1975 to May 1976, was led to believe petitioner acquiesced in the action of June for reasons he understood, and there was no necessity for review of the legal ramifications which are raised at this juncture. Nor, the Commissioner finds, is there any such necessity now since delay in the application of the Board's discretion would only further complicate the matter. Petitioner is barred by long inaction from raising issues which might

You are viewing an archived copy from the New Jersey State Library.

appropriately have been raised in the summer of 1975. As the Commissioner said in *Elowitch v. Bayonne, supra,* when also confronted with a delay of approximately eleven months in the filing of a claim against a local board:

> "***[P]etitioner's delay in making an effective protest and respondent's reasonable inference therefrom has caused sufficient detriment to respondent to warrant a finding of laches. Irreparable harm to the educational program, and hence to the welfare of pupils, results when professional staff members, and the appointing board cannot feel reasonably secure against interruption by a long-delayed challenge such as appears herein.***" (1967 *S.L.D.*, at 85-86)

The finding herein is the same.

There remains, however, the matter of petitioner's placement upon the salary guide applicable for the 1976-77 academic year and in this regard the Commissioner finds for petitioner. Although petitioner's salary for the 1975-76 year could be maintained at the prior level pursuant to law (*N.J.S.A.* 18A:29-14), the Commissioner can find no justification for the establishment of a salary level for 1976-77 which is outside the Board's salary guide and foreign to it. Accordingly, the Commissioner determines that petitioner's salary for the 1976-77 year shall be that to which he is entitled in terms of academic training and experience; namely, $15,550. The Commissioner directs that the compensation be set at this level.

In all other respects the Motion is granted and the Petition dismissed.

COMMISSIONER OF EDUCATION

February 25, 1977

You are viewing an archived copy from the New Jersey State Library.

Arthur Barber,

Petitioner,

v.

Board of Education of the Town of Kearny, Hudson County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Goldberg, Simon & Selikoff (Theodore M. Simon, Esq., of Counsel)

For the Respondent, Koch and Koch (Calvin S. Koch, Esq., of Counsel)

Petitioner, a teaching staff member who has acquired a tenure status in the employ of the Board of Education of the Town of Kearny, hereinafter "Board," alleges that the Board abused its discretion and subjected him to invidious discrimination by refusing to appoint him to a teaching position in its 1975 special education summer school program. Petitioner seeks to recover the amount of $1,300 which he would have received had he been so employed. The Board denies the allegation and has filed a Motion to Dismiss for failure of the Petition of Appeal to state a cause of action upon which the Commissioner of Education may grant relief.

The Motion to Dismiss is before the Commissioner for adjudication on the record, including the pleadings, affidavits executed on behalf of the parties, and petitioner's Brief in opposition to the Motion.

The essential allegations of the Petition, as subsequently amended, are these. Petitioner is a full-time physical education teaching staff member in the employ of the Board. He applied for the position of physical education teacher of special education pupils in the Board's 1975 special education summer school program. Petitioner complains in his executed affidavit (P-1) that, notwithstanding the fact the Superintendent of Schools, the director of special services, and the director of summer school programs recommended him for such position, the Board elected to appoint another candidate who enjoyed less seniority in the Board's employ and had less teaching experience than petitioner. Petitioner asserts that the Board refused to appoint him to its summer school program in retaliation for his successful prior litigation against it in the matter entitled *Arthur Barber and Barry Kelner v. Board of Education of the Town of Kearny, Hudson County,* 1975 *S.L.D.* 58. Petitioner asserts that such retaliatory action taken against him constitutes an abuse of Board discretion and prays that the matter proceed to a plenary hearing so that he may prove the validity of his allegations.

The Board moves for dismissal supported by its verified Answer and affidavits (R-1 through R-6) executed by its seven members and its

You are viewing an archived copy from the New Jersey State Library.

Superintendent. The Board asserts that when the position of physical education teacher for its 1975 special education summer school was posted pursuant to Article XVII of its policy, several applications were received. The Board asserts that the Superintendent screened the applications and determined that two of the candidates, one of whom was petitioner, had the necessary experience in physical education for the position. The other candidate was subsequently appointed to the position. (Board's Answer, at p. 3) The Board contends that of the two candidates, its appointee had been engaged in teaching physical education to special education pupils during the 1974-75 academic year. Petitioner had taught physical education during 1974-75, but not to special education pupils.

The Superintendent attests in his affidavit that he recommended petitioner to the Board for appointment to the position on June 16, 1975, based on his "***seniority and my opinion that his teaching performance has been most satisfactory." (R-6) The Board rejected this recommendation and the Superintendent then recommended the second teacher. The Board approved the appointment of the second teacher to its special education summer school program. (Board's Answer, at pp. 3-4) The Board states that petitioner's nomination was not approved because the successful candidate was more qualified for the position by virtue of his preceding year's experience as a physical education teacher for special education pupils and by virtue of the fact he had nine credits in special education courses, while petitioner had only three such credits. Furthermore, the Board contends that the pupils involved in its summer school program were the same pupils involved in its regular special education program during the 1974-75 academic year and would best be served by the person who taught them during that regular academic year. The Board asserts that petitioner, on the other hand, had not been assigned as a physical education teacher for special education pupils since 1971. (Board's Answer, at pp. 4-5) Finally, the Board contends that its selection of the second teacher over petitioner for appointment to the position is consistent with its guidelines for appointments to summer school positions as set forth in Article XVII of its policy, which reads in pertinent part as follows:

> "A. All openings for positions in the adult evening school, summer school, if any, home teaching, federal projects, and other programs (including non-teaching positions for which teachers may be qualified and eligible) shall be adequately publicized by the Superintendent in accordance with the procedure for publicizing promotional vacancies, set forth in Article XVI, Section B of this Agreement. Summer School, if any, and adult evening school openings shall be publicized not later than June 1 and September 15, respectively, and teachers shall be notified of the action taken not later than June 15 and October 1. Home teaching openings shall be posted as they occur.
>
> "B. In filling such positions, consideration shall be given to a teacher's area of competence, major and/or minor field of study, quality of teaching performance, attendance record, and length of service in the Kearny School District; and when all other factors are substantially equal, preference shall be given first to teachers who have taught the subject area

You are viewing an archived copy from the New Jersey State Library.

and/or grade level in question during the regular school year and then to teachers who have taught the grade and/or subject in question on a regular basis at any time during the preceding three (3) years. Teachers employed in the Kearny School District shall have priority to such assignments before appointment to applicants from outside the district."

The Board categorically denies that its action not to appoint petitioner to the controverted position was due to any retaliation for petitioner's prior litigation. The Board relies on the affidavits (R-1 through R-5) executed by each of the Board members in support of this position. The Board asserts that it exercised its discretionary authority in a proper manner in its selection of candidates for its 1975 special education summer school program. Thus, the Board concludes that petitioner states no cause of action upon which the Commissioner may grant relief and seeks dismissal of the Petition.

Petitioner alleges that he was not appointed by the Board as the direct result of the litigation he had successfully initiated. The Commissioner observes that the *Barber, supra,* matter dealt with the propriety of the Board's appointment of its Secretary to the position of head football coach. The Commissioner found in favor of Petitioner Barber therein and set aside that appointment. Petitioner asserts herein that the Board President caused a letter it received to be read at its meeting on June 16, 1975. The letter, according to the minutes (C-1) of that meeting, was submitted over thirty signatures requesting that the alleged harassment of the Board Secretary-football coach cease. Petitioner concludes that because the alleged harassment emanated from his successful challenge of the appointment of the Secretary as head football coach, the Board had the litigation fresh on its mind when it elected not to appoint him to its summer school at this meeting. (C-1, at p. 3) Petitioner relies on the official minutes (C-1) of the Board Meeting to show that the Board engaged in no discussion on his recommendation for appointment by the Superintendent. Rather, it simply elected, by a four to three vote, not to appoint him.

Petitioner attests in his affidavit (P-1) that the Board's action was unreasonable because he had more experience in various summer school programs; that his seniority in the employ of the Board was greater at that time; and that his academic qualifications were similar to those of the appointed teacher. (P-1, at pp. 4-5)

Petitioner further attests that Board member Caputo was said to have stated (to an unnamed listener) that the Board did not appoint him to the position as a reprisal against his prior litigation. (P-1, at p. 2) Petitioner attests that the Board President advised the athletic director to remove him from "***a winter extra-compensation duty because '***we don't give goodies to troublemakers.'***" (P-1, at p. 2) Petitioner does not assert that he was removed from any "winter extra-compensation duty."

The Commissioner has reviewed the affidavit (R-1) of Board member Caputo and the affidavit (R-5) of the Board President, which is joined by two other Board members. In both instances, affiants attest to the Board's previously stated position that its selection of another teacher instead of petitioner was not

You are viewing an archived copy from the New Jersey State Library.

based on any reprisal but simply on the basis that in its judgment the other teacher was more qualified.

Petitioner, in his Brief in opposition to the Motion, argues that such motions must be considered with caution and cites *DiCristofaro v. Laurel Grove Memorial Park,* 43 *N.J. Super.* 244, 252 (*App. Div.* 1957); *C.B. Snyder Realty Co., Inc. v. Seeman Bros. Inc.,* 79 *N.J. Super.* 88 (*App. Div.* 1963); and *Gaines v. Monroe Calculating Machine Co., Inc.,* 78 *N.J. Super.* 168 (*App. Div.* 1963). Petitioner argues that for purposes of the Motion it must be considered that the factual allegations of the opposing party are true and cites *Day v. Grossman,* 44 *N.J. Super.* 28 (*App. Div.* 1957); *Orrok v. Parmigiani,* 32 *N.J. Super.* 70 (*App. Div.* 1954); *Mianulli v. Gunagan,* 32 *N.J. Super.* 212 (*App. Div.* 1954); *Ridgefield Park v. Bergen County Board of Taxation,* 31 *N.J.* 420 (1960).

The Commissioner has considered the arguments of the parties and, in the first instance, notices that a board of education is not bound to accept the recommendations of its superintendent for teaching staff member appointments. *Florence Fitzpatrick v. Board of Education of the Borough of Wharton, Morris County,* 1970 *S.L.D.* 149; *Ronnie Abramson v. Board of Education of the Township of Colts Neck, Monmouth County,* 1975 *S.L.D.* 418, affirmed State Board of Education 424, affirmed Docket No. A-780-75 New Jersey Superior Court, Appellate Division, September 27, 1976. While in *Fitzpatrick* and *Abramson* the challenge was to the failure of the Board to reappoint the respective petitioners, both nontenured, to continued employment the following years, the principle articulated therein is equally applicable here. Moreover, the matter controverted herein is not with respect to employment of a teaching staff member during the academic year. Rather, the gravamen of the matter herein is the failure of the Board to appoint petitioner to its summer school program.

Petitioner is not entitled, nor does he lay claim, to summer school employment by the Board as a matter of right. Petitioner claims that the causative factor for which the Board refused to appoint him to its summer school program was his successful litigation against it. Petitioner asserts that his seniority and his total teaching experience is greater than that of the successful candidate. Consequently, petitioner contends that he was denied appointment for improper reasons.

The Commissioner does not agree. The minutes (C-1) of the meeting held on June 16, 1975, show that the Board President directed that a letter be read which requested the alleged harassment of the football coach cease. It is also reasonable to assume that the Board had petitioner's successful litigation in its mind when, at the same meeting, it rejected his recommendation by the Superintendent for summer school employment. The fact remains that it is the Board itself which establishes its own policy with respect to the operation of its schools. *N.J.S.A.* 18A:11-1 In the instant matter, the Board followed its own policy set forth at Article XIV with respect to the controverted summer school appointment. Even if the Board was reminded of petitioner's prior litigation moments before its rejection of his nomination for appointment, the fact is that the Board appointed the candidate who, in its judgment, would best serve the needs of its summer school program. Such a determination is wholly within the

You are viewing an archived copy from the New Jersey State Library.

discretion of the Board and there is no requirement for a board to formalize a statement of reasons for its actions. *Preston K. Mears, Jr. et al. v. Board of Education of the Town of Boonton, Morris County,* 1968 *S.L.D.* 108 Petitioner has failed to set forth in his Petition of Appeal, or his Amended Petition of Appeal, adequately detailed and corroborated allegations which would be sufficient to require consideration of his complaint by way of a plenary hearing. *Winston v. Board of Education of South Plainfield,* 125 *N.J. Super.* 131 (*App. Div.* 1973), *aff'd* 64 *N.J.* 582 (1974) Petitioner alleges that because of his prior litigation the Board elected not to appoint him to its summer school program. The evidence in the record before the Commissioner leads to a contrary conclusion. The Commissioner so holds.

The Commissioner, having found no justiciable issue raised by the pleadings herein, grants the Board's Motion to Dismiss.

COMMISSIONER OF EDUCATION

February 25, 1977

Brick Township Education Association,

Petitioner-Appellee,

v.

Board of Education of the Township of Brick, Ocean County,

Respondent-Appellant.

COMMISSIONER OF EDUCATION

ORDER

For the Petitioner-Appellee, Joseph Dempsey, Esq.

For the Respondent-Appellant, Anton and Ward (Donald H. Ward, Esq., of Counsel)

This matter was remanded to the Commissioner of Education by the State Board of Education for further clarification, enumeration, and determination of volunteer services of an athletic trainer within the meaning and intent of *N.J.A.C.* 6:29-6.3; and

It appearing that Petitioner-Appellee no longer wishes to proceed to a hearing in this matter (Conference Agreements, October 26, 1976; Petitioner-Appellee's letter, November 22, 1976); and

It further appearing that no useful information regarding the facts in this matter can be gleaned without a hearing; now therefore

You are viewing an archived copy from the New Jersey State Library.

IT IS ORDERED on this 25th day of February 1977 that the Petition of Appeal in this matter is hereby dismissed with prejudice.

COMMISSIONER OF EDUCATION

Board of Education of the Borough of North Arlington,

Petitioner,

v.

Mayor and Council of the Borough of North Arlington, Bergen County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Borough of North Arlington, hereinafter "Board," Glenn T. Leonard, Esq., which challenges the reductions imposed upon its 1976-77 school budget by the Mayor and Council of the Borough of North Arlington, hereinafter "governing body," Lucille Russello, Esq. The principal facts of the matter are these:

At the annual school election held March 9, 1976, the Board submitted to the electorate the following proposal for the amount to be raised by local taxation for the 1976-77 school year:

Current Expense	$2,787,256

This proposal was defeated. Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that lesser amounts were necessary to be raised by local taxation as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$2,787,256	$2,733,756	$53,500

Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $27,500 for current expense from the total amount available to it as unbudgeted current expense State aid. The Commissioner observes that this authorization for increased expenditure by the Board has no

You are viewing an archived copy from the New Jersey State Library.

effect on the local tax levy for school purposes in the community of North Arlington.

The Commissioner of Education concurs with the Stipulation of Settlement. The Petition of Appeal is hereby dismissed this 28th day of February 1977.

COMMISSIONER OF EDUCATION

Board of Education of the Borough of Lodi,

Petitioner,

v.

Mayor and Council of the Borough of Lodi, Bergen County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Gerald P. Lo Proto, Esq.

For the Respondent, Eugene L. Dinallo, Esq.

Petitioner, the Board of Education of the Borough of Lodi, hereinafter "Board," appeals from an action of the Mayor and Council of the Borough of Lodi, hereinafter "Council," taken pursuant to *N.J.S.A.* 18A:22-37 certifying to the Bergen County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The facts of the matter were adduced at a hearing conducted on August 23, 1976 at the State Department of Education, Trenton, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

At the annual school election held March 9, 1976, the Board submitted to the electorate proposals to raise $5,437,746 by local taxation for current expense costs of the school district. This item was rejected by the voters and, subsequent to the rejection, the Board submitted its budget to Council for its determination of the amounts necessary for the operation of a thorough and

You are viewing an archived copy from the New Jersey State Library.

efficient school system in Lodi for the 1976-77 school year, pursuant to the mandatory obligation imposed on Council by *N.J.S.A.* 18A:22-37.

After consultation with the Board, Council made its determinations and certified to the Bergen County Board of Taxation an amount of $4,355,519 for current expenses. The pertinent amount in dispute is shown as follows:

	Current Expense
Board's Proposal	$5,437,746
Council's Proposal	4,355,519
Amount Reduced	$1,082,227

The Board contends that Council's action was arbitrary, unreasonable, and capricious and documents its need for restoration of the reductions recommended by Council with written testimony and a further oral exposition at the time of the hearing. Council maintains that it acted properly and after due deliberation and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system. Council also supports its position with written and oral testimony. As part of its determination, Council suggested specific line items of the budget in which it believed economies could be effected as follows:

Account Number	Item	Board's Proposal	Council's Proposal	Amount Reduced
CURRENT EXPENSE:				
J110B	Sal., Bd. Secy. Off.	$ 95,467	$ 72,128	$ 23,339
J110C	Sal., Cust. Sch. Mon.	3,180	3,000	180
J110D	Sal., Sch. Elect.	3,000	1,500	1,500
J110E	Sal., Legal Servs.	9,000	8,496	504
J110F	Supt.'s Off.	69,667	63,724	5,943
J120D	Exps., Negotiations	10,745	10,245	500
J130A	Exps., Bd. Members	4,000	2,000	2,000
J130B	Other Exps., Bd. Secy.	14,900	7,400	7,500
J130E	Extra Legal Servs.	4,000	2,000	2,000
J130F	Other Exps., Supt.'s Off	7,000	5,000	2,000
J130N	Misc. Exps., Adm.	1,000	500	500
J211	Sal., Prins.	240,920	203,724	37,196
J213.1	Sal., Teachers	2,905,679	2,673,400	232,279
J213.2	Sub. Tchrs.	60,000	45,000	15,000
J213.3	Bedside Instr.	25,000	17,000	8,000
J214A	Sal., Sch. Lib.	62,096	48,400	13,696
J214B	Sal., Guid. Pers.	102,915	98,381	4,534
J214C	Sal., Psych. Soc. Wkr.	57,493	55,605	2,088
J215	Sal., Clerk Prins. Off.	109,491	96,614	12,877
J230A	Lib. Bks.-AV Mats.	60,128	45,000	15,128
J240A	Teach. Supls.	62,428	60,000	2,428
J250A	Misc. Supls.	13,270	9,700	3,570

You are viewing an archived copy from the New Jersey State Library.

J250B	Travel Exp.	1,000	500	500
J310A	Sal., Att. Pers.	25,000	13,000	12,000
J320	Travel Exp.	1,200	600	600
J410A1	Sal., Sch. Phys.	8,500	6,340	2,160
J410A2	Sal., Sch. Dent.	3,361	3,170	191
J410A3	Sal., Sch. Nurses	97,626	44,000	53,226
J410A5	Sal., Sch. Optom.	3,361	3,170	191
J420A	Supls., Health Serv.	3,075	3,000	75
J420C	Misc. Exps.	2,700	1,000	1,700
J510A	Sal., Trans.	6,869	6,480	389
J520C	E.C.A. Trans.	11,000	10,000	1,000
J610A	Sal., Cust. Servs.	364,077	353,768	10,309
J620	Contr. Servs.	12,000	11,000	1,000
J640A	Water	4,000	3,000	1,000
J640D	Telephone	15,000	13,000	2,000
J640A	Cust. Supls.	23,000	21,000	2,000
J720	Contr. Servs., Maint.	70,000	50,000	20,000
J730	Purch. New Instr. Equip.	25,000	20,000	5,000
J810A	State Retire. Fund	165,072	41,000	124,072
J820B	Empl. Ins.	205,000	193,400	11,600
J870	Tuition	130,000	124,000	6,000
J930	Food. Servs., Deficit	64,244	34,244	30,000
J1010	Sal., Stud. Body Activ.	31,800	25,000	6,800
J1020	Other Exps.	51,200	45,000	6,200
	SUBTOTALS	$5,751,772	$5,060,997	$ 690,775
	Additional reduction based on *N.J.S.A.* 18A:7A-1 *et seq.*, unspecified		− 391,452	+ 391,452
	TOTALS		$4,669,545	$1,082,227

There appears no necessity to deal *seriatim* with each of the areas in which Council recommended reduced expenditures. As the Commissioner said in *Board of Education of the Township of Madison v. Mayor and Council of the Township of Madison, Middlesex County,* 1968 *S.L.D.* 139:

> "***The problem is one of total revenues available to meet the demands of a school system***. The Commissioner will indicate, however, the areas where he believes all or part of Council's reductions should be reinstated. It must be emphasized, however, that the Board is not bound to effect its economies in the indicated items but may adjust its expenditures in the exercise of its discretion as needs develop and circumstances alter.***"
>
> (at p. 142)

The hearing examiner, based on his review of the record, including the testimony elicited by the parties and the documentary evidence submitted, will set forth in chart form his recommendations with respect to each item reduced by Council.

You are viewing an archived copy from the New Jersey State Library.

CHART II

Account Number	Item	Amount of Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
J110B	Sal., Bd. Secy. Off.	$ 23,339	$ 15,000	$ 8,339
J110C	Sal., Cust. Sch. Mon.	180	–0–	180
110D	Sal., Sch. Elect.	1,500	–0–	1,500
110E	Sal., Legal Servs.	504	–0–	504
110F	Supt.'s Off.	5,943	500	5,443
120D	Exps., Negotiations	500	–0–	500
130A	Exps., Bd. Members	2,000	–0–	2,000
130B	Other Exps., Bd. Secy.	7,500	500	7,000
130E	Extra Legal Servs.	2,000	2,000	–0–
130F	Other Exps., Supt.'s Off.	2,000	1,000	1,000
130N	Misc. Exps., Adm.	500	–0–	500
J211	Sal., Prins.	37,196	25,000	12,196
J213.1	Sal., Teachers	232,279	150,000	82,279
J213.2	Sub. Tchrs.	15,000	15,000	–0–
J213.3	Bedside Instr.	8,000	–0–	8,000
J214A	Sal., Sch. Lib.	13,696	13,696	–0–
J214B	Sal., Guid. Pers.	4,534	2,000	2,534
J214C	Sal., Psych. Soc. Wkr.	2,088	2,000	88
J215	Sal., Clerk Prins. Off.	12,877	6,000	6,877
J230A	Lib. Bks.-AV Mats.	15,128	–0–	15,128
J240A	Teach. Supls.	2,428	2,000	428
J250A	Misc. Supls.	3,570	–0–	3,570
J250B	Travel Exp.	500	–0–	500
J310A	Sal., Att. Pers.	12,000	12,000	–0–
J320	Travel Exp.	600	600	–0–
J410A1	Sal., Sch. Phys.	2,160	2,000	160
J410A2	Sal., Sch. Dent.	191	–0–	191
J410A3	Sal., Sch. Nurses	53,226	20,000	33,226
J410A5	Sal., Sch. Optom.	191	–0–	191
J420A	Supls., Health Serv.	75	–0–	75
J420C	Misc. Exps.	1,700	1,700	–0–
J510A	Sal., Trans.	389	–0–	389
J520C	E.C.A. Trans.	1,000	1,000	–0–
J610A	Sal., Cust. Servs.	10,309	10,309	–0–
J620	Contr. Servs.	1,000	500	500
J640A	Water	1,000	1,000	–0–
J640D	Telephone	2,000	2,000	–0–
J650A	Cust. Supls.	2,000	1,000	1,000
J720	Contr. Servs., Maint.	20,000	20,000	–0–
J730	Purch. New Instr. Equip.	5,000	2,000	3,000
J810A	State Retire. Fund	124,072	–0–	124,072*
J820B	Empl. Ins.	11,600	–0–	11,600
J870	Tuition	6,000	–0–	6,000
J930	Food Servs., Deficit	30,000	25,000	5,000

You are viewing an archived copy from the New Jersey State Library.

J1010	Sal., Stud. Body Activ.	6,800	3,000	3,800
J1020	Other Exps.	6,200	6,200	–0–
	Additional reduction based on *N.J.S.A.* 18A:7A-1 *et seq.*, unspecified	391,452	391,452	–0–
	SUBTOTALS	$1,082,227	$734,457	$347,770
*TPAF Adjustment			+124,578	-124,578
	TOTALS	$1,082,227	$859,035	$223,192

**Note of explanation* – These moneys included by the Board for payment to the TPAF were included by the municipal body in its reduction of the Board's adopted budget for 1976-77. This inclusion and the subsequent budget appeal by the Board resulted in a double deduction from the adopted budget. The hearing examiner observes that the correct amount for the TPAF contribution is $124,578 and this correct sum is used in restoration.

The hearing examiner sets down for consideration by the Commissioner the following facts pertaining to current expense item expenditures in several budgets of the Board.

	Actual Expenditures
1974-75	$4,694,862
1975-76	$5,223,204

In summary, the hearing examiner recommends that $859,035 of the reductions for current expense deemed appropriate by Council be restored by the Commissioner for use of the Board in its conduct of a thorough and efficient educational program in Lodi for the 1976-77 academic year. This restoration of $859,035 includes the TPAF adjustment as shown on Chart II, *ante*.

The hearing examiner recommends to the Commissioner that the amount of $619,982 be restored from unbudgeted State aid with the remaining sum of $239,053 to be raised by local tax levy.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner as set forth above and concurs in his findings and recommendations therein. He observes that neither the Board nor a majority of Council filed exceptions to the report but notes the objection of the Mayor as an individual. He finds the amounts certified by Council to be insufficient to maintain a thorough and efficient school system in the Borough of Lodi. He therefore authorizes the amount of $619,982 to be restored from unbudgeted State aid for current expenses and further certifies to the Bergen County Board of Taxation an

You are viewing an archived copy from the New Jersey State Library.

additional amount of $239,053 to be raised by local taxation for the 1976-77 school year.

COMMISSIONER OF EDUCATION

March 1, 1977

Board of Education of the City of Long Branch,

Petitioner,

v.

Board of School Estimate and Mayor and Council of the City of Long Branch, Monmouth County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the City of Long Branch, hereinafter "Board," McOmber & McOmber (Richard D. McOmber, Esq., of Counsel) which challenges the reductions imposed upon its 1976-77 school budget by the Board of School Estimate and the Mayor and Council of the City of Long Branch, hereinafter "governing body," Robert L. Mauro, Esq. The principal facts of the matter are these:

The Board submitted to the Board of School Estimate the following proposals for amounts to be raised by local taxation for the 1976-77 school year:

Current Expense	$6,922,045
Capital Outlay	52,600

Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that lesser amounts were necessary to be raised by local taxation as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$6,922,045	$6,224,645	$697,400
Capital Outlay	52,600	–0–	52,600
Total			$750,000

Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on

You are viewing an archived copy from the New Jersey State Library.

November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $250,000 for current expense available to it as unbudgeted current expense State aid. There shall be no restoration to the capital outlay account. The Commissioner observes that this authorization for increased expenditure by the Board has no effect on the local tax levy for school purposes in the City of Long Branch.

The Commissioner of Education concurs with the Stipulation of Settlement. The Petition of Appeal is hereby dismissed this 1st day of March 1977.

COMMISSIONER OF EDUCATION

William and Lorraine McMillan, and Mary Dawson,

Petitioners,

v.

Board of Education of the South Orange-Maplewood School District, Essex County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioners, William J. Ewing, Esq.

For the Respondent, Lieb, Wolff & Samson (Ronald E. Wiss, Esq., of Counsel)

Petitioners are parents of pupils enrolled in the public schools operated by the Board of Education of South Orange-Maplewood, hereinafter "Board." They claim entitlement to reimbursement from the Board for costs which they incurred in transporting their elementary school children during the 1974-75 school year to the Board's Newstead School, a distance greater than two miles from their homes. The Board admits that petitioners' homes were remote from the schoolhouse, but denies liability for transportation costs on grounds that petitioners voluntarily chose to enroll their children in a remote schoolhouse with full knowledge that they would be responsible to provide their children's transportation.

The matter is jointly submitted to the Commissioner of Education for Summary Judgment on a stipulation of facts, a Brief on behalf of petitioner,

You are viewing an archived copy from the New Jersey State Library.

hereinafter "BP," a Brief on behalf of respondent, hereinafter "BR," and documents admitted into evidence at a conference of counsel. The relevant facts are these:

On September 5, 1974, the Board at a special meeting and by formal resolution voted 7-0, with two abstentions, to close its First Street School in which petitioners' children had formerly been enrolled. (R-1) That resolution relocated the boundaries of attendance districts of five surrounding elementary schools to incorporate the attendance district of the First Street School. It also stated that:

> "***The students slated for attendance in the First Street School on September 5, 1974 shall be given the option to attend any of the nine elementary schools providing instruction in the School District of South Orange and Maplewood, *provided the parent assume responsibility for the transportation of the child.*" (*Emphasis added.*) (R-1)

Although there were six elementary schools less than two miles from petitioners' residences, they chose to enroll their children in the Newstead School which was a substantially greater distance than two miles from their homes. Soon thereafter, petitioners applied to the Board to assume the costs of transporting their children by shared taxicab which, in the aggregate, amounted to $283.33 per child for the 1974-75 school year. The Board denied the application, whereupon petitioners filed the within Petition of Appeal seeking relief in the form of an order of the Commissioner directing the Board to compensate them for transportation expenses of their children to Newstead School. (R-2, 3)

Petitioners contend that the Board's closing of the First Street School on September 5, 1974 was arbitrary and contrary to its public trust. They aver that the Board's decision at the very opening of the school term was not only untimely but allowed insufficient time to weigh the alternative choices open to them. (BP-2-3, 5-6, 8, 10)

Petitioners argue that pursuant to the Board's resolution, *ante,* they properly elected to enroll their children in Newstead School which was remote from their houses as defined by *N.J.A.C.* 6:21-1.3 which states:

> "The words 'remote from the schoolhouse' shall mean *** two miles or more for elementary pupils***."

Petitioners contend that when the Board resolved to allow a free choice of any elementary school it could not enforce a corollary requirement that parents provide transportation to one which was remote from their homes. Rather, they assert that the Board was obligated to provide convenience of access to such school at public expense. (BP-3-7)

Petitioners argue further that:

> "***The members of [a] board of education 'hold positions of public

You are viewing an archived copy from the New Jersey State Library.

> trust and must at all times faithfully discharge their functions with the public interest as their polestar.' [*Cullum v. Board of Education of Township of North Bergen,* 15 *N.J.* 285, 292 (1954)] ***" (BP, at p. 7)

They maintain that, in this instance, two meetings on September 3 and 5 provided insufficient opportunity for members of the public to evaluate, discuss and react to the proposed school closing.

It is argued further that the Board's action is flawed in that a decision to close the school was made on September 3, two days in advance of the official resolution passed at the public session on September 5. Petitioners argue that such a decision made in advance of the public meeting of the Board reduced to a sham and invalidated its resolution. Thus, it is argued that a contingent requirement placing upon them the burden of transporting their children is *ultra vires. Cullum, supra* (BP-7-10) Petitioners seek to further buttress the above arguments by citing, *inter alia, Board of Education of the Town of Belvidere v. Bosco,* 138 *N.J. Super.* 368 (*Law Div.* 1975), 351 *A.2d* 36; *Silverman et al. v. Board of Education Township of Millburn,* 134 *N.J. Super.* 253 (*Law Div.* 1975), aff'd 136 *N.J. Super.* 435 (*App. Div.* 1975).

Conversely, the Board asserts that it had authority, when it allowed parents to send their children to any of its elementary schools, to require those who selected schools remote from their homes to transport their own children. In this regard, it is argued that the newly formed attendance districts provided for petitioners' children and others convenience of access without transportation to an appropriate elementary school, pursuant to *N.J.S.A.* 18A:33-1 and *N.J.S.A.* 18A:39-1. The Board avers that, since it provided quality education suitable to petitioners' children at numerous schools which were not remote, it was petitioners' choice alone that created the remoteness which necessitated that they be transported. Thus, it is argued that petitioners must bear the cost of such transportation and that their claim for reimbursement from the Board should be dismissed.

The Commissioner has carefully reviewed, considered and weighed the documents in evidence and the legal arguments submitted by the respective parties. The narrow issue ripe for determination is whether the Board's resolution, which required petitioners to assume responsibility for costs of transporting their children when they chose to enroll them in a school remote from their homes, was legal and proper.

The Board clearly had the discretionary authority to close one of its schools. *N.J.S.A.* 18A:11-1; *Boult and Harris v. Board of Education of Passaic,* 135 *N.J.L.* 329 (*Sup. Ct.* 1947), aff'd 136 *N.J.L.* 521 (E.&A. 1948); *Green Village Road School Association et al. v. Board of Education of the Borough of Madison, Morris County,* 1976 *S.L.D.* 700, aff'd State Board 716 In such matters it has been held by the Commissioner and the courts that, absent a clear abuse of discretion or proof of illegality, a board of education must answer, not to the Commissioner, but to its constituents for the wisdom of its actions. As was said by the Commissioner in the school closing dispute of *John J. Caffrey,*

You are viewing an archived copy from the New Jersey State Library.

Jr., et al. v. Board of Education of the Township of Millburn, Essex County, 1975 *S.L.D.* 630

"***[I]t is axiomatic that the members of local boards of education are responsible for the wisdom of their actions to the people who elect them and not to the Commissioner of Education. As the Commissioner recited the law as a frame of reference in *Cecelia Barnes et al. v. Board of Education of the City of Jersey City, Hudson County,* 1961-62 *S.L.D.* 122, 125, aff'd State Board of Education, 1963 *S.L.D.* 240:

'***as long as***a board of education*** acts within the authority conferred on*** it by law the courts are without power to, or will not, interfere with, control, or review *** its action and decisions in matters involving the exercise of discretion, in the absence of clear abuse thereof or error; nor is the wisdom or expediency of an act, or the motive with which it was done, open to judicial inquiry or consideration, where power to do it existed.' 78 *C.J.S.* 920

'In absence of clear abuse of the discretionary power of the Board, the Commissioner will not interfere. It was held in *Boult v. Board of Education of Passaic,* 136 *N.J.L.* 521 (*E. & A.* 1948), concerning the authority of the Commissioner and State Board of Education under *R.S.* 18:3-14 and 15:

> 'Neither of the quoted statutory provisions was intended to vest in the appellate officer or body the authority to exercise originally the discretionary power vested in the local board.'

'The wisdom and effectiveness of a board of education's administrative decisions is a matter for the constituent citizenry to determine.

> 'It remains to say a word upon that view of the case which assumes that it is within the judicial province to protect constituencies from the 'recreancy' of their representatives by undoing legislation that evinces 'bad faith.' To which the answer is – first, that the power so to intervene has wisely been withheld from the judiciary; secondly, that if the power existed, its exercise would be most mischievous, and lastly, that the redress of the betrayed constituent is in his own hands, to be sought at the polls and not in the courts." *Moore v. Haddonfield,* 62 *N.J.L.* 386, 391 (*E. & A.* 1898)
>
> '***I desire to make clear that I express no opinion as to the policy employed by the majority in the selection which they made or in the manner in which they made their selection effective. That is their responsibility to those whom they govern. Courts cannot compel governing officials to act wisely, but it can and does compel them to act in good faith. And to say that governing officials must act in good faith is merely equivalent to saying that they must act honestly.***" *Peter's Garage, Inc. v. Burlington,* 121 *N.J.L.* 523, 527 (*Sup. Ct.* 1939)'*** (at p. 125)***" (1975 *S.L.D.* at 638-639)

You are viewing an archived copy from the New Jersey State Library.

Similarly, in the instant matter, the Commissioner finds in the statutes or case law no limitations placed on the Board regarding when it may take action to close a school. While there may be reason to question the desirability of reaching such a decision at the very opening of a school year, it was within the discretionary power of the Board to act at that time. The Commissioner so holds. *Green Village, supra*

Petitioners argue that the unreasonablemess of the Board's requirement that they provide transportation is reflected in the documents in evidence authored by the County Superintendent. (P-1, 2, 3) The Commissioner, however, in fulfilling his quasi-judicial function of determining disputes and controversies pursuant to *N.J.S.A.* 18A:6-9, is not bound by the opinions which his subordinates are frequently called upon to render by citizens of the State. *Green Village, supra*

In the instant matter the Board was not compelled to allow free enrollment of its First Street School pupils in any other elementary school in the district. Nevertheless, it granted such flexibility of choice contingent on the corollary requirement that, if a remote school were chosen, parents would bear the transportation expense of their children. The Commissioner does not view such a requirement as arbitrary or unreasonable. Nor is there a showing that the Board failed to acquaint the public with the issue which it was considering. At least two lengthy meetings of the Board were held at which public expression was invited and received. (BP-7-9) Additionally, administrators met to discuss the matter with parents. Attempts were made to telephone each parent whose child would be affected by the possible closing in order that those parents might be present when the Board brought the matter up for action. (BP-7)

The Commissioner finds no merit in petitioners' argument that an unalterable decision to close the school was finalized in private prior to the meeting of September 5. The minutes of the meeting are explicit that much discussion by the Board and the public ensued after the resolution was proposed. (R-1) It is similarly evident that petitioners were not unaware of the herein controverted corollary requirement to assume transportation costs. Thus, there is no reason to believe that petitioners did not understand that such a contingent requirement was inexorably bound to the selection of a school remote from their homes. The Commissioner determines that, within such a contextual pattern, petitioners chose to send their children to an elementary school remote from their homes with full awareness of the requirement that they were required to assume full responsibility for transportation.

A search of the statutes and case law reveals no bar which would prevent such a corollary requirement or its enforcement by the Board. Petitioners were early aware of the adamant stance of the Board to enforce its resolution. That they continued to send their children to a remote school is undoubtedly attributable to their desire not to interrupt within the academic year the quality education their children were receiving. Yet, it must be recognized that they failed to exercise their legal right to re-enroll those children in any one of six other elementary schools with convenient access less than two miles from their homes.

You are viewing an archived copy from the New Jersey State Library.

Absent a showing of violation of the statutes or rules of the State Board of Education, the Commissioner determines for the Board as a matter of equity. The Board, faced with low enrollment in its First Street School, moved to protect the public interest by reducing expenditures by closing that school. It allowed flexibility of choice for re-enrollment of those pupils. Its corollary requirement that parents whose houses were remote from the schools in which they enrolled their children should bear the cost of transportation was similarly in the public interest. The Board's resolution and its manner of promulgation were in all aspects legal. The Commissioner so holds. Accordingly, the Petition of Appeal is dismissed.

COMMISSIONER OF EDUCATION

March 3, 1977

Emil Scachetti,

Petitioner,

v.

Board of Education of the Township of Rockaway, Morris County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Gebhardt & Keifer (Richard Dieterly, Esq., of Counsel)

For the Respondent, Schenck, Price, Smith & King (Alten W. Read, Esq., of Counsel)

Petitioner, a teacher with a tenure status employed by the Board of Education of the Township of Rockaway, Morris County, hereinafter "Board," alleges that the Board's adoption of a resolution requiring him to submit to a psychiatric examination in accordance with *N.J.S.A.* 18A:16-2 was arbitrary, capricious, unreasonable, and based upon insufficient evidence. Petitioner also challenges the Board's action suspending him from his teaching duties without pay for his refusal to undergo a psychiatric examination.

The Board denies that its determination requiring petitioner to submit to a psychiatric examination is in any respect improper, unreasonable or discriminatory. The Board asserts that its action suspending petitioner without pay is justifiable and proper because his continued refusal to submit to a psychiatric examination constitutes insubordination and is grounds for his dismissal as a teacher in the school district.

You are viewing an archived copy from the New Jersey State Library.

Motions for Summary Judgment have been filed by both parties relying upon the pleadings, transcripts, exhibits, affidavits and Briefs which comprise the record in the instant matter.

A recitation of the chronology of events is necessary for a clear understanding of this dispute.

The Board adopted a resolution at a public meeting held December 27, 1972, which determined that petitioner should submit to a psychiatric examination.

On or about February 9, 1973, the Superintendent of Schools sent a letter to petitioner directing him to appear at the office of a Dr. Albert Sherman for a medical examination on February 13, 1973, and that failure to report for the scheduled examination would be considered an act of insubordination. The parties agree that the letter in question did not specify a psychiatric examination, although the named physician is a psychiatrist. Petitioner elected to have the medical examination performed by his personal physician, and he so notified the Superintendent on or about February 9, 1973. Subsequently, on or about February 14, 1973, petitioner's physician, who is not a psychiatrist, sent a report of the medical examination to the Board, which stated that petitioner was in excellent physical condition with the exception of some arthritis in his right middle finger. (Petition, pars. 2-3)

On February 14, 1973, the Superintendent advised petitioner of the Board's requirement that he submit to a psychiatric examination and asked petitioner to submit the names of three psychiatrists for the Board's consideration. By letter dated March 1, 1973, petitioner submitted the names of three physicians. The Board determined that two of the three were not psychiatrists, and the third was not acceptable to the Board. The Superintendent advised petitioner by letter dated March 13, 1973, that the Board found the three names unacceptable, and requested that petitioner submit the names of three additional psychiatrists by March 24, 1973 for the Board's consideration.

A letter dated March 23, 1973 (Exhibit R-1), was received by the Board President which contained the names of three physicians, presumably psychiatrists. The letter contains petitioner's home address, and what appears to be petitioner's signature. The letter reads in pertinent part as follows:

> "***The submission of this list has a singular purpose—that being to avoid any charge of insubordination or other action that could directly influence my employment status in the district.
>
> "In no way does this list signify agreement with nor the condoning of the practices and procedures pertaining to this matter. Be it further understood that any correspondence pertaining to this matter shall be between the Board of Education per se and myself. Be it further understood that I will in no way deal secondhand or indirectly with the Superintendent as an agent of the Board."

You are viewing an archived copy from the New Jersey State Library.

At a later point in these proceedings petitioner submitted an affidavit (Exhibit P-1) denying that he had mailed or signed the letter dated March 23, 1973. (Exhibit R-1) His affidavit included a letter dated July 31, 1973 (Exhibit P-2) from a handwriting consultant corporation which had examined the March 23, 1973 letter (Exhibit R-1) in comparison with other documents, at petitioner's request, and advised him that the signatures on his letter request and enclosed documents differed from the signature on the March 23, 1973 letter. (Exhibit R-1)

After the Board received the letter of March 23, 1973 (Exhibit R-1), it advised petitioner that it had accepted one of the psychiatrists named therein for the purpose of conducting a psychiatric examination of petitioner. By letter dated April 18, 1973, the Board was informed by the Rockaway Township Education Association that petitioner had contacted the psychiatrist to arrange an appointment for his examination. (Board's Reply Brief, at p. 2) After receiving the letter from the local education association, the Superintendent communicated with the psychiatrist, and was advised that petitioner had not contacted his office. On May 23, 1973, a Petition of Appeal was filed by petitioner, and an Answer was subsequently filed by the Board.

A conference of counsel was held in the Division of Controversies and Disputes on August 7, 1973, which resulted in a Stipulation of Agreement that certain procedures would be followed by both parties prior to submitting this matter to the Commissioner for his adjudication. These procedures were set forth in the conference report dated August 21, 1973, and the Stipulation jointly filed by the parties on October 15, 1973. In essence the parties agreed that: (1) the Board would furnish to petitioner a summary of its reasons for requesting that he submit to a psychiatric examination; (2) petitioner would be given an opportunity to appear with a representative and be heard by the Board in a conference or executive session; and (3) following such an appearance by petitioner, the Board would make a determination at a special meeting as to whether it would require petitioner to submit to a psychiatric examination. A copy of the Board's final determination was to be furnished promptly to petitioner. The Commissioner retained jurisdiction to decide any issue raised by either party in regard to the implementation of the procedures set forth in the Stipulation. The Commissioner determined that such procedures were necessary for proper compliance with the directive of the Court in *James V. Kochman and John N. Gish, Jr. et al. v. Keansburg Board of Education and Paramus Board of Education et al.*, 124 *N.J. Super.* 203 (*Chan. Div.* 1973), decided May 31, 1973. The Court's opinion held that the statute *N.J.S.A.* 18A:16-2 is constitutional, and set forth certain procedural requirements to safeguard the due process rights of teaching staff members when a local board of education requests a psychiatric examination.

At a special meeting of the Board held November 15, 1973, which was attended by petitioner, his counsel, and the president and grievance chairman of the local education association (Exhibit P-8), the Board adopted a resolution (Exhibit R-2) directing petitioner to submit to a psychiatric examination and setting forth its reasons for such determination. This resolution also provided that petitioner would be given an opportunity to be heard at an executive

You are viewing an archived copy from the New Jersey State Library.

session of the Board to be held within thirty days, after which the Board would make a final determination whether it would require petitioner to submit to a psychiatric examination.

Petitioner requested copies of any reports or other information upon which the Board had relied in formulating the resolution adopted November 15, 1973. On December 27, 1973, petitioner and his counsel reviewed the Board's files which related to petitioner, prepared an inventory of the materials in these files, and received copies of all documents requested by petitioner.

Petitioner filed an application for relief, *pendente lite,* on January 3, 1974, which was heard on January 7, 1974. As a result of that proceeding both parties agreed to the procedures which were to be followed for petitioner's appearance before the Board. These included, *inter alia,* that: (1) petitioner would be given opportunity to testify orally or present a written report stating his position, and his counsel would have the right to be heard by the Board; (2) petitioner would be permitted to present witnesses on his behalf, or submit written affidavits of his witnesses; (3) cross-examination of witnesses would not be conducted before the Board; and (4) petitioner would have the right to use a court reporter to record the proceeding, with the understanding that both parties would share the cost for transcribing the record. (Tr. II-32-33)

On February 6, 1974, petitioner appeared before a private session of the Board with his counsel, at which time he presented a fourteen page written statement (Exhibit P-5), but he did not address the Board or present oral testimony. Petitioner's attorney presented arguments to the Board in support of petitioner's position, and read petitioner's affidavit to the Board. Petitioner also presented, *inter alia,* three affidavits of teachers who were his colleagues (Exhibits R-18, 19, 20) and four formal evaluations of his teaching performance on various dates during 1970, 1971, and 1972. (Exhibits P-11, 12, 13, 14) The transcript of petitioner's appearance before the Board on February 6, 1974, has been received in evidence in these proceedings. (Exhibit P-17)

The Board asserts that it reviewed all of the material submitted by petitioner, as well as its own files regarding his performance as a teaching staff member. The Board also avers that one of its members, who was not present at the February 6, 1974 meeting, did later review all of the material submitted on behalf of petitioner. On February 12, 1974, the Board held a special meeting at which time it adopted a resolution stating its determination that petitioner submit to a psychiatric examination. (Exhibits R-4, R-11)

Petitioner filed an Amendment to his Petition of Appeal on April 30, 1974, and the Board filed an Answer to the Amendment on May 7, 1974. The Board filed a Motion for Summary Judgment on September 3, 1974, setting forth all of the evidence upon which it relied in support thereof. Oral argument on the Motion was held on November 20, 1974, before the Assistant Commissioner of Education. (Tr. II)

Petitioner filed a Brief, and the Board filed a Reply Brief with certain

You are viewing an archived copy from the New Jersey State Library.

affidavits in response to allegations made by petitioner. Petitioner then filed a Rebuttal Brief. Thereafter, petitioner filed a Motion for Summary Judgment with supporting documents. This matter is now before the Commissioner on Cross-Motions for Summary Judgment.

Petitioner's position is that he is entitled, as a matter of law, to an order determining that he need not submit to a psychiatric examination, because the Board based its determination to require his submission to such an examination upon inaccurate and insufficient information and evidence. Petitioner argues that, if he is not granted such an order by the Commissioner, the Board's Motion for Summary Judgment should be denied on the same grounds that the Board's determination was based upon inaccurate and insufficient information, and therefore the whole basis for the Board's determination is an issue of disputed material facts. Therefore, petitioner contends, he is entitled to a plenary hearing before the Commissioner to prove the inaccuracy and insufficiency of the Board's reasons for its determination and possibly prove what he describes as a strong implication that the Board was attempting to intimidate him and force him to leave the school district. Petitioner supports this argument by citing *Judson et al. v. Peoples Bank and Trust Co. et al.*, 17 *N.J.* 67, 74-75 (1954); *Blum v. Prudential Insurance Co.*, 125 *N.J. Super.* 195, 197 (*Law Div.* 1973); and *Kochman, supra.*

Petitioner also asserts that the Board's requirement that he submit to a psychiatric examination demands that he be granted an adversary hearing to subpoena witnesses for direct and cross-examination because such an action by the Board may seriously damage his standing in the community and reflect unfavorably upon his name, reputation and integrity. In support of this contention petitioner cites *Greene v. McElroy*, 360 *U.S.* 474, 497 (1959); *Willner v. Committee on Character and Fitness*, 373 *U.S.* 96 (1963); *Goldberg v. Kelly*, 397 *U.S.* 254, 269 (1970); *Wheeler v. Montgomery*, 397 *U.S.* 280 (1970); *Escalera v. New York City Housing Authority*, 425 *F.2d* 853, 861 (*2d Cir.* 1970); *McNeill v. Butz*, 480 *F.2d* 314 (*4th Cir.* 1973); *State v. King*, 112 *N.J. Super.* 138 (*App. Div.* 1970), aff'd 59 *N.J.* 525 (1970); and *Tibbs et al. v. Board of Education of the Township of Franklin*, 114 *N.J. Super.* 287, 297 (*App. Div.* 1971), aff'd 59 *N.J.* 506 (1971).

Petitioner also avers that the Board adopted its final resolution on February 6, 1974, which shows that an absent member of the Board voted in favor of the resolution. Petitioner further challenges the procedures of the November 15, 1973 special meeting of the Board on the grounds that the Board formulated its lengthy resolution in private and out of the presence of petitioner and his representatives, in violation of *N.J.S.A.* 47:1A-1 *et seq.*, the so-called Right to Know Law. *Kramer v. Board of Adjustment*, 80 *N.J. Super.* 454 (*Law Div.* 1963) and *Scott v. Town of Bloomfield*, 94 *N.J. Super.* 592 (*Law Div.* 1967), dismissed 52 *N.J.* 473 (1968) are cited in support of this argument.

Petitioner's final assertion is that the Board has illegally suspended him without pay during the pendancy of the instant Appeal. He requests a return to his teaching status and an order to restore the compensation due him.

You are viewing an archived copy from the New Jersey State Library.

The Board avers that all such arguments should be set aside by the Commissioner and a decision rendered in its favor as a matter of law. In the Board's view there are no material facts in contention and the basic issue is simply concerned with whether or not the statute, *N.J.S.A.* 18A:16-2, entitles the Board to demand a psychiatric examination be performed with respect to a tenured employee. The Board asserts that its judgment was properly grounded in evaluations and reports of school administrators and that petitioner's contention that such evaluations and reports are untrue cannot now be considered as posing factual issues of substance. In particular, the Board avers petitioner "***failed at his hearing before the Board to contest the accuracy of these statements and observations***" (at p. 6) and that such failure bars petitioner from contesting them at this juncture. The Board defends the accuracy and validity of the documents upon which it relied as the basis for requesting a psychiatric examination of petitioner and cites *Kochman, supra; Gish v. Board of Education of the Borough of Paramus, Bergen County,* 1974 *S.L.D.* 1150, aff'd State Board of Education, 1975 *S.L.D.* 1085, aff'd 145 *N.J. Super.* 96 (*App. Div.* 1976); and *Laba v. Newark Board of Education, Essex County,* 23 *N.J.* 364 (1957) to support its contention that the factual content of the documents requires the expertise of a psychiatrist for proper evaluation.

The Board further maintains that the meeting of February 6, 1974, was legally and properly a private executive session of the Board and that petitioner had ample opportunity, as evidenced by the transcript (P-17), to present his views. The Board cites *Gish, supra,* to support its contention that proceedings such as the instant one which involve tenure teachers are entitled to privacy and confidentiality.

Finally, the Board avers that petitioner has been afforded the due process rights to which he is entitled but that such rights do not include cross-examination of witnesses or other benefits of a full adversary hearing prior to the time when a psychiatric examination is conducted. It maintains that a full adversary hearing is required only when there is an ultimate judicial determination of unfitness and that a request or demand for a psychiatric exam is not such a determination. The Board cites *Cafeteria and Restaurant Workers v. McElroy,* 367 *U.S.* 886, 895 and *Stanley v. Illinois,* 405 *U.S.* 645 (1972) in support of its avowal that constitutional due process is a flexible rather than rigid concept and that the due process afforded petitioner by the Board was that to which he was entitled. The Board maintains further that its Motion for Summary Judgment is properly before the Commissioner since six members of the Board attended the hearing of February 6, 1974, and even the disqualification from voting of one member who was not present would not have altered the result with respect to petitioner.

The Commissioner has reviewed all such arguments and the total record in this matter and determines that the Board's Motion for Summary Judgment in its favor is ripe for decision and should be granted at least in part. While the documentation which supported the Board's action to invoke the statute, *N.J.S.A.* 18A:16-2, is attacked by petitioner with respect to factual validity, the Commissioner determines that it is more than adequate to support the action taken by the Board.

You are viewing an archived copy from the New Jersey State Library.

The documentation includes reports of school administrators (R-5 *et seq.*) with long experience in the supervision of teaching staff members and school programs and such reports do afford reason for concern. Moreover, the Board's final action to invoke the statute was taken only after a period of deliberation following petitioner's presentation on February 6, 1974 during which time the Board had an opportunity to adequately weigh the conflicts before it. The Board's judgment was one that it logically could make in the interest of school pupils on the record before it. The Commissioner so holds.

The New Jersey Legislature and the State Board of Education have together prescribed precise regulations for the supervision of instruction in the public schools by teaching staff members who are required to complete graduate programs in education and to possess special certification for the duties they perform. When supervisory personnel report classroom teaching observations and evaluations such as those herein in Exhibits R-5 *et seq.*, these evaluations may not lightly be set aside. To the contrary, the Commissioner holds these evaluation reports demand initial consideration with *prima facie* validity and an ultimate weight of great significance in the determinative process with respect to petitioner's performance. When, as here, there is evidence that due process has been afforded, and there has been an equable balanced consideration, there are no grounds for intervention by the Commissioner.

The quantitative and/or qualitative entitlements to constitutional due process have been set forth by the Commissioner and the courts in a number of decisions which are directly at point since petitioner avers the due process afforded him was inadequate. Thus, in *Gish, supra,* when also called upon to discuss the requirement of *N.J.S.A.* 18A:16-2 that teachers submit to psychiatric examination when "***in the judgment of the board***" such examination is required, the Commissioner said that prior to the exercise of the judgment the teacher must be afforded reasons for the contemplated action and afforded the right of reply in a hearing procedure. The rationale for the conduct of the hearing was set forth as follows:

> "***In the Commissioner's judgment, when reasons are provided by a local board of education and a hearing is scheduled, certain procedures must be followed. Adequate written notice of the hearing must be provided to insure the individual sufficient time to prepare his presentation. In addition to the written statement of reasons, the ideal procedure would be to have the reasons verbally explained to the employee prior to his appearance before the board. The individual is entitled to be represented by counsel or a person of his own choice before the board, and must be permitted to present witnesses on his behalf. If written statements or affidavits of witnesses are relied upon by the board in making its independent determination, the individual is entitled to receive copies of such signed statements upon request, and prior to the hearing. Such a hearing must be *private* because the hearing itself is *actually preliminary*. The appearance by the teacher is expressly to dissuade the board from requiring him/her to undergo a psychiatric examination. It is logical to assume that, once a board has furnished

You are viewing an archived copy from the New Jersey State Library.

reasons to a teaching staff member or other employee, and upon request is giving the individual an opportunity to be heard, the board has already made a tentative determination that a psychiatric examination is necessary. But the individual could conceivably change such a determination by convincing the members of the board that they had made an incorrect judgment. Should this result, the entire matter would end at that point. For this important reason an individual is entitled to *privacy* and *confidentiality* during such a proceeding.

"The Commissioner does not believe that this preliminary hearing by a local board of education should contain all of the formal panoply of a full adversary hearing. It has been pointed out that, when an individual challenges a board's determination for a psychiatric examination on whatever grounds, by filing a formal petition of appeal with the Commissioner, the proceedings then become fully adversary with all the elements of due process. Following the filing of a Petition and Answer, a pre-hearing conference is held. The issues are defined and procedures are determined. If a fact-finding hearing is necessary, witnesses may be subpoenaed to testify and are submitted to cross-examination. The final determination of the Commissioner may be appealed by either party to the State Board of Education. *N.J.S.A.* 18A:6-27***" (*Emphasis supplied.*) (1974 *S.L.D.* at 1164-65)

The Appellate Division of Superior Court in its affirmance of the State Board's and Commissioner's decisions expressly balanced the right to full due process, as claimed by petitioner herein, with the obligation to maintain the integrity and fitness of the public schools for pupils and determined that the "full sweep" of due process was not required. The Court said:

"***The principles asserted [with respect to due process] are not in dispute. However, they are misapplied, for several reasons. First, they apply to an official or body whose purpose in conducting the hearing is to determine whether sanctions or penalties shall be imposed. A requirement that appellant subject himself to a psychiatric examination can hardly be classified as a penalty or a sanction. See *Morrissey v. Brewer,* 408 *U.S.* 471, 92 *S.Ct.* 2593, 33 *L.Ed.*2d 484 (1972); *Goldberg v. Kelly,* 397 *U.S.* 254, 90 *S.Ct.* 1011, 25 *L.Ed.*2d 287 (1970). What is due process depends upon what the state or governmental body seeks to take from or deprive a person of receiving. *** *Monks v. N.J. State Parole Board, supra* 58 *N.J.* at 245. '***[I]n determining what procedures [are] required, the completing interests of the individual teacher and the school board must be balanced.' *Drown v. Portsmouth School Dist.,* 435 *F.*2d 1182 (1 Cir. 1970), cited with approval in *Monks, supra* at 245. Appellant was afforded the opportunity to be heard after the specific reasons were furnished to him.

"The submission by Gish to a psychiatric examination takes nothing from him except his time. His status as a teacher continues with full rights under the law. Therefore, from the standpoint of his being deprived of a right or

You are viewing an archived copy from the New Jersey State Library.

> privilege it is minimal, except as it may loom in his mind. But that subjective apprehension cannot control or limit the Board's right and obligation. As already indicated, the role of teachers in the shaping of young minds is a sensitive one. This very sensitivity adds weight to the side of the board in the mentioned competing interests between it and the teacher.***" (145 *N.J. Super.* at 106-107)
>
> See also *Hoffman v. Jannarone,* 401 *F.Supp.* 1095 (*D.N.J.* 1975); aff'd in part, rev'd in part and rem. on seventh count, 532 *F.2d* (3rd Cir. 1976), appearing on table of unpublished opinions.

In the context of such criteria it is possible to assess the facts of the instant matter which are of importance. Such facts are that:

1. On January 9, 1974 the Board advised petitioner of fourteen items which served as the basis of the Board's invocation of the statute *N.J.S.A.* 18A:16-2 to require that petitioner submit to a psychiatric evaluation. (R-24; see also P-5)

2. Thereafter petitioner was afforded a period of time to prepare for a rebuttal of the Board's reasons and on February 6, 1974, was given the opportunity to appear before the Board.

3. Petitioner did not personally testify on such date but presented, through counsel, a rebuttal in written form which consisted of his own affidavit and affidavits of fellow teachers and/or citizens.

4. Such affidavits either attacked the factual validity of the fourteen items the Board listed as a basis for its action or averred they were "greatly distorted and generalized" and did not fairly depict petitioner's behavior. (P-5, at p. 12)

5. Subsequent to a period of private consideration the Board resolved on February 12, 1974 to require the psychiatric examination.

The question that remains is whether such procedure conforms to the requirements of the Commissioner and the courts and, if so, whether there is any further relief which should be afforded by the Commissioner. The Commissioner determines that the procedure was adequate, that the record is complete and that there is no basis for further hearing. It is nowhere denied that the Board's action was predicated on reports of school administrators which are in evidence on the Board's Motion. The contention of petitioner is that such evidence "***does not support any determination***" that petitioner suffered from a "***harmful significant deviation***" from the mental health which is required of those who instruct school pupils. (P-5) The Commissioner does not agree. The reports upon which the Board relied do give reason for concern that teacher-pupil relationships were deteriorating; that there was a lack of purpose or reason in what petitioner did and that confrontation had replaced cooperation, *i.e.*:

You are viewing an archived copy from the New Jersey State Library.

From R-6 the unreasonable and unreasoned reading lesson;

From R-8 the statement from the principal that petitioner regarded pupils as "***a threat***" and that the class was "***one confrontation after another***";

From R-12 report of the Assistant Superintendent - the evidence of a poorly organized and motivated period of instruction which lacked purpose and promoted misbehavior of pupils;

From R-14 report of the Assistant Superintendent - "***My impression of Mr. Scachetti is that he is a disorganized and disoriented person. His lesson and his actions appear to me to be purposeless.*** Many of the statements he says end up in an incoherant (sic) manner.***"

From R-15 report of the assistant principal - a reiteration of other opinions, *ante,* attesting to disorganization, etc.

Although such reports require subjective, as well as objective, judgment there is no showing that they were made in bad faith. Petitioner's own affidavit does not deny that there was in 1974 a deteriorating situation in his room, although he attributes the blame to others:

> "***I believe it was becoming more difficult for me to manage the class because it was becoming known to the students that I did [not] have the support of the school administration.***" (P-5, at p. 12)

In the totality of the record, however, such disavowal lacks credence.

Accordingly, the Commissioner finds that that portion of the Board's resolution which requires petitioner to submit to a psychiatric evaluation must be met with compliance forthwith. (R-4, R-11) It is so ordered.

Finally there is petitioner's avowal that his suspension without pay by the Board was an illegal act and that restitution should be ordered by the Commissioner. The statutes with respect to suspension of tenured employees, in effect at the time of petitioner's suspension, are clear and are set forth as follows:

N.J.S.A. 18A:6-11

> "If written charge is made against any employee of a board of education under tenure during good behavior and efficiency, it shall be filed with the secretary of the board and the board shall determine by majority vote of its full membership whether or not such charge and the evidence in support of such charge would be sufficient, if true in fact, to warrant a dismissal or a reduction in salary, in which event it shall forward such written charge to the commissioner, together with certificate of such determination." (Amended *c.*304, *L.*1975)

You are viewing an archived copy from the New Jersey State Library.

N.J.S.A. 18A:6-14

"Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is made, with or without pay, but, if the determination of the charge by the Commissioner of Education is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made. Should the charge be dismissed, the person shall be reinstated immediately with full pay from the first day of such suspension. Should the charge be dismissed and the suspension be continued during an appeal therefrom, then the full pay or salary of such person shall continue until the determination of the appeal. However, the board of education shall deduct from said full pay or salary any sums received by such employee or officers by way of pay or salary from any substituted employment assumed during such period of suspension. Should the charge be sustained on the original hearing or an appeal therefrom, and should such person appeal from the same, then the suspension may be continued unless and until such determination is reversed, in which event he shall be reinstated immediately with full pay as of the time of such suspension."

Thus, suspensions, with or without pay, are legally correct only when accompanied by a certification of charges against a teaching staff member to the Commissioner. There has been no such certification by the Board in the instant matter, and it would have been held improper by the Commissioner if it had been made subsequent to petitioner's filing of the instant Appeal. Petitioner has done nothing more than exercise the rights of appeal which the Commissioner has said were available to him. *Gish, supra*

Accordingly, the Commissioner finds this plea of petitioner to be well founded and therefore directs the Board to compensate petitioner at its next regular pay period for lost earnings retroactive to the effective date of his suspension, subject only to mitigation of other compensation petitioner may have earned in the interim.

In summary, the Commissioner determines that petitioner has been afforded appropriate rights of due process, and that the Board's action to require a psychiatric examination of petitioner was a proper exercise of its discretion based upon sufficient credible evidence. Petitioner's suspension without pay pending receipt of the results of the required psychiatric examination cannot be sustained and is hereby set aside. Petitioner is to be immediately reinstated to his employment, with an appropriate duty assignment made at the discretion of the Board which may include a designation of work location outside the classroom.

COMMISSIONER OF EDUCATION

March 3, 1977

You are viewing an archived copy from the New Jersey State Library.

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, March 3, 1977

For the Petitioner-Appellant, Gebhardt & Kiefer (Richard Dieterly, Esq., of Counsel)

For the Respondent-Appellee, Alten W. Read, Esq.

The decision of the Commissioner of Education is affirmed for the reasons expressed therein.

July 6, 1977
Dismissed New Jersey Superior Court February 27, 1978

Mary Ann Mesics,

Petitioner,

v.

Board of Education of East Windsor Regional School District and Edward Callahan, County Superintendent, Mercer County,

Respondents.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Mary Ann Mesics, *Pro Se*

For the Respondents, Smith, Cook, Lambert and Miller (Thomas P. Cook, Esq., of Counsel)

Petitioner, a member of the Board of Education of the East Windsor Regional School District, hereinafter "Board," alleges that the Board illegally appointed a person not properly certified to the position of assistant superintendent in charge of support services. Petitioner demands that the Board be directed to remove that person from the position and further seeks an order from the Commissioner of Education by which the Board would be permanently enjoined from appointing a non-certificated person to any position for which an appropriate certificate is required. The Board denies the allegations and seeks Summary Judgment in its favor for failure of petitioner to state a cause of action upon which relief could be granted.

You are viewing an archived copy from the New Jersey State Library.

Oral argument on the parties' respective Motions was heard on February 16, 1977 at the State Department of Education, Trenton, by a representative of the Commissioner. The matter is referred directly to the Commissioner for adjudication on the record, including the transcript of the argument, the pleadings, affidavits, and exhibits of the parties, and the Board's Brief in support of its position.

The facts of the matter are these:

The Board granted its assistant superintendent for support services a one year leave of absence on June 28, 1976. While the leave was not effective until August 16, 1976, the assistant superintendent took vacation leave between June 28 and August 16 and placed Henry Williams in charge of his duties.

The Commissioner observes that Henry Williams is a teaching staff member in the employ of the Board and possesses certification as a teacher of production, personal or service occupations. Williams also possesses a baccalaureate degree awarded by Trenton State College. The Commissioner notices that a certificate as a teacher of production, personal or service occupations is issued in the vocational field and is issued pursuant to *N.J.A.C.* 6:11-8.4(16).

The Board, at a meeting conducted on July 12, 1976, determined not to have a meeting during August 1976 and also determined "***that permission be granted to the Board Secretary to pay bills retroactively during the interim period, and positions to be filled by staffing.***" (C-5) Consequently, the Board did not meet again until September 13, 1976. (Board's Answer, par. 2)

In the meantime, the assistant superintendent in charge of personnel and training by letter (C-9) dated August 11, 1976, applied to the Mercer County Superintendent of Schools for permission to assign Henry Williams on an interim basis to the position of assistant superintendent for support services, effective August 16, 1976. This application was made pursuant to the provisions of *N.J.A.C.* 6:3-1.1 which provide in full as follows.

> "(a) If because of illness or death or some other good and sufficient reason, the board of education must fill the post of superintendent of schools, assistant superintendent of schools, school business administrator, high school principal or elementary school principal with a person who is designated as the acting administrator in a respective situation and who is not properly certified to hold the position, it shall be the duty of the board of education to make written application to the Commissioner of Education for permission to employ such person in an acting capacity, stating the reasons why such action is necessary.
>
> "(b) If such approval is given by the Commissioner of Education, it shall be of three months' duration, and may be renewed by him upon application for a period of three months at a time. If the acting status of said individual is to extend beyond a year, no such permission can be given except upon recommendation of the Commissioner of Education to the

You are viewing an archived copy from the New Jersey State Library.

State Board of Education that the application of the local board of education be granted."

The Commissioner, by letter (C-10) dated September 7, 1976, approved the application and approved the appointment of Williams as an acting assistant superintendent of schools for the period of time commencing August 16 through November 16, 1976. The Commissioner also advised that "***renewal of this three-month appointment must be made pursuant to conditions set forth in NJAC 6:3-1.1." (C-10)

On November 8, 1976, the assistant superintendent in charge of personnel and training made application for renewal of Williams' three month interim appointment "pursuant to requirements set forth in NJAC 6:3-1.1." (C-11) The Board did approve the application for this renewal of the interim appointment. (C-12) The Commissioner by letter (C-13) dated November 16, 1976, granted renewal of Williams' appointment for the period of time commencing November 16, 1976 through February 16, 1977.

Petitioner asserts that in the first instance the assistant superintendent did not have the approval of the Board to initially apply on August 11, 1976 for Williams' interim appointment which, it is alleged, is contrary to the precise requirements of *N.J.A.C.* 6:3-1.1. Petitioner relies on affidavits (C-1, C-2, C-3) filed by three Board members in her claim that the Board did not grant authority for the initial application.

Petitioner asserts that even if the Board's approval on September 13, 1976 of the application for renewal of the interim appointment is considered to be ratification of the initial application made on August 11, 1976, the Board's action is still illegal because it had no good and sufficient reason to make such an application as required by *N.J.A.C.* 6:3-1.1. Petitioner asserts that the Board has in its employ several persons who are in possession of appropriate certificates and who, had they known of the vacancy, would have applied for the interim appointment.

Petitioner demands the Board remove Henry Williams from the position of assistant superintendent in charge of support services because he is not properly certified and because no reason has been established for such an interim appointment of a non-certificated person.

The Board President attests in a statement (C-7A) incorporated as part of his affidavit (C-7) that he considered the Board's action of July 12, 1976, as approval for the initial application. The Board President also attests that when the Superintendent had informed him on September 8, 1976 of the initial application for the interim appointment he, as Board President, approved that action.

The Board argues that even if it did not clearly act on July 12, 1976 to delegate such authority to its Superintendent, surely its action on September 13, 1976 to apply for an extension of the initial appointment must be held as a ratification of the initial appointment.

You are viewing an archived copy from the New Jersey State Library.

The Commissioner observes that for a person to be appointed as an assistant superintendent of schools, the possession of either a principal's certificate, or in one instance a supervisor's certificate, is prerequisite. *N.J.A.C.* 6:11-10.4(a)(b) In the instant matter, Henry Williams does not possess either of the requisite certificates.

While Williams' initial appointment was approved for three months, and renewed thereafter for an additional three months, such approval was grounded upon the well-established doctrine that actions of a board of education are presumed to be correct and within its authority and will not be set aside unless it is proven that the action is illegal or improper. *Thomas v. Morris Township Board of Education,* 89 *N.J. Super.* 327 (*App. Div.* 1965), aff'd 46 *N.J.* 581 (1966)

It is recognized that a board need not always formalize a statement of reasons for its actions. If challenged, however, the board must come forward with evidence that the action was not arbitrary, capricious or unreasonable. *Preston K. Mears et al. v. Board of Education of the Town of Boonton, Morris County,* 1968 *S.L.D.* 108

In the instant matter, the Commissioner has reviewed the affidavit of the Board President (C-7, C-7A) and the Board's Brief in support of its controverted action and finds that the Board did not have good and sufficient reason to apply for the controverted interim appointment. The Board had been aware of the pending vacancy from June 28, 1976. Even though the public schools were under Court order at that time, it certainly could have acted to transfer the duties of the assistant superintendent in charge of support services to another administrative office, or divided the duties among its certified staff, or appointed a person who was properly certified.

Accordingly, the Board is directed to forthwith remove Henry Williams from the position of assistant superintendent of schools in charge of support services.

Petitioner's prayer to permanently restrain the Board from applying for interim appointments pursuant to *N.J.A.C.* 6:3-1.1 is denied on the basis that such an order would be speculative.

Finally, the Commissioner notices that the Board applied for its second extension of its controverted interim appointment. Consistent with the Commissioner's ruling herein, the application is denied.

COMMISSIONER OF EDUCATION

March 3, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Sterling Regional High School District,

Petitioner,

v.

Borough Councils of the Boroughs of Stratford, Somerdale, and Magnolia, Camden County,

Respondents.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Hyland, Davis & Reberkenny (William D. Hogan, Esq., of Counsel)

For the Respondents, Stransky and Steinberg (Isaiah Steinberg, Esq., of Counsel)

Petitioner, the Board of Education of the Sterling Regional School District, hereinafter "Board," appeals from an action of the Borough Councils of the Boroughs of Stratford, Somerdale, and Magnolia, hereinafter "Councils," taken pursuant to *N.J.S.A.* 18A:22-37 certifying to the Camden County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The facts of the matter were adduced at a hearing conducted on January 18 and 25, 1977 at the office of the Camden County Superintendent of Schools, Pennsauken, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

At the annual school election held March 2, 1976, the Board submitted to the electorate a proposal to raise $1,311,456.61 by local taxation for current expense costs of the school district. This proposal was rejected by the voters and, subsequent to the rejection, the Board submitted its budget to the Councils for their determination of the amount necessary for the operation of a thorough and efficient school system in the Sterling Regional High School District for the 1976-77 school year, pursuant to the mandatory obligation imposed on the Councils by *N.J.S.A.* 18A:22-37.

After consultation with the Board, the Councils made their determination and certified to the Camden County Board of Taxation an amount of $1,151,456.61 for current expenses. The pertinent amount in dispute is shown as follows:

	Current Expense
Board's Proposal	$1,311,456.61
Councils' Proposal	1,151,456.61
Amount Reduced	$ 160,000.00

You are viewing an archived copy from the New Jersey State Library.

The Board contends that the Councils' action was arbitrary, unreasonable, and capricious and documents its need for restoration of the reductions recommended by the Councils with written testimony and a further oral exposition at the time of the hearing. The Councils maintain that they acted properly and after due deliberation and that the items reduced by their action are only those which are not necessary for a thorough and efficient educational system. The Councils also support their position with written and oral testimony. As part of their determination, the Councils suggested sixty-seven specific program object codes of the budget in which they believed economies could be effected. The total recommended reduction of these sixty-seven program items is $94,092.44.

There appears no necessity to deal *seriatim* with each of the object codes in which the Councils recommended reduced expenditures. As the Commissioner said in *Board of Education of the Township of Madison v. Mayor and Council of the Township of Madison, Middlesex County,* 1968 *S.L.D.* 139:

> "***The problem is one of total revenues available to meet the demands of a school system***." (at 142)

The hearing examiner determines that the actual issue in contention is the Board's current expense free appropriations balance, which is now $248,868.50 according to the Commissioner's records in the Division of Administration and Finance (DAF). This determination was reached by considering the Councils' frequent remonstration that a particular program object code could be funded by the Board's current expense free appropriations balance. (Tr. I-15, 25-30, 94-98, 102-108, 111-112) The total current expense budget is $2,331,023.61 and the current expense free appropriations balance on June 30, 1976 was $398,868.50, reduced by $150,000 which has been appropriated to the 1976-77 school budget. (Tr. I-29; Commissioner's Records, DAF) The amount remaining, $248,868.50, is the Board's actual contingency which represents 10.67 percent of the current expense budget.

There is no statutory authority for contingency funds. However, the Commissioner has held that good business practice dictates that some contingency funds be made available. *Board of Education of Penns Grove-Upper Penns Neck Regional School District v. Mayor and Council of the Borough of Penns Grove and Township Committee of the Township of Upper Penns Neck, Salem County,* 1971 *S.L.D.* 372; *Board of Education of the Borough of Dunellen v. Mayor and Council of the Borough of Dunellen, Middlesex County,* 1974 *S.L.D.* 64

In the instant matter, the Board shows a free appropriations balance greater than that usually allowed by the Commissioner. The Board President testified that the Board has tried to build this reserve over several years so that it could expand its vocational education program. (Tr. II-93-102) Additionally, the hearing examiner notices that unbudgeted State aid in the amount of $226,428 is available to the Sterling Regional High School District. (State Department of Education, Division of Administration and Finance - Report 03) In the hearing

You are viewing an archived copy from the New Jersey State Library.

examiner's judgment, one purpose for this unbudgeted State aid is to restore programs and the necessary funds required to operate a thorough and efficient system of public schools when those programs have been eliminated or reduced. Another purpose is to provide property tax relief to the taxpayers of the school district. (See *c.*113, *L.*1976.) In the instant matter part, or all, of the reduction made by the Councils can be restored by available State aid and there would still be property tax relief for the school district.

The Board argues that its surplus should not be considered in the matter herein controverted, and that it is entitled to the unbudgeted State aid provided by the Legislature. The Board argues further that it should not be penalized because it followed the recommendations of the Department of Education when anticipating its State aid. Therefore, it demands full restoration of its budget with the available State aid funds. (Exhibit A - Board's Letter Brief, January 27, 1977) The Councils' letter Brief (Exhibit B, February 3, 1977) disagrees and argues that the Board has not sustained its burden of proof that the programs the Councils reduced are necessary for a thorough and efficient system of schools in the district. The Councils argue further that the law does not provide automatic restoration of moneys simply because it is available as State aid.

The New Jersey Supreme Court commented in *East Brunswick Board of Education v. East Brunswick Township Council,* 48 *N.J.* 94 (1966) as follows:

> "***As in *Booker,* [45 *N.J.* 161 (1965)] the Commissioner in deciding the budget dispute here before him, will be called upon to determine not only the strict issue of arbitrariness but also whether the State's educational policies are being properly fulfilled. Thus, if he finds that the budget fixed by the governing body is insufficient to enable compliance with mandatory legislative and administrative educational requirements or is insufficient to meet minimum educational standards for the mandated 'thorough and efficient' East Brunswick school system, he will direct appropriate corrective action by the governing body or fix the budget on his own within the limits originally proposed by the board of education. *On the other hand, if he finds that the governing body's budget is not so inadequate, even though significantly below what the Board of Education had fixed or what he would fix if he were acting as the original budget-making body under R.S. 18:7-83, then he will sustain it, absent any independent showing of procedural or substantive arbitrariness.* ***"
> (*Emphasis supplied.*) (at 107)

In the instant matter, the hearing examiner finds that the Board has not sustained its burden of proof that its budget would be inadequate to operate a thorough and efficient system of schools within the amount provided for by the Councils as required by *East Brunswick, supra.* The Commissioner's records in DAF show that the Board's current expense free appropriations balance has increased in the past three years as detailed, *ante.*

In the hearing examiner's opinion, it is inconceivable that the Board would allow programs to suffer and permit equipment to deteriorate while holding a

You are viewing an archived copy from the New Jersey State Library.

current expense free appropriations reserve of approximately a quarter of a million dollars, on a total current expense budget less than two and one quarter million dollars.

Having made this finding, it is now necessary to examine the Councils' actual reduction, any recommended restoration, and the source of that recommended restoration; specifically, it must be determined whether the restoration should be from State aid or the Board's own current expense free appropriations balance.

The record shows that the Councils' actual specific program object code reduction is $94,092.44. (Tr. I-30) Therefore, the hearing examiner recommends that the Board's budget be reduced by that amount and that the balance of $65,907.56 be restored to the budget. It is further recommended that this restoration be made from available unbudgeted State aid. (DAF, Report 03) A review of the sections of the pertinent statute reveals the following:

"1. The Legislature finds and declares:

"a. That in this year of transition in the funding of education, *special procedures* must be established for the distribution of State aid to school districts;

"b. That *these special procedures must include a method for assuring substantial property tax relief for the citizens of this State, as well as a guarantee that additional aid to school districts will be spent for educational programs and special educational services necessary for a thorough and efficient education*;

"c. That *such special procedures must include the restoration of funds, after sufficient justification* and adequate public notice, to those districts in which the budget was reduced by action of municipal governing bodies and to those districts which, upon recommendation, reduced their budget at the expense of educational programs and special educational services necessary for a thorough and efficient education; and

"d. That in providing such funds *it is the intent of the Legislature that they be used to implement such educational programs and special educational services and to provide local property tax relief.*" (*Emphasis supplied.*) (*c.*113, *L.*1976)

Thus, it is clear that the Legislature intended to restore moneys found necessary for the thorough and efficient operation of the public schools and to provide substantial property tax relief.

In summary, the hearing examiner finds that the Board did not show that its budget is inadequate after the Councils' reduction. The hearing examiner finds that the reduction is actually $94,092.44. Therefore, he recommends that the balance of $65,907.56, which amount was not delineated by the Councils'

You are viewing an archived copy from the New Jersey State Library.

line item reduction, be restored to the budget from available unbudgeted State aid. (DAF, report 03)

Total Unbudgeted Current Expense State Aid	$250,089.00
Less Compensatory Bilingual Aid	23,661.00
Amount Available for Restoration and/or Property Tax Relief	$226,428.00
Less Recommended Restoration	65,907.56
Amount Available for Property Tax Relief	$160,520.44

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner and notices that the litigants have waived the filing of exceptions to the hearing examiner's report pursuant to *N.J.A.C.* 6:24-1.17(b).

The Commissioner finds that the Board's current expense free appropriations balance of $248,868.50 is excessive. As indicated above, there is no statutory authority for contingency funds; however, the Commissioner has always permitted reasonable reserves. *Board of Education of Penns Grove-Upper Penns Neck, supra*

The Commissioner cannot find in his review of the record evidence that programs were eliminated or reduced by Councils' action. Quite the contrary, the Board's current expense free appropriations balance is sufficient to offset Councils' entire reduction and still provide reasonable contingency funds. The Commissioner determines that the Board has not demonstrated that its budget is inadequate, as set forth by the Court in *East Brunswick, supra.*

For these reasons, the Commissioner adopts the report of the hearing examiner in its entirety. Councils' reduction of $94,092.44 will stand unchanged. The balance of Councils' reduction ($65,907.56) for which it supplied no documented reasons, as required, will be restored with unbudgeted State aid.

The Commissioner directs that $65,907.56 in unbudgeted State aid moneys be restored to the Board's budget for current expenses of the school district for the 1976-77 school year.

COMMISSIONER OF EDUCATION

March 9, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the
Union County Regional High School District No. 1, Union County,

Petitioner,

v.

Henry T. Karamus,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

For the Petitioner, Johnstone & O'Dwyer (Franz J. Skok, Esq., of Counsel)

For the Respondent, Henry T. Karamus, *Pro Se*

Petitioner, the Board of Education of the Union County Regional High School District No. 1, hereinafter "Board," alleges in a Petition of Appeal filed with the Commissioner of Education on March 4, 1977, that a nominating petition filed on behalf of Henry T. Karamus for presentation of Mr. Karamus as a candidate for election to a seat on the Board at the annual school election of March 22, 1977, is defective. Specifically, the Board alleges that such nominating petition contained the names of two affiants who were not qualified to vote in the district in the annual election and, thus, that the petition was legally flawed in the context of the clear prescription of the statute, *N.J.S.A.* 18A:14-11. The Board requested the Commissioner to so determine and to direct that the name of Henry T. Karamus be deleted from the ballot as a candidate for election to a seat on the Board.

Subsequent to receipt of the Board's Petition of Appeal, and after consideration of it, the Assistant Commissioner of Education directed Candidate Karamus to show cause at a hearing on March 8, 1977 at the Office of the Union County Superintendent of Schools, Westfield, why his name should not be so deleted. The hearing was held as scheduled, and Candidate Karamus appeared but did not present a defense to the allegations. He did admit that they were true in fact.

Accordingly, the Commissioner finds and determines that the imprinted name of Henry T. Karamus may not lawfully appear on the printed ballot at the annual school election of March 22, 1977 in the Union County Regional High School District No. 1 and he directs the Secretary of the Board to delete such name from the list of names of candidates to be inscribed thereon.

ORDERED this 9th day of March 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

**In the Matter of the Tenure Hearing of Matilda Grabert,
School District of the Township of Egg Harbor, Atlantic County.**

COMMISSIONER OF EDUCATION

DECISION ON MOTION

For the Complainant Board of Education, (A. Ralph Perone, Esq., of Counsel)

For the Respondent, Hartman, Schlesinger, Schlosser & Faxon (Joel S. Selikoff, Esq., of Counsel)

Respondent, a teacher with a tenure status employed by the Board of Education of the Township of Egg Harbor, Atlantic County, hereinafter "Board," was suspended from her teaching duties without pay on March 8, 1974 at the direction of the Board President (P-1), and was subsequently suspended without pay by the Board on March 20, 1974, when it certified a series of fourteen charges to the Commissioner of Education pursuant to *N.J.S.A.* 18A:6-11. Four days of hearings on those charges have already been conducted by a hearing examiner appointed by the Commissioner, and additional days of hearings have already been set.

On August 22, 1974, respondent moved that she be paid at her regular salary pursuant to the provisions of *N.J.S.A.* 18A:6-14. Oral argument on the Motion was heard on September 10, 1974 at the State Department of Education, Trenton, by a representative of the Commissioner. The transcript of that argument and the record are now before the Commissioner for his determination.

N.J.S.A. 18A:6-14 provides as follows:

> "Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is made, with or without pay, but, if the determination of the charge by the Commissioner of Education is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made. Should the charge be dismissed, the person shall be reinstated immediately with full pay from the first day of such suspension. Should the charge be dismissed and the suspension be continued during an appeal therefrom, then the full pay or salary of such person shall continue until the determination of the appeal. However, the board of education shall deduct from said full pay or salary any sums received by such employee or officers by way of pay or salary from any substituted employment assumed during such period of suspension. Should the charge be sustained on the original hearing or an appeal therefrom, and should such person appeal from the same, then the suspension may be continued unless and until such determination is reversed, in which event he shall be

You are viewing an archived copy from the New Jersey State Library.

reinstated immediately with full pay as of the time of such suspension."

The Commissioner observes that the issues in dispute herein are three:

1. For purposes of benefits provided by the above-cited law, are days during the summer recess when teachers generally are not employed in their regular teaching assignments to be counted in the tolling of the 120 days?

2. In the factual circumstances as herein, where a teaching staff member has been suspended during one school year and the proceedings are carried over to the next school year and a finding is made that the benefits of *N.J.S.A.* 18A:6-14 are to begin, do such benefits include the salary earned at the time of suspension or must the salary payments be made on the basis of the salary increment generally afforded teaching staff members from one year to the next?

3. Which of the parties herein caused a delay, if any, in the proceedings from the date of respondent's suspension by the Board on March 20, 1974 until the date of oral argument on the Motion, *sub judice,* September 10, 1974?

In regard to the first issue set forth above, the Commissioner has addressed the counting of days during the summer recess for the tolling of time pursuant to *N.J.S.A.* 18A:6-14. In a recent Decision on Motion, *In the Matter of the Tenure Hearing of Walter Kizer, School District of the Borough of Haledon, Passaic County,* 1974 *S.L.D.* 501, the Commissioner held, *inter alia*:

> "***The Commissioner***determines that the precise language used by the Legislature in *N.J.S.A.* 18A:6-14 calls for a maximum of '***120 calendar days after certification of the charges***.' The Legislature did not say 'school calendar days' as it certainly could have done.***
>
> "In *N.J.S.A.* 18A:6-14, the Legislature stated that a tenured person who is suspended by a board from his employment, pending disposition of charges preferred against him, shall be paid his full salary commencing with the 121st calendar day of his suspension if the Commissioner has not yet rendered his decision, providing that the delay, if any, is not attributable to the employee. The clear meaning of this provision is that 120 calendar days are 120 periods of 24 hours each of suspension, after which salary payment must resume.***" (at p. 504)

Accordingly, it is clear that the days during the summer recess are to be counted in the tolling of time for purposes of *N.J.S.A.* 18A:6-14. See also *In the Matter of the Tenure Hearing of Anthony Polito, School District of the Township of Livingston, Essex County,* Decision on Motion, 1974 *S.L.D.* 662.

In regard to the second issue set forth above as to whether an employee who has been suspended during one school year and who becomes eligible for

You are viewing an archived copy from the New Jersey State Library.

the benefits of *N.J.S.A.* 18A:6-14 during the succeeding school year should receive salary benefits based on what that person's salary would have been during the succeeding school year, including the salary increment had the suspension not occurred, the Commissioner points out that that narrow issue has not yet been addressed. However, the Commissioner did state in *Kizer, supra,*:

> "***In the judgment of the Commissioner, *N.J.S.A.* 18A:6-14 was amended by *Chapter* 435, *Laws* of 1971, in order to provide financial assistance to individuals who are suspended without pay from their employment with local boards of education, pending the determination of formal charges, and, consequently, find themselves in protracted legal proceedings. Nowhere is there any indication that the first 120 days of suspension was to be considered a penalty imposed upon the suspended employee by either the Legislature or the Commissioner***." (at p. 505)

Furthermore, it is well-established that a local board of education has no authority to set its own penalty against any of its tenured employees. *In re Fulcomer,* 93 *N.J. Super.* 404 (*App. Div.* 1967) The Commissioner alone has the authority to determine whether the proofs offered support charges preferred against a tenured employee. *In re Fulcomer, supra* The employee against whom charges are certified by a board of education is, according to our most fundamental principle of jurisprudence, innocent of the charges until, and if, the board carries the burden of proof.

Accordingly, the Commissioner determines that, in the circumstances as herein, when an employee suspended in one school year, becomes eligible for benefits pursuant to *N.J.S.A.* 18A:6-14, in the subsequent school year, salary payments are to be based on the salary that person would receive in the subsequent school year had the suspension not occurred. Otherwise, a penalty, in the form of the withholding of a salary increment would be imposed, which was not intended by the Legislature and which is not within the authority of the Board under such circumstances.

Finally, in regard to the period of time which has elapsed in this matter between March 20, 1974, the date of respondent's suspension, and September 10, 1974, the date of oral argument on the Motion, *sub judice,* the pertinent dates as reflected in the record are as follows:

March 20, 1974: Respondent was suspended without pay by the Board which also certified charges to the Commissioner.

March 29, 1974: Tenure charges were received at the Commissioner's office.

April 2, 1974: Receipt of tenure charges acknowledged to the Board Secretary by the Division of Controversies and Disputes, hereinafter "Division." Also, a copy of the charges was sent to the two known addresses of respondent with a letter advising her to file an Answer to the charges within ten days.

You are viewing an archived copy from the New Jersey State Library.

April 24, 1974: An unsuccessful telephone attempt by the Division was made to contact respondent because no Answer to the charges had been filed nor was any communication received from her.

April 25, 1974: Another unsuccessful telephone attempt to contact respondent was made by the Division.

May 3, 1974: The Division was notified by letter that the firm of Hartman, Schlesinger, Schlosser, and Faxon had been engaged to represent respondent. The last paragraph of that letter is reproduced here in full:

> "N.J.A.C. 6:24-4.1 and 6:24-4.2 contain no guidance with respect to the filing of written responses to the charges [as certified against respondent by the Board]. If written answers should be filed I would appreciate being advised of that fact so that I [Alfred A. Faxon, III, Esq., of Counsel] may prepare them and submit them in advance of any hearing date on these charges."

May 7, 1974: The Division referred respondent's counsel to *N.J.A.C.* 6:24-1.3 which sets forth the requirement for the filing of an Answer. Furthermore, the Division also referred respondent's counsel to the letter dated April 2, 1974, *ante,* in which she was advised to file her Answer within ten days.

May 30, 1974: By telephone, counsel to the Board inquired of the Division whether an Answer to the charges was filed by respondent. Counsel was informed that respondent's Answer had not yet been filed.

May 31, 1974: The Division inquired of respondent's counsel whether a defense would be entered against the charges. Counsel stated the Answer was mailed on May 30, 1974. By telephone, counsel to the Board was so informed.

June 4, 1974: Respondent's formal Answer denying the charges herein was filed.

June 13, 1974: Conference of counsel between the parties was set for June 21, 1974.

June 21, 1974: Conference of counsel was conducted.

June 28, 1974: Hearing dates were set for July 29 and July 30, 1974.

July 1, 1974: An amended Answer was filed.

July 16, 1974: A Motion was filed by respondent to take depositions.

You are viewing an archived copy from the New Jersey State Library.

July 24, 1974: Oral argument on respondent's Motion was heard.

July 25, 1974: The Commissioner, by written decision, denied respondent's Motion.

July 29 and 30, 1974: Hearings were conducted.

July 31, 1974: Additional hearing dates were set for August 22 and 23, 1974.

August 22, 1974: Respondent's Motion, *sub judice,* was filed.

September 10, 1974: Oral argument on respondent's Motion, *sub judice,* was heard.

September 3, 1974: Additional hearing dates were set for September 23 and October 1, 1974.

It is obvious to the Commissioner that a review of the pertinent dates set forth above reflect that a "delay," as contemplated by the Legislature, has occurred. The issue to be decided is how much delay was created by petitioner.

In this regard, respondent asserts that no delay in the matter may be attributed to her, while the Board contends the delay is attributable to her for failure to file a timely Answer. The Commissioner notes that respondent's formal Answer was not filed until June 4, 1974. According to the Division's letter sent on April 2, 1974, respondent had ten days in which to file an Answer. Allowing two days for mail delivery, the tolling of ten days began on April 4, 1974, and expired on April 15, 1974. The period of time between April 16, 1974, the first day of delay when the Answer was not filed, until June 3, 1974, the day before the Answer was filed, is forty-nine days. This forty-nine day delay is attributable, in the Commissioner's judgment, to respondent.

After a thorough review of the pertinent dates regarding the proceedings in this matter, the Commissioner finds and determines that respondent has caused no other delay than that set forth above.

Accordingly, the Commissioner finds that the benefits of *N.J.S.A.* 18A:6-14 became applicable to respondent on the day after the 169th day from the date of her suspension which was September 6, 1974. The Board of Education of the Township of Egg Harbor is hereby ordered to resume salary payments to Matilda Grabert in the amount and manner she would receive for the 1974-75 academic year had she not been suspended.

COMMISSIONER OF EDUCATION

October 7, 1974

You are viewing an archived copy from the New Jersey State Library.

COMMISSIONER OF EDUCATION

DECISION

For the Complainant Board of Education, A. Ralph Perone, Esq.

For the Respondent, Goldberg & Simon (Joel S. Selikoff, Esq., of Counsel)

The Board of Education of the Township of Egg Harbor, hereinafter "Board," certified fourteen charges of unbecoming conduct and insubordination on March 20, 1974 to the Commissioner of Education for adjudication against respondent, a teacher with a tenure status. Respondent denies the allegations and asserts that the charges are the direct result of improper discrimination and harassment against her by the school principal. Respondent seeks reinstatement to her position from which she has been suspended.

Twenty-two days of hearing were conducted in the matter commencing on July 29, 1974, and concluding on December 2, 1975 at the State Department of Education, Trenton; at the office of the Atlantic County Superintendent of Schools, Mays Landing; and at the office of the Cape May County Superintendent of Schools, Cape May, before a hearing examiner appointed by the Commissioner. Subsequent to the last day of hearing the parties filed written summations in support of their respective positions. The report of the hearing examiner is as follows:

Prior to a recitation of the proofs submitted in support of the charges and the defenses entered thereto, the hearing examiner observes that the Commissioner directed the Board to resume respondent's salary payments as of September 6, 1974 pursuant to *N.J.S.A.* 18A:6-14. (See *In the Matter of the Tenure Hearing of Matilda Grabert, School District of the Township of Egg Harbor, Atlantic County,* decision on Motion, October 7, 1974.) The hearing examiner also observes that the Commissioner denied respondent's Motion to compel discovery by way of depositions on July 25, 1974. *In the Matter of the Tenure Hearing of Matilda Grabert, School District of the Township of Egg Harbor, Atlantic County,* Order, July 25, 1974

Respondent has been a teacher for twelve years, the last seven of which have been in the employ of the Board. (Tr. XI-127, 129) The Superintendent of Schools testified that prior to the 1973-74 academic year when the charges emerged, respondent had been assigned to the Board's Swift School. The principal of Swift School had complained of respondent's alleged tardiness and it appears that respondent complained of alleged harassment by the principal. (Tr. I-24) Thus, respondent requested and was granted a transfer to Slaybaugh School for 1973-74. (Tr. I-24, 45) Respondent taught at Slaybaugh School between September 1973 and March 8, 1974, when she was suspended from her teaching duties by the Slaybaugh School principal, hereinafter "principal." The Board ratified the principal's action on March 30, 1974, when it certified the fourteen charges to the Commissioner.

You are viewing an archived copy from the New Jersey State Library.

Finally, the hearing examiner observes that the principal who prepared and forwarded the charges to the Board and who is the Board's chief witness in support of thirteen of the fourteen charges is no longer in the employ of the Board. His tenure of service began in September 1971 and concluded on June 30, 1974. (Tr. I-99) Consequently, his testimony in support of the charges herein was elicited after his employment with the Board ceased.

The charges shall now be discussed *seriatim.*

CHARGE ONE

"That on or about the fourteenth of February, 1974, Mrs. Grabert did commit acts which constitute conduct unbecoming a teacher, in that she did attend a student dance that was given at the Slaybaugh School although she was not one of the three teachers assigned to chaperone duty at the dance, that upon arriving at the dance, she entered the girl's lavatory and because of a disturbance, was asked to leave the lavatory along with the female students who were then in the lavatory. During the dance, Mrs. Grabert was initially seated next to a seventh grade student, who had his head on her shoulder. She and the seventh grade student later danced together holding each other closely. When the dance ended, Mrs. Grabert and this same seventh grade student did embrace; thereafter, Mrs. Grabert and the seventh grade student kissed each other. When the students were departing from the dance, and awaiting transportation to their respective homes, it was discovered that Mrs. Grabert had offered to drive the seventh grade student home."

The hearing examiner observes that February 14, 1974, was a Thursday. School was not in session on Friday, February 15 or Monday, February 18, 1974. The principal testified that upon his return to school on Tuesday, February 19, 1974, he heard complaints from the school disciplinarian regarding respondent's conduct at the February 14 eighth grade dance, hereinafter "dance." (Tr. I-108) The principal testified that the school disciplinarian explained that he was informed by a parent that the parent had heard respondent offered a male pupil a ride home after the dance. (Tr. I-154) The principal testified that he then talked with the guidance counselor who, according to the principal, stated that he had heard rumors regarding respondent's total conduct at the dance. (Tr. I-109) The principal then talked with the teacher who was the authorized chaperone in charge of the dance, Bruce Crawford. The principal testified that Chaperone Crawford stated that respondent behaved in a professionally unacceptable manner at the dance. (Tr. I-105, 110-111) The principal testified that he then talked with the two other assigned chaperones, Carol Smith and Robert Reed, with respect to their knowledge of respondent's behavior at the dance.

The principal testified that he informed respondent of the allegations he heard with respect to her behavior at the dance (Tr. III-67) and further testified that he summarized the conversation in a memorandum (P-3) dated February 20, 1974 which was reviewed and signed by respondent as being accurate insofar as the contents of the conversation were concerned. The memorandum

You are viewing an archived copy from the New Jersey State Library.

substantially sets forth the allegations which shall be discussed, *post,* all of which were denied by respondent. It is noticed that respondent agreed, by her signature affixed thereto, that a topic of conversation was her inability to recollect whether Chaperone Crawford had recruited her to be a chaperone for the dance.

Chaperones Crawford, Smith and Reed, as the result of their earlier conversations with the principal and at his direction (Tr. III-30), prepared and submitted to him written statements with respect to their perceptions of respondent's behavior at the dance. The hearing examiner observes that the principal testified that Chaperones Smith and Reed, both of whom are nontenure teachers, were reluctant to provide the statements. Chaperone Crawford, who enjoys a tenure status, was not reluctant to submit a statement with respect to the charge. (Tr. III-42)

Chaperone Crawford's statement (P-26) dated February 21, 1974, is as follows:

> "On Feb. 14, 1974 from 7:00-9:45 a dance was held in the cafeteria of E.H. Slaybaugh.
>
> "I, Bruce Crawford, was in charge and the chaperones were Carol Smith and Bob Reed. Chaperones are to be at the dance at 7:00, which they both were.
>
> "Around 9:00 M. Grabert entered the dance and went right into the bathroom. A group of girls then also entered. Some five or ten minutes later M. Grabert and the girls left the bathroom and went in and sat down at the dance. They sat along the back wall.
>
> "About ten minutes later a 7th grade boy came up and said 'do you remember what I was telling you in school? Well look.' (The boy had told me about three days before that M. Grabert and [R.L.] were acting overly friendly and that [R.L.] was telling about it in a proud way. I am on a teacher committee that answers student problems, if we can, and this was handed in, in writing, as a problem.)
>
> "I looked to where the boy was pointing and saw [R.L.] with his head on M. Grabert's shoulder sitting against the wall. Students were sitting around them also.
>
> "At this time students were walking by to all get a look. I, at this time, told Carol Smith and Bob Reed but they had also heard about it and had looked.
>
> "About ten minutes later they were dancing together.
>
> "At 9:45 many students left and went outside to go home. All students left except [R.L.] who stayed behind with M. Grabert. I was standing near Carol Smith who said 'I don't believe it,' I turned to see [R.L.] and M.

You are viewing an archived copy from the New Jersey State Library.

Grabert kissing mouth to mouth in a hugging embrace. The kiss was not a short one and I went to the door to keep any students from entering again.

"Once during the dance M. Grabert was standing next to me after being in the bathroom. A boy came over and said '[R.L.] wants you,' her reply was 'I'll bet I know what he wants' at which time she went over to him."

Chaperone Smith's statement, dated February 22, 1974, is as follows:

"The following is written at the request of Mr. Pagnotto, principal.

"To the best of my knowledge, the following is an account of what took place at the school dance on Thursday February 14, 1974 in the Slaybaugh Cafeteria.

"Mr. Crawford, Mr. Reed and I were chaperones arriving approximately 7:00 p.m. At 9:00 p.m. Mrs. Grabert arrived and went into the girls lavatory with a group of girls. It was at this point that I become cognizant that there was trouble in the lavatory as reported by a student.

"It was suggested by me to a custodian to lock the lavatory doors due to continued misbehavior. At this time I asked Mrs. Grabert and the girls to leave the lavatory. Mrs. Grabert was reluctant to leave but complied.

"Within a short time as I was checking the records for music I noticed Mrs. Grabert in the corner sitting with a group of students, one boy having his head on her shoulder. Also, at this time I became aware that Mr. Crawford was also informed of this through several students.

"By 9:30 Mr. Reed and I noticed Mrs. Grabert and this same student dancing in a very close position.

"At 9:45 the dance ended and the students began filing out of the cafeteria. A few students and parents remained behind. Mrs. Grabert and this student had moved to the far corner of the cafeteria where he stood behind her with his arms around her and her arms resting on his.

"Mr. Reed, Mr. Crawford and I tried to usher all remaining so as not to observe the incident. At this point, Mrs. Grabert and the student kissed each other on the lips in an embrace.

"Mr. Crawford and I remained to put away the records. When I looked again the cafeteria was empty.

"This statement is being made reluctantly and only because my principal requested it.

"Due to the nature of this situation, I would hope this statement is sufficient on my part. I feel any further action should be taken by my superiors." (P-28)

You are viewing an archived copy from the New Jersey State Library.

Chaperone Reed's statement, dated February 22, 1974, is as follows:

"I have been requested by Mr. Pagnotto to give a written accounting of what I witnessed at the Slaybaugh canteen on Thursday evening, February 14, 1974. I *reluctantly* do so.

"This, then - in brief - is what occurred throughout the evening. At approximately 9:00 Mrs. Grabert entered the cafetorium and went to the rear of the cafetorium and sat there.

"At about 9:15 it was brought to my attention by several students that a seventh grader, [R.L.] was sitting back in the corner with his head on Mrs. Grabert's shoulder. I walked from the kitchen, in order to check the authenticity of this observation, and to my dismay, saw that this indeed was true!

"Approximately 30 minutes later I observed Mrs. Grabert and ***[R.L.]*** dancing together - very close to each other. They danced a couple of other times after this in the same fashion.

"At 9:40 the auditorium started to clear out; and about two-thirds of the students exited. It was, at this time, that I observed Mrs. Grabert standing with***[R.L.] behind her.

"His arms were around her, and her arms encircled his. Then they kissed each other on the lips. This incident, I believe, was witnessed not only by me and Miss Smith, but also by some of the remaining students and a few parents who were waiting for their children.

"Again, may I stress my reluctance in being a witness in this unfortunate situation. I am writing these statements only because my superior directed me to do so.

"Although, it may be extremely difficult to comply with this request; I deeply appreciate no further involvement." (*Emphasis in text.*) (P-27)

The hearing examiner observes, with respect to that portion of the charge concerning whether respondent had been assigned as a chaperone for the dance, that the principal testified Chaperone Crawford was authorized by him to assign dance chaperones. (Tr. I-107) The principal further testified that respondent was not assigned as a chaperone for the dance. (Tr. I-106) Chaperone Crawford testified that respondent was not assigned as a dance chaperone. (Tr. X-23-24) The accounting book (P-42) of finances for the various dances establishes that the only chaperones who received the regular five dollar stipend for duties at this dance were Chaperones Crawford, Smith and Reed.

Respondent testified that Chaperone Crawford did in fact authorize her to be a chaperone. (Tr. XIV-12; Tr. XV-22-23) Respondent testified that the statement in the principal's memorandum (P-3, *ante*) wherein it is asserted that

You are viewing an archived copy from the New Jersey State Library.

she could not recall whether Chaperone Crawford had recruited her for the dance is not accurate. (Tr. XIV-19) In the hearing examiner's view, this testimony, elicited on May 27, 1975 some fifteen months after the dance, cannot alter what respondent originally asserted to be true regarding the contents of the conversation with the principal on February 20, 1974, some six days after the dance. Respondent testified that because she was a chaperone she arrived at the dance at approximately 8:05 p.m. (Tr. XI-147) A pupil who attended the dance, C.B., testified she saw respondent at approximately 8:10 p.m. (Tr. XXI-36) Chaperone Smith testified she saw respondent enter the dance at approximately 9 p.m. (Tr. IV-8) Chaperone Reed testified that while his statement (P-27) asserts respondent entered the dance at 9 p.m. he himself did not see her enter at that time. Rather, he testified he was told she had entered at that time. (Tr. XI-12)

The hearing examiner observes that a finding on the issue of whether respondent was assigned as a chaperone is not necessary to establish the propriety of her presence at the dance. This is so for the principal testified that it is not unusual for teachers who are not assigned as chaperones to attend pupil dances. Furthermore, the principal testified that there is no Board policy or administrative rule which bars teachers from attending pupil dances. (Tr. III-41)

Respondent, however, explains her presence at the dance through the assertion that she was assigned chaperone duties. The hearing examiner finds that, to the extent an issue of whether respondent was assigned chaperone duties exists, the Board's position prevails that she was not so assigned. The testimony of Chaperone Crawford, coupled with the documentary evidence of the accounting book of dance finances (P-42) which establishes those persons assigned and compensated as chaperones, is more credible than the testimony of respondent. This finding is not altered by respondent's testimony that the principal had allegedly advised her that chaperones were to receive no compensation for their services. (Tr. XV-78)

Chaperone Smith testified with respect to the disturbance in the girls' lavatory. Her testimony is that respondent went directly to the girls' lavatory upon entering the dance at 9 p.m. Thereafter, Chaperone Smith went to the girls' lavatory to investigate a report of a disturbance. Upon entering, Chaperone Smith testified, she observed approximately seven or eight pupils, some of whom were sitting on the floor smoking cigarettes while several stood by the window. Chaperone Smith testified that the condition of the lavatory was deplorable. One of the toilets was inoperable because of trash which had been thrown in, and water was over the floor. She testified that respondent was using one of the stalls. Chaperone Smith testified that when she saw the condition of the lavatory she ordered the pupils out and that she also asked respondent to leave which she did reluctantly. Chaperone Smith testified that she then instructed a janitor to lock the door to the girls' lavatory because of its inoperable condition. (Tr. IV-8-10, 40)

Respondent testified that upon her arrival at the dance, at 8:05 p.m., she noticed several girls were yelling to her from the lavatory window. After entering

You are viewing an archived copy from the New Jersey State Library.

the building, she went into the girls' lavatory and discovered five girls there, whereupon she and the pupils proceeded to the dance. (Tr. XI-148-150)

Respondent testified that at approximately 8:50 p.m. she received a report that several high school girls had come to the dance and were in the girls' lavatory. She testified that she and four female pupils who were standing with her went to the lavatory to investigate and found no one there. (Tr. XIV-83) While there, respondent did proceed to use one of the vacant stalls. Respondent testified that Chaperone Smith came into the lavatory and began to yell at the four girls who accompanied respondent and in a profane manner told them to leave the lavatory. Respondent exited the stall and both she and Chaperone Smith left the lavatory and the janitor then locked the door. (Tr. XI-170-172; Tr. XIV-83)

Chaperone Smith testified that at no time during the evening of February 14, 1974, did she observe respondent participate or cause a disturbance in the girls' lavatory. (Tr. IV-41) Chaperone Smith also denied ever using profanity to or in front of any pupil. (Tr. IV-43)

The hearing examiner finds that the Board failed to establish any causative relationship between respondent's behavior in the girls' lavatory and any disturbance which may have occurred. Furthermore, the Board failed in its proofs to establish that respondent was asked to leave the lavatory as the result of her behavior. Thus, within the context of this charge the allegation that respondent's behavior in the girls' lavatory was inappropriate is found to be without merit.

The next major portion of Charge One, in regard to respondent allowing a male pupil, R.L., to place his head on her shoulder, dance closely with her and embrace her and in regard to a kiss between the two, shall now be discussed.

The testimony of Chaperones Crawford (Tr. X-35-45), Smith (Tr. VI-12-127) and Reed (Tr. X-143-153; Tr. XI-3-57) substantially corroborates their written statements, *ante,* regarding this portion of the charge. Chaperone Smith's testimony is particularly clear that R.L. had his head on respondent's shoulder (Tr. IV-13, 123); that respondent and R.L. were dancing very closely near the rear of the dance area (Tr. IV-13); that R.L. was standing behind respondent with his arms around her waist and her arms on top of his (Tr. IV-14); and that at the end of the dance respondent and R.L. kissed each other on the lips in plain view of others. (Tr. IV-15-16)

Respondent testified that when she entered the dance area she walked around and then sat near some pupils, one of whom was R.L. (Tr. XI-163) This was prior to going to the girls' lavatory to investigate the reported disturbance with the high school girls, *ante.* (Tr. XI-170) Respondent testified that while some of the boys were teasing R.L. to dance with her, at no time did he have his head on her shoulder. Respondent testified that during the fooling around by the boys, including R.L., she had her back to him and that it is possible that R.L. "***could have leaned his head over [towards her] far enough to look as if it [his head] was touching my back.***" (Tr. XIV-98)

You are viewing an archived copy from the New Jersey State Library.

Respondent testified that she did dance once with R.L. as the result of the other boys teasing him (Tr. XII-4), and that the dance was in a normal fashion. (Tr. XII-7) The hearing examiner observes that the principal testified that it was not unusual for teachers to dance with pupils. (Tr. III-61) Respondent denies that R.L. ever stood behind her with his arms around her (Tr. XIV-113-114), and respondent denies the occurrence of an embrace or a kiss. (Tr. XII-35) Respondent explained that during the course of the evening R.L. was pushed into her a couple of times by the other boys (Tr. XV-9) which she testified she ignored. (Tr. XV-61) Respondent also testified that when R.L. was preparing to leave the dance for the evening he leaned over to her ear and asked her to contact his guardian with respect to his school progress. Respondent testified that R.L. spoke into her ear because the dance music was still playing loudly. (Tr. XII-28)

R.L. testified on behalf of respondent that he and other boys were in fact "fooling around" with respondent during the dance and that his stooping down in a rapid fashion behind respondent could probably have led someone to believe he had his head on her shoulder. (Tr. XXII-10) In response to the direct question of whether he was positive that he did not have his head on respondent's shoulder, R.L. testified he could not be positive. (Tr. XXII-10) Furthermore, while R.L. testified that he recalled kissing a female pupil that evening (Tr. XXII-15), he could not recall whether he and respondent had kissed. (Tr. XXII-36)

The hearing examiner observes that the proofs offered by the Board with respect to the allegation that respondent offered to drive R.L. home after the dance were limited to hearsay testimony of the principal and to the testimony of a mother of R.L.'s friend, R.S. In this regard, the principal testified that his knowledge that this precise event occurred was limited to what was told him by the school disciplinarian who himself received the information secondhand. (Tr. III-14, 41) The mother of R.S. testified that her son and R.L. went to the dance together. R.L.'s guardian drove them to the dance and she, B.S., agreed to drive them home. B.S. testified that the pupils began leaving the dance at approximately 9:45 p.m. and her son, R.S., got in the car. Her son informed her that R.L. had a ride home with a teacher. B.S. instructed her son to go back in the dance and tell R.L. that he was to go home with them. (Tr. XI-105) R.L. left the dance and got in B.S.'s car. On the way home B.S. testified that R.L. apologized for being late leaving the dance and explained that he had been offered a ride home by respondent. (Tr. XI-106)

Respondent denies offering R.L. a ride home after the dance. In fact, respondent testified that R.L. asked her to give him a ride home which she refused. (Tr. XII-23; Tr. XV-64) R.L. testified that he was not certain whether he had a ride home that evening. Consequently, he testified that he asked respondent for a ride home which she refused. In continuing testimony with respect to the conversation in the car on the way home with B.S., R.L. testified that he did tell B.S. that "***I might have had another ride home *** [from] Mrs. Grabert [respondent].***" (Tr. XXII-11-12)

You are viewing an archived copy from the New Jersey State Library.

Finally, the hearing examiner observes that respondent elicited testimony on her behalf in regard to a meeting which occurred at the home of her friend, P.F., on the evening before the first day of hearing herein with herself, P.F., and Chaperone Reed present. Respondent and P.F. testified that Chaperone Reed was alleged to have stated at the meeting that, contrary to his written statement (P-27, *ante*), he really did not see respondent kiss R.L. (Tr. XI-134; Tr. XX-19-20) Respondent testified that Chaperone Reed also was alleged to have stated that even though his written statement (P-27) contained untruths he had to testify against her or lose his teaching position. Respondent testified that Chaperone Reed explained he was being pressured by a Board member to testify against her. (Tr. XI-133)

Chaperone Reed testified before the hearing examiner that while he was at this meeting he did not deny seeing respondent kiss R.L. He did testify that he may have stated that unless he testified against respondent he might lose his job. He also testified that this conclusion was his own opinion and that nobody pressured him to submit his statement or to testify against respondent. (Tr. XI-61, 67-69)

The hearing examiner has carefully reviewed the extensive testimony elicited by the parties in support of their respective positions with respect to the whole of this charge. Specifically, the hearing examiner has reviewed the testimony of certain pupils who testified on behalf of respondent, including L.S. (Tr. XX-8 *et seq.*), C.B. (Tr. XXI-33 *et seq.*), and T.L. (Tr. XXII-110 *et seq.*) The hearing examiner finds that the collective testimony of these three pupils has no probative value to the truth or falsity of this charge.

The hearing examiner attaches little credibility to the testimony of respondent that the series of events alleged within the whole of this charge is attributable to the horseplay of the boys and girls who were around her during the dance. It is recognized here that there was no rule barring teachers, not assigned as chaperones, from attending pupil dances. It is also recognized that there was no rule, unwise though such absence may be, prohibiting teachers from dancing with pupils at such dances. Teaching staff members who elect to attend such dances and elect to dance with pupils must take great caution to maintain a standard of behavior beyond reproach. The degree of closeness in which respondent and R.L. held each other while dancing is not that critical to a finding on the whole of the charge. It is clear from the testimony of the three chaperones that there is no question with respect to what they observed between respondent and R.L. They observed, and the hearing examiner so finds, that R.L. had his head on respondent's shoulder, that R.L. while standing behind respondent had his arms around her and that respondent's arms were resting on his, and that a kiss was exchanged between respondent and R.L.

The hearing examiner also finds the testimony of B.S. convincing wherein R.L. told her that respondent offered him a ride home and finds that respondent did, in fact, tender such an offer.

Consequently, with the exception of respondent being responsible for any disturbance in the girls' lavatory, the hearing examiner finds the allegations set forth in Charge One to be true.

You are viewing an archived copy from the New Jersey State Library.

CHARGE TWO

"Mrs. Grabert has been insubordinate, in that she has constantly been tardy reporting to school. The frequency of her tardiness resulted in the issuance of formal reprimands on October 12, November 2, December 5, and December 13, 1973; January 18, January 24, February 8, February 13 and February 19, 1974, totalling nine formal reprimands for tardiness during a six month period."

CHARGE THREE

"Mrs. Grabert has been insubordinate, and as a result caused numerous written memoranda and formal reprimands regarding her tardiness. She was specifically instructed to maintain a sign in book, thereby recording the exact time she reported for work. Although she was directed to maintain this book in her mail box, she failed to do so on February 27, 28, and March 1, 1974, thus requiring my noting the matter in a written memorandum to Mrs. Grabert dated March 4, 1974."

CHARGE ELEVEN

"Mrs. Grabert has been insubordinate, in that she failed to comply with directives to supply written information within a specified period of twenty-four hours in response to a written memorandum dated November 2, 1973, directing her to submit to me written reasons for lateness to school on October 16, 18 and 19, 1973, and for missing a department meeting on October 16, 1973, and in response to a written memorandum dated December 5, 1973, directing her to explain in writing a time discrepancy of six minutes between my observation of her reporting to school and the time entered in her sign in book. She was observed entering school at 7:51 A.M., but the time she recorded was 7:45 A.M."

CHARGE THIRTEEN

"Mrs. Grabert did commit an act constituting conduct unbecoming a teacher, in that she failed to fulfill a commitment made on November 19, 1973, to supply written reasons for her tardiness in reporting to school. Her failure to fulfill this commitment required my noting the matter in a written memorandum dated December 4, 1973."

Because Charges Two, Three, Eleven and Thirteen are interrelated, they shall be considered together.

The principal testified that respondent had established a pattern of tardiness in reporting to her teaching duties. (Tr. I-126) He testified that he had spoken to respondent many times with respect to her tardiness in addition to the specific dates when he reduced his cautions to her in writing, referenced in Charge Two, *ante.* (Tr. I-129) Prior to a discussion of those precise memoranda, however, the hearing examiner observes that the first chronological date mentioned in Charge Two is October 12, 1973. Prior to that time, however, the principal sent the following memorandum dated October 5, 1973 to respondent in regard to his prior talks with her about tardiness:

You are viewing an archived copy from the New Jersey State Library.

"You will recall that I have spoken with you on a number of occasions about coming to school late. While discussing with you a general problem of lateness on September 24, 1973, I specifically pointed out that the teacher day begins at 7:45 A.M. and that you were to be in your room at that time.

"Given this and other conferences about the problem, I was dismayed to note your arrival today at 7:58 A.M., three minutes after your students arrived. Although you stated that your car would not start this morning, I am surprised that a teacher with your experience did not call the school to alert us of unavoidable lateness.

"Given these considerations I must now formally direct you to be at school at 7:45 each morning and to telephone the school prior to this time in the event of unavoidable lateness. This phrase is defined as any unique condition which would physically prevent your being to school on time." (P-19)

The starting time for teachers was 7:45 a.m., which time remained constant during the entire 1973-74 academic year. (Tr. VI-9) The principal testified that he began the year by reporting to his duties at 7:30 a.m. (Tr. VII-9) and that on January 14, 1974, he was instructed by memorandum (J-2) from the Board Secretary that his starting time was changed to 8 a.m. (Tr. VII-6) He further testified that his reporting time remained at 8 a.m. until January 30, 1974, when he received another memorandum (J-1) from the Board Secretary advising him his reporting time was changed to 7:45 a.m. (Tr. VII-6) The principal testified that regardless of his established starting time he generally reported to his duties prior to 7:55 a.m., the time when pupils arrived. (Tr. VII-10)

The principal testified that when he recognized a problem existed with respect to respondent's tardiness he had instituted several measures he had hoped would correct the problem. He testified he held a number of conferences with her because he felt the problem could be corrected through a mutual effort. The principal testified that respondent sought to explain her tardiness by informing him she was being medically treated. The principal testified that he requested respondent to submit a medical certificate, which he received (C-4A), and that he himself talked with respondent's physician.

The principal testified that when all these measures failed he submitted the following memorandum to respondent on October 12, 1973:

"As you know, I observed you entering the building at 8:00 A.M., five minutes after our students arrived.

"In our numerous conferences I have outlined without avail the effects of your continued lateness. Consequently, I now find it necessary to take further measures.

"Beginning October 16, 1973, you will sign in daily in a book to be kept

You are viewing an archived copy from the New Jersey State Library.

in my office. In addition, you will submit to me a written report detailing the reasons for each subsequent lateness that may occur.

"Please be advised that should these efforts not be productive, I am prepared to take all further measures at my disposal to get you to school on time." (P-18)

Subsequent thereto, the principal began reducing his observations of respondent's tardiness to memoranda. On November 2, 1973, he advised respondent (P-17) he observed her reporting late on that day. Furthermore, he advised respondent she was not using her sign-in book each morning as he had directed her by memorandum. (P-18) He also advised respondent he had not yet received written explanations for her tardiness on October 16, 18 and 19, 1973. The hearing examiner observes that respondent's alleged failure to submit written explanations for tardiness on those dates is a major part of Charge Eleven, *ante*.

The principal thereafter advised respondent (P-15) on December 5, 1973, that he observed her entering the building at 7:51 a.m. but the time registered in the sign-in book was 7:45 a.m. The principal demanded a written explanation of that discrepancy within the following twenty-four hours. The hearing examiner observes that respondent's alleged failure to provide a written explanation within twenty-four hours of December 5, 1973, forms another major part of Charge Eleven, *ante*.

The Superintendent testified that he met with the principal and respondent sometime in December 1973 in regard to her tardiness, the maintainance of her sign-in book, and so-called room damage which itself is the subject matter of another charge. (Tr. I-28-29) This meeting occurred on December 6, 1973. (Tr. V-72) On December 13, 1973, the principal advised respondent (P-14) that he observed her reporting in at 7:52 a.m. according to the school's master clock, which time was beyond the reporting time of 7:45 a.m.

On January 18, 1974, the principal advised respondent (P-11) he observed her reporting to school at 7:53 a.m. and directed her to explain in writing why she was late. Again on January 24, 1974, the principal advised respondent (P-9) he observed her reporting to school at 7:57 a.m. and again demanded a written explanation why she was late. The principal advised respondent (P-7) on February 8, 1974, that she reported to school at 7:55 a.m. and directed her to explain her tardiness in writing. Respondent was advised (P-5) again by the principal on February 13, 1974 that she reported at 8:01 a.m. (P-5) Again, the principal demanded a written explanation. Finally, on February 19, 1974, respondent was advised (P-4) that she reported to her teaching duties at 7:54 a.m. and was again directed by the principal to submit a written explanation.

The principal testified with respect to the daily sign-in book he directed respondent to maintain according to his memorandum (P-18, *ante*) dated October 12, 1973. The principal testified that between October 12, 1973 when the daily sign-in book began and March 4, 1974 two sign-in books were used.

You are viewing an archived copy from the New Jersey State Library.

(Tr. I-130; Tr. VI-112) The principal testified that the first sign-in book was kept in his outer office, either on the secretary's desk or on a table adjacent thereto. (Tr. I-130) The principal testified that this book was reported lost sometime after the 1973 Christmas vacation. A second sign-in book was given respondent at her request and she was directed to keep it in her mailbox. (Tr. I-131-132; Tr. VI-81-82) This second sign-in book was reported lost to the principal by respondent sometime after March 4, 1974. (Tr. VI-112)

Respondent testified that she was maintaining the first sign-in book as directed, but one day it was simply gone. (Tr. XII-110) Respondent testified that she was maintaining the second sign-in book and kept it in her mailbox, but that this book was also missing on February 27, 28 and March 1, 1974. Consequently, respondent explained she could not have maintained the sign-in book on those days. (Tr. XII-110-113) Respondent testified that during the time the second book was missing, February 27, 28 and March 1, 1974, she did sign-in on slips of paper which, she asserted, the principal refused to accept. (Tr. XVIII-5-7)

Respondent testified that she did report late to her teaching duties on several occasions during the 1973-74 academic year. Respondent testified, however, that she was being treated by her physician for exhaustion and fatigue. Consequently, the medication she was taking had an adverse effect upon her with respect to waking up in the morning. (Tr. XII-84-86)

The hearing examiner has reviewed respondent's testimony that the principal's memoranda (P-19, P-18, P-17, P-15, P-14, P-11, P-7, P-5, P-4, *ante*) are generally accurate with respect to her tardiness (Tr. XII-89); that the times she recorded in her sign-in books as reporting for duty and the times set forth in the same memoranda, *ante,* are different (Tr. XII-92); and, finally, that she was generally falsely accused by the principal of reporting late to her duties. (Tr. XII-104) The hearing examiner has also reviewed respondent's testimony that on occasion she had already been in her classroom prior to 7:45 a.m. and decided to go to the teachers' room. On her way the principal would see her and assume that she was just reporting to school. Respondent's testimony that she had trouble with her automobile and her testimony alleging that the principal inaccurately recorded the time she actually reported for her duties has been reviewed. (Tr. XII-93-106) Finally, respondent's testimony that the school clocks, including the master clock, were out of synchronization has also been reviewed. (Tr. XII-74)

Prior to the hearing examiner setting forth findings of fact in regard to the four charges, *ante,* it is observed that Charge Thirteen alleges a failure by respondent to supply written explanations for tardiness within a twenty-four hour period of November 19, 1973. Respondent did not, in fact, submit the requested written explanations within twenty-four hours of November 19, 1973. On January 9, 1974, respondent did submit written explanations (P-29) in regard to various requests by the principal, one of which addressed the question of tardiness.

Therein, respondent explained:

You are viewing an archived copy from the New Jersey State Library.

"***The discrepancy in time between that which I recorded and that which you observed [with respect to tardiness] was the result of my preference to abide by radio station W.A.B.C., rather than the office clock. I did what any normal human being would have done - acknowledged the source which proved most favorable to my instinct for self-preservation." (P-29)

The hearing examiner finds the evidence clearly supports Charges Two, Three, Eleven and Thirteen. It is clear and the hearing examiner so finds that respondent developed and adhered to a chronic pattern of tardiness which was not corrected by her. The hearing examiner finds that the second sign-in book, albeit missing, was not maintained as required. Respondent advanced no proofs which would require a finding that the mere absence of the book absolved her of her obligations in this regard. Within the context of Charge Three alleging insubordination for her failure to maintain the sign-in book on the three specified dates, the hearing examiner finds that it was respondent's carelessness with respect to its security which resulted in her not being able to maintain the sign-in book.

Finally, the hearing examiner observes that the subject matter of Charge Seven addresses that portion of Charge Eleven which alleges respondent's failure to supply written information regarding a department meeting on October 16, 1973, and it shall be discussed *post*.

CHARGE FOUR

"Mrs. Grabert has been insubordinate, in that she failed to submit her plan book at the appropriate time. Her neglect in this regard required my forwarding Mrs. Grabert written memoranda on this subject on November 2, December 4, and December 18, 1973, and March 4, 1974."

CHARGE FIVE

"Mrs. Grabert did commit an act constituting conduct unbecoming a teacher, in that she deliberately mislead her superiors into believing her plans had been recorded within the proper time, she did this by falsifying the date of December 10, 1973, in her plan book and by stapling pages shut thereby creating a false impression that the plans had been recorded in the book for the weeks of November 26 and December 3, 1973."

Charges Four and Five shall be considered together because they are interrelated.

The principal testified that he met with three teaching staff members who were newly assigned to his building, Slaybaugh School, on September 3, 1973, one of whom was respondent. (Tr. V-111) The principal testified that he informed the three teachers of the necessity to prepare and submit lesson plans, on a weekly basis, for his review. (Tr. VI-123-126) The reason he directed the three teachers to prepare and submit lesson plans was to insure regular planning. (Tr. VII-14) The three teachers were to submit their weekly lesson plans to him until he had sufficient knowledge of their planning. (Tr. II-6)

You are viewing an archived copy from the New Jersey State Library.

The principal testified that he reminded respondent of her failure to submit weekly lesson plans to him by memoranda dated November 2, 1973 (P-17) and December 4, 1973. (P-16) (Tr. VII-26) He also informed respondent by memorandum (P-13) dated December 18, 1973, that his review of her plan book (P-34) reflected no written plans for the weeks of November 26 and December 3, 1973. Furthermore, the principal also directed respondent to explain in writing by December 21, 1973, why plans were not recorded for those two weeks. Finally, the principal sent respondent a memorandum (P-2) dated March 4, 1974, which asserted that she had not submitted lesson plans for the entire month of February 1974.

The principal testified with respect to Charge Five that when respondent submitted her plan book to him on December 10, 1973, certain pages were stapled together so that when the book was opened, the week of November 26, 1973 appeared. The principal testified that respondent then crossed out the week of November 26 and inserted the date of December 10, 1973 and represented that those weekly plans were for the week of December 10. The principal testified that it is this occurrence by which he concludes respondent attempted to deceive him because the plans were actually for the week of November 26 and not for the week of December 10. (Tr. VII-115) The principal testified that when he spoke to respondent about this incident, she explained that she felt she should not have to hand in lesson plans because by this time the other two teachers who were new to Slaybaugh School had been released from this requirement. (Tr. VII-116) The principal testified that he did release the other two teachers from the requirement of submitting weekly lesson plans because in his judgment that requirement was no longer appropriate for them. (Tr. VII-36)

Respondent, in the same memorandum (P-29, *ante*) submitted to the principal on January 9, 1974, explaining her tardiness, set forth the reason why her plans were not submitted for the controverted two week period as follows:

> "***My failure to submit written lesson plans for a period of two weeks was not due to my neglecting to make plans but rather due to the gradual development of a slight 'persecution complex' deriving from the realization that after teaching for ten years I was required to have my plans checked weekly, while those teachers with a year's experience were exempt. I felt further discriminated against after learning that although new to the Slaybaugh School, several other teachers were no longer required to submit their plans. I also recalled your stating that my plans were 'good.'
>
> "Although they were completed, on several occasions I was distracted somewhere between my classroom and the office and mistakenly arrived home with my plan book among my other books and homework papers. I shall place it on *top* of my books in the future.***" (*Emphasis in text.*)
>
> (P-29)

Respondent testified that she failed to submit her plan book only for the weeks of November 26 and December 3, 1973. She also testified that while she

You are viewing an archived copy from the New Jersey State Library.

did not submit her plan book she nevertheless had prepared written plans. (Tr. XIII-24)

The hearing examiner finds respondent's testimony lacking in credibility to the extent that the allegations set forth in Charges Four and Five are supported by the testimony and documentary evidence. The hearing examiner finds specifically with respect to Charge Five that respondent attempted to falsely represent that plans prepared for the week of November 26, 1973 were prepared for the week of December 10, 1973.

CHARGE SIX

> "Mrs. Grabert has been insubordinate, in that she has failed to comply with my directive pertaining to building procedures, whereby she was required to report any and all damage to the room to which she was assigned. Her refusal to comply with my request necessitated my submitting written memoranda on September 14, 1973, February 1, and February 12, 1974, respectively apprising her of her non-compliance."

The damage referred to in Charge Six is in regard to sliding closet doors coming off the track and vinyl molding attached to the base of the classroom wall coming unglued. The principal testified that the sliding closet doors coming off the track was a general problem in the school and that, in respondent's instance, once a request for repairs was filed with his office, the doors were replaced on the track. (Tr. VIII-9) The hearing examiner observes that much testimony was elicited by the Board to establish that respondent failed to submit appropriate maintenance request forms for the minor damage controverted herein. (Tr. VIII-3-52) The principal testified that he spoke with respondent on a number of occasions with respect to submitting a request for maintenance repairs. (Tr. VIII-19)

The principal advised respondent by memorandum (P-20) dated September 14, 1973 to file a request for maintenance repairs to the classroom closet doors. Again on October 31, 1973, as part of a classroom evaluation (C-1), the principal directed respondent to file a request with respect to an unglued portion of vinyl molding he noticed in her classroom. The principal advised respondent by memorandum (P-16) dated December 4, 1973, that she still had not complied with his directive of October 31, 1973 to submit a request for maintenance repair of the vinyl strip.

Respondent testified that during September she noticed the sliding closet doors off the track and requested, but did not receive, a request form from the principal's secretary. (Tr. XIII-38) Respondent testified that she submitted a request as soon as she received the appropriate form and the doors were fixed several weeks thereafter. (Tr. XIII-39) Respondent testified that she completed and submitted requests for maintenance repair as soon as she discovered damage.

The hearing examiner believes that the issue herein is crystallized by respondent's testimony that subsequent to December 10, 1973, she did not submit maintenance requests because she was "***tired of submitting forms [because the principal] never did anything.***" (Tr. XVIII-111)

You are viewing an archived copy from the New Jersey State Library.

The hearing examiner finds that, to the extent Charge Six alleges respondent failed to follow established administrative procedures, the allegation is true.

CHARGE SEVEN

"Mrs. Grabert has been insubordinate, in that she failed to attend meetings which had been specifically scheduled on October 16, 1973, in which budgeting procedures were explained to her department, and on February 11, 1974, in which preliminary candidates for retention in Grade 8 were identified."

Respondent testified she did not attend the meeting of October 16, 1973 because a father of two of her pupils appeared for a conference without an appointment and she elected to hold a conference rather than attend the meeting because of the difficulty of arranging such conferences. She testified that she did go to the meeting after the conference, but it had adjourned. (Tr. XIII-56-58) Respondent, on cross-examination, affirmed that the reason why she failed to attend the meeting of October 16 was because a father of two of her pupils appeared for a conference. (Tr. XVII-117)

In the same memorandum (P-29, ante) respondent submitted to the principal on January 9, 1974 in which she explained, *inter alia,* her tardiness respondent also explained why she failed to attend the October 16 meeting as follows:

"***Regarding the faculty meeting which I neglected to attend - I was unexpectedly met at 2:10 p.m. by the *mother* of a student who appeared for an unscheduled conference. Since conferences with those we are most in need of seeing are extremely rare, I seized the opportunity and momentarily forgot the faculty meeting.***" (*Emphasis supplied.*)

The hearing examiner finds incredible respondent's testimony that she stated "mother" in her memorandum instead of "father" as a result of haste. (Tr. XIX-19-22) The memorandum (P-29) was prepared on January 9, 1973, approximately three months after the meeting. She testified on July 9, 1975 with respect to the parent being a father, almost two years after October 16, 1973.

The principal testified that the meeting of February 11, 1974, was announced to the teachers that day through the daily absentee list. (R-4; Tr. VIII-88, 105) Respondent testified that she did not attend this meeting because she did not receive the list. (Tr. XIII-61) Furthermore, respondent testified that while the meeting was occurring, unknown to her at the time, she entered the outer office of the principal and she saw him. (Tr. XIII-65) The principal testified he saw her at that time but did not question her as to why she was not attending the meeting. (Tr. VIII-93)

The hearing examiner finds with respect to the meeting of February 11, 1974, that it is reasonable to believe respondent had no knowledge that the meeting was scheduled.

You are viewing an archived copy from the New Jersey State Library.

Consequently, the hearing examiner finds that, to the extent Charge Seven alleges respondent failed to attend the scheduled meeting of October 16, 1973, that portion is true. The hearing examiner recommends dismissal of that portion of the charge alleging failure of respondent to attend the February 11, 1974 meeting.

CHARGE EIGHT

"Mrs. Grabert has been insubordinate, in that she failed to appear for bus duty as required and scheduled during the week of January 7, 1974."

The principal testified that according to the bus duty schedule (P-31) respondent was to supervise the egress of pupils from the school buses in the morning and be on duty no later than 7:55 a.m. during the period of time between Friday, January 4 through Thursday, January 16, 1974. (Tr. II-67, 69) The charge herein, however, is limited to the week January 7-11, 1974. (Tr. II-69) Respondent was also assigned the responsibility of supervising the boarding of pupils onto the school buses at 2:10 p.m. (Tr. II-68)

The principal testified that while he did not go outside to supervise the teachers in their bus duty responsibilities, he had been informed on or about January 8, 1974 that the pupils were entering the building early. Consequently, he went outside on Tuesday or Wednesday, January 8 or 9 of that week to investigate the complaint of the pupils' early entrance to school. (Tr. VIII-127-128) He testified that he went outside again on Thursday, January 10, and discovered the assigned teacher was not on duty. (Tr. VIII-126)

The principal testified that he checked the bus duty schedule (P-31) and established that respondent was the teacher scheduled to be on duty. The following day, the principal discussed the matter with respondent who allegedly explained that she was not aware she was scheduled for bus duty because she misplaced her schedule roster. (Tr. II-71; Tr. VIII-134) Respondent also allegedly stated to the principal that she was not on duty the entire week beginning January 7, 1974. The principal reduced to writing the subject of this conference with respondent in a memorandum dated January 14, 1974, which states, *inter alia*:

"During our conference on January 11, 1974, it was established that you were not on bus duty during the mornings of the week of January 7, 1974.***" (P-12)

The hearing examiner observes that the proof offered by the Board in support of this charge is limited to the principal's testimony in which he asserted he observed the absence of the teacher assigned to bus duty on Thursday and his testimony with respect to the conversation he had with respondent wherein she stated she misplaced her schedule and was not on duty the week of January 7, 1974.

Respondent testified that she was on bus duty every day to which she was assigned except January 7, 1974. Respondent was absent from school that day.

You are viewing an archived copy from the New Jersey State Library.

(R-3; Tr. XIII-74) Respondent testified that on one of the days she was on bus duty, the weather was inclement because of a driving rain. Consequently, instead of standing on the curb she took shelter in a doorway. The principal observed her and stated that notwithstanding the driving rain she was expected to be standing on the curb waiting for the buses and supervising the egress of pupils. Respondent testified that in this instance the principal informed her she would be considered absent from her post. (Tr. XIII-74-76)

Respondent denied informing the principal she lost or misplaced her schedule (Tr. XIII-79); denied being absent from her assigned duty except January 7 when she was absent; and denied telling the principal that she was not on duty. (Tr. XIX-24-25) Respondent explained that she did not respond in writing to the principal's memorandum (P-12, *ante*) dated January 11, 1974, wherein he asserted that her absence from bus duty was established, because it would have been futile. (Tr. XIX-40-41)

The merits of this charge turn on the credibility of the principal and/or respondent. Respondent would have the hearing examiner believe that the principal concocted the story of the conference he had with her with respect to her reasons why she was not on bus duty as assigned. Respondent would also have the hearing examiner believe that the principal required her to stand in a driving rain or be considered absent. The hearing examiner finds no basis to accept respondent's testimony as credible.

The hearing examiner finds that the weight of credible testimony must lie with the principal. Accordingly, the hearing examiner finds that the allegation set forth in Charge Eight, *ante,* is true.

CHARGE NINE

"Mrs. Grabert has been insubordinate in her conduct as a teacher in that she failed to perform her duties of outdoor supervision of students on March 1, 1974, during the 7th grade recreation period."

CHARGE FOURTEEN

"Mrs. Grabert did commit an act constituting conduct unbecoming a teacher by deliberately misrepresenting on March 1, 1974, that the reason she did not perform her outside duty was due to her mistake that she had a study hall in her seventh grade homeroom, when in fact the assigned seventh grade study hall was in a different room in the building."

Charges Nine and Fourteen shall be considered together because they are interrelated.

The principal had prepared a six month library and study supervision schedule for the teachers assigned to Slaybaugh School. A provision of that schedule states:

"Homeroom teachers not scheduled [for library or for study supervision] for a given five day period are to supervise outdoors." (P-32)

You are viewing an archived copy from the New Jersey State Library.

Respondent was not assigned to library or study supervision for the period February 26 through March 4, 1974. Consequently, according to the above-recited provision of the schedule she was assigned to outdoor supervision of pupils during that period of time.

The principal testified that Bruce Crawford, the same teaching staff member who testified in support of Charge One, *ante,* reported to him on March 1, 1974, that respondent was not on her assigned outdoor supervision. (Tr. II-76; Tr. IX-9) The principal testified he requested the guidance counselor to determine whether respondent was on outdoor duty. The guidance counselor reported that respondent was in her regularly assigned homeroom with several pupils. The principal testified that he then discussed the matter with respondent who explained that she believed she was assigned study supervision. (Tr. II-77) The principal testified that if respondent was in fact assigned to a study supervision such an activity would have been conducted in a room other than her regularly assigned homeroom. (Tr. II-78) The hearing examiner observes that it is this latter testimony which forms the gravamen, and proof in support thereof, of Charge Fourteen, *ante*.

The principal recorded the conversation of respondent with respect to her failure to be on outdoor duty on March 1, 1974 in the same memorandum (P-2, *ante*) dated March 4, 1974 in which he set forth his assertions with respect to lesson plans (Charge Four, *ante*). The principal asserts:

> "On March 1, 1974, it was established that you were not on your outside duty during the Grade 7 recreation period. When questioned you stated you thought you were scheduled for study hall although you were in your homeroom and not in Room 19, the study hall location.***" (P-2)

The principal testified on cross-examination that between September 4, 1973 and March 1974 when she was suspended from her teaching duties respondent had been scheduled for outdoor supervision on thirty days. The charge herein addresses one of those thirty days. (Tr. IX-6)

Respondent testified that she simply misread the schedule (P-32, *ante*) and believed she was assigned study supervision. Respondent testified she went to the regularly assigned study supervision room and found no pupils. Shortly after, respondent testified, several pupils appeared and because she had some work to do in her own classroom elected to take the pupils back there for the study supervision period.

The hearing examiner finds that Charge Nine, to the extent it alleges respondent was not on outdoor supervision on March 1, 1974, is true. The hearing examiner finds no basis in fact to conclude that the allegations set forth in Charge Fourteen are true. Consequently, the hearing examiner recommends that Charge Fourteen be dismissed.

CHARGE TEN

"Mrs. Grabert has been insubordinate, in that she failed to follow lunch

You are viewing an archived copy from the New Jersey State Library.

accounting procedures from October 10 through October 19, 1973, by omitting dates, paid lunch counts, and free lunch counts, all of which were required in a directive to teachers on September 3, 1974."

The principal testified that teachers were directed by memorandum (P-41) dated the week of September 3, 1973 to collect lunch money from their respective pupils and place the money in an envelope for delivery to the cafeteria cashier. Teachers were also directed to record on the envelope the date of collection, the number of pupils who paid, the number who were to receive free lunches and the total money which was placed in the envelope.

The principal testified that the basis for the charge herein is that respondent simply did not carry out the directions with respect to lunchroom accounting procedures from October 10 through October 19, 1973. There is no allegation that respondent's failure to carry out the appropriate instructions resulted in confusion or inefficiency with respect to the lunch program. (Tr. IX-39-40)

Respondent testified that she did not fully comply with the instructions regarding lunchroom accounting procedures between October 10 and October 19, 1973. (Tr. XIII-99) Respondent testified she recorded only the amount of money collected on the envelope, but did not record the number of pupils who paid or the number who were to receive free lunch. Respondent testified that she simply did not have time to do all the necessary tasks in the morning prior to the start of class. (Tr. XIII-100)

The hearing examiner finds that the allegations set forth in Charge Ten are true. Respondent did not comply with the stated directions (P-41, *ante*) for lunchroom accounting procedures between October 10 and October 19, 1973.

CHARGE TWELVE

"Mrs. Grabert has been insubordinate, in that she failed to develop bulletin boards for her classroom after being directed to do so in my report of an observation of her class on October 31, 1973. Her failure to follow this directive required my noting of this matter in a written memorandum of December 4, 1973."

The principal testified that teachers were expected to use bulletin boards in their classrooms as instructional tools. (Tr. II-111) The principal evaluated (C-1, *ante*) respondent's teaching on October 31, 1973 and directed her to develop appropriate bulletin board displays. The bulletin boards were not completed by December 4, 1973, and he submitted a memorandum (P-16, *ante*) in this regard to respondent.

The principal also testified that the lack of supplies used to prepare bulletin boards was a general school problem because supplies were arriving sporadically. The principal testified that respondent's bulletin boards were acceptable prior to the 1973 Christmas vacation. (Tr. XIII-59-62)

You are viewing an archived copy from the New Jersey State Library.

Respondent testified that when she received supplies, she created bulletin board displays.

The hearing examiner finds no proof to sustain this charge. Accordingly, the hearing examiner recommends that Charge Twelve be dismissed.

In summary, the hearing examiner finds all the following charges to be proven true in fact: Charge One, Two, Three, Four, Five, a portion of Six, a portion of Seven, Eight, Nine, Ten, Eleven and Thirteen.

The hearing examiner has also reviewed the testimony in support of respondent's claim that the charges herein result from discrimination against her by the principal. The hearing examiner finds that such claim is not supported by the record. The charges have been fully supported by testimony and documentary evidence.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner and the exceptions and objections filed thereto by respondent. It is noticed that the Board takes exception to respondent's objections to the hearing examiner's report. Respondent urges that the hearing examiner erred with respect to his findings which support the charges, *ante,* by his failure to consider all the testimony elicited by respondent in her defense, by finding charges to be true in fact without setting forth a basis for such findings, by attaching credibility to the testimony of the principal, and by his alleged failure to consider mitigating factors with respect to Charge Two. Furthermore, respondent objects specifically to the hearing examiner misquoting her testimony with respect to Charge Two wherein it is stated:

> "***The hearing examiner has reviewed respondent's testimony that the principal's memoranda (P-19, P-18, P-17, P-15, P-14, P-11, P-7, P-5, P-4, *ante*) are generally accurate with respect to her tardiness (Tr. XII-89)***." (Charge Two, *et seq.*)

The Commissioner has reviewed the transcript of testimony taken on March 31, 1975 (Tr. XII), and finds that the following is accurate:

> Q. "Now Mrs. Grabert [respondent], you had a chance, you heard Mr. Pagnotto's [the principal] testimony, you had a chance to review these memos which were put in evidence with regard to the issues of tardiness, are those memos and times recorded in them, are they all accurate?
>
> A. "Most of them are *not* accurate." (*Emphasis supplied.*) (Tr. XII-89)

This error by the hearing examiner is not, in the Commissioner's view, sufficient to set aside his finding that the substance of Charge Two is true. The Commissioner has reviewed the record with respect to Charge Two, including

You are viewing an archived copy from the New Jersey State Library.

relevant portions of the hearing examiner report, *ante,* the principal's memoranda (P-18, P-17, P-15, P-14, P-11, P-9, P-7, P-5, P-4) and his testimony (Tr. I; Tr. VI; Tr. VII) in support of the charge, and respondent's memoranda (P-29) and her testimony (Tr. XII) in refutation of the charge. The Commissioner agrees with and adopts as his own the hearing examiner's finding with respect to Charge Two that respondent developed a chronic pattern of tardiness which was not corrected.

The Commissioner has reviewed respondent's general objections taken to the hearing examiner report and finds no basis in fact to support her objections. Respondent complains that the hearing examiner erroneously failed to attach credible weight to the testimony of two pupils, L.S. and T.L., who testified on her behalf with respect to Charge One. The Commissioner disagrees. The issue of credibility with respect to the testimony of witnesses is the responsibility of the trier of fact, in this instance, the hearing examiner. The hearing examiner's factual findings with respect to Charge One are supported by competent evidence. *In re Tenure Hearing of Grossman,* 127 *N.J. Super.* 13 (*App. Div.* 1974); *In re Hackensack Water Co. Application,* 132 *N.J. Super.* 296 (*App. Div.* 1974)

Furthermore, it is well established that the testimony of school pupils must be used with great caution. *In the Matter of the Tenure Hearing of Emma Matecki, School District of New Brunswick, Middlesex County,* 1971 *S.L.D.* 566, aff'd State Board of Education 1973 *S.L.D.* 733, aff'd New Jersey Superior Court 773; *In the Matter of the Tenure Hearing of Mary Louise Connolly, School District of the Borough of Glen Rock, Bergen County,* 1971 *S.L.D.* 305

In the instant matter, the hearing examiner did state that "***the collective testimony of these three pupils has no probative value to the truth or falsity of this charge.***" (Charge One, *et seq.*) The Commissioner has been presented no basis upon which to set aside this determination by the hearing examiner. The whole of the charge has been amply considered by the hearing examiner in his report including the testimony of the three assigned chaperones, respondent and the mother of R.S.

Finally, the Commissioner observes that the standard used in administrative hearings with respect to the evidence necessary to establish the truth of a charge is the weight of credible evidence. A tenure charge need not be proven beyond a reasonable doubt. *Pilon v. Board of Alcoholic Beverage Control,* 112 *N.J. Super.* 436 (*App. Div.* 1970) The Commissioner agrees with and adopts as his own the hearing examiner's finding of fact that the weight of credible evidence establishes the truth of Charge One. The Commissioner so holds.

The Commissioner has reviewed respondent's objections with respect to Charge Three, that she recorded her arrival times on slips of paper which the principal refused to accept; with respect to Charge Four, that the hearing examiner improperly stated that her plans were not presented for the entire month of February 1974; with respect to Charges Five, Six, Seven, Eight and Ten, that no basis exists for a finding that the charges are true; with respect to

You are viewing an archived copy from the New Jersey State Library.

Charge Eleven, that she verbally explained to the principal her tardiness, her absence from a meeting, and a discrepancy regarding her actual arrival time compared to her sign-in time; and, finally, with respect to Charge Thirteen that it was not established that a commitment was ever made by her as charged.

The Commissioner, after a thorough review of the record and respondent's objections, finds and determines that the weight of credible evidence establishes the truth of the charges as found by the hearing examiner. Accordingly, the Commissioner adopts as his own the findings of the hearing examiner that Charge One, Two, Three, Four, Five, a portion of Six, a portion of Seven, Eight, Nine, Ten, Eleven and Thirteen are true.

It remains for the Commissioner to determine whether respondent's conduct warrants dismissal from her position of employment with the Board. In *Redcay v. State Board of Education,* 130 *N.J.L.* 369 (*Sup. Ct.* 1943), aff'd 131 *N.J.L.* 326 (*E.&A.* 1944), it was held that:

> "***Unfitness for a task is best shown by numerous incidents. Unfitness for a position under the school system is best evidenced by a series of incidents.***" (130 *N.J.L.* at 371)

Respondent, by her conduct at the school dance held on February 14, 1974, her chronic lateness to school, her uncooperative attitude with the principal in regard to her lesson plans, her responsibility to perform routine administrative tasks regarding building procedures, attendance at meetings, bus duty, and lunchroom procedures has displayed unfitness for the task of being a teaching staff member in the employ of the Board. The Commissioner so finds.

Accordingly, the Commissioner of Education determines that Matilda Grabert is dismissed from her teaching staff position in the employ of the Board of Education of the School District of the Township of Egg Harbor, Atlantic County, as of the date of her suspension, March 20, 1974.

COMMISSIONER OF EDUCATION

March 10, 1977

You are viewing an archived copy from the New Jersey State Library.

Louis A. Garibaldi, Jr.,

Petitioner,

v.

Board of Education of the Toms River Regional School District, Ocean County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Haines, Schuman & Butz (Thomas P. Butz, Esq.)

For the Respondent, Milton H. Gelzer, Esq.

Petitioner, a tenured high school teacher in the employ of the Toms River Regional School District Board of Education, hereinafter "Board," was the respondent in a previous decision of the Commissioner of Education, *In the Matter of the Tenure Hearing of Louis A. Garibaldi, Jr., School District of Toms River, Ocean County,* 1972 *S.L.D.* 611. The two final paragraphs of this decision having direct impact, as they do, on the present proceedings are herewith set down in entirety as follows:

> "***Accordingly, having considered the instant finding of conduct unbecoming a teacher in the context of prior decisions of the Commissioner and the courts, the Commissioner directs that respondent be restored to his regular teaching position.
>
> "The Commissioner further directs that respondent's salary for the 1972-73 school year shall be the same contractual salary appropriate to a teacher with his training and experience during the 1971-72 school year, minus the costs of a substitute needed to serve as his replacement during the period of his suspension on May 17, 1972 to the date of this decision. The suspension without pay prior to that date is allowed to stand."

Thereafter, the Board in subsequent years in accordance with its interpretation of the meaning and intent of the Commissioner's judgment in this prior proceeding, withheld the increment in petitioner's advancement on the teacher's salary guide. It is this action of the Board that petitioner brings before the Commissioner in this proceeding.

This matter is submitted to the Commissioner for Summary Judgment on a Memorandum of Law and exhibits from petitioner and a letter of information by the Board to the Commissioner.

The Board, in accordance with its interpretation of the prior Commissioner's decision paid petitioner as set forth in Schedule A. Had the petitioner not been subject to the discipline in the aforesaid Commissioner's

You are viewing an archived copy from the New Jersey State Library.

decision, the salary he would have received is set forth in Schedule B. Petitioner claims that the correct interpretation of the Commissioner's decision would provide a salary scale as set forth in Schedule C.

SCHEDULE A

1971-72	9th B.A. + 30	$11,600
1972-73	9th B.A. + 30	11,600
1973-74	10th M.A. + 30	14,750
1974-75	11th M.A. + 30	16,000 + $200 S.I.
		$54,150

SCHEDULE B

1971-72	9th B.A. + 30	$11,600
1972-73	10th B.A. + 30	12,750
1973-74	11th M.A. + 30	15,350
1974-75	12th M.A. + 30	16,650 + $200 S.I.
		$56,550

SCHEDULE C

1971-72	9th B.A. + 30	$11,600
1972-73	9th B.A. + 30	11,600
1973-74	11th M.A. + 30	15,350
1974-75	12th M.A. + 30	16,650 + $200 S.I.
		$55,200

Petitioner contends that if the Board continues to withhold increases the eventual financial loss to petitioner will be, at the minimum, several thousands of dollars depending upon future salary guides. (Petition, at p. 5) He requests an order directing the Board to pay petitioner all back salary and wages wrongfully withheld.

The Board had previously requested of the Commissioner a clarification of the last paragraph of the decision in the prior tenure hearing involving petitioner and relies substantially on the response included herein:

> "Your letter under date of September 6, 1973, addressed to Dr. Podesta, has been referred to this office for reply.
>
> "The portion of the Commissioner's decision from p. 14, which you quote in your letter, makes no mention of respondent's salary for the 1973-74 school year. Therefore, it is entirely within the discretionary authority of the Board to determine respondent's salary for the 1973-74 school year."

Additionally, the Board states that "***there are occasions when teachers and other staff members are denied their increments. On those occasions, they remain at the lower increments throughout the balance of their career.***" (Letter of Information, at p. 2)

You are viewing an archived copy from the New Jersey State Library.

Petitioner challenges the jurisdiction and legal authority of the letter from the then Deputy Assistant Commissioner. (Memorandum of Law, at p. 2)

The Commissioner observes that *N.J.S.A.* 18A:29-14 provides in its entirety as follows:

> "Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year by a recorded roll call majority vote of the full membership of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the member concerned. The member may appeal from such action to the commissioner under rules prescribed by him. The commissioner shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. The commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals. *It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment.*" (*Emphasis added.*)

The Commissioner finds the language of the statute clear, explicit, and unambiguous. As was said in *Harry A. Romeo, Jr. v. Board of Education of the Township of Madison, Middlesex County,* 1973 *S.L.D.* 102, as follows:

> "In ascertaining the meaning of a policy, just as of a statute, the intention is to be found within the four corners of the document itself. The language employed by the adoption should be given its ordinary and common significance. *Lane v. Holderman,* 23 *N.J.* 304 (1957) Where the wording is clear and explicit on its face, the policy must speak for itself and be construed according to its own terms. *Duke Power Company, Inc. v. Edward J. Patten, Secretary of State et al.,* 20 *N.J.* 42, 49 (1955); *Zietko v. New Jersey Manufacturers Casualty Ins. Co.,* 132 *N.J.L.* 206, 211 (*E. & A.* 1944); *Bass v. Allen Home Development Co.,* 8 *N.J.* 219, 226 (1951); *Sperry & Hutchinson Co. v. Margetts,* 15 *N.J.* 203, 209 (1954); 2 *Sutherland, Statutes and Statutory Construction* (*3rd ed.* 1943), *section* 4502***" (at p. 106)

So, too, in this case *N.J.S.A.* 18A:29-14 is explicit that "***It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment."

There is no merit in petitioner's protest that there is no language in the Commissioner's prior decision directing or permitting the Board of Education to withhold an increment. (Memorandum of Law, at p. 4) No such language is needed. Such authority is explicit in *N.J.S.A.* 18A:29-14 which, in this case, the Commissioner opines has been properly exercised by the Board.

Petitioner's objections to the letter from the Deputy Assistant

You are viewing an archived copy from the New Jersey State Library.

Commissioner on the basis of lack of legal authority or jurisdiction are without merit. Explicit language in *N.J.S.A.* 18A:29-14 authorizes such jurisdiction. "***The commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals.***"

Therefore, for the aforestated reasons, the Commissioner finds no grounds for his intervention in this matter and the Petition herein is accordingly dismissed.

COMMISSIONER OF EDUCATION

March 10, 1977

Board of Education of Red Bank Regional High School District,

Petitioner,

v.

Borough Councils of the Boroughs of Little Silver, Red Bank, and Shrewsbury, Monmouth County,

Respondents.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Red Bank Regional High School District, hereinafter "Board," Crowell and Otten (Robert H. Otten, Esq.), which challenges the reductions imposed upon its 1976-77 school budget by the Mayors and Councils of the Boroughs of Little Silver, Red Bank, and Shrewsbury, hereinafter "governing bodies," Parsons, Canzona, Blair & Warren (George G. Whitmore, Esq.) and Martin M. Barger, Esq. The principal facts of the matter are these:

At the annual school election held on March 2, 1976, the Board submitted to the electorate the following proposal for amounts to be raised by local taxation for the 1976-77 school year.

Current Expense	$2,884,644

The proposal was defeated. Thereafter, the Board and governing bodies consulted and the governing bodies adopted resolutions determining that a lesser amount was necessary to be raised by local taxation as follows:

You are viewing an archived copy from the New Jersey State Library.

	Board's Proposal	Governing Bodies' Resolutions	Reduction
Current Expense	$2,884,644	$2,804,449	$80,195

Subsequently, the parties entered into a Stipulation of Settlement and Dismissal which provides that the sum of $40,097 be added to the amount previously certified to be raised for current expenses of the Red Bank Regional High School District for the 1976-77 school year, so that the total levy shall be $2,844,546 for current expenses. The additional tax certification of $40,097 was ordered by the governing bodies to be added to the local tax levy on January 31, 1977.

As a result of the enactment of *c.* 113, *L.* 1976 (Senate Bill No. 1503) on November 9, 1976, unbudgeted State aid moneys are available to the Board in excess of the amount restored by the governing bodies in the form of a supplemental certification to the Monmouth County Board of Taxation. Therefore such supplemental certification is unnecessary and the governing bodies are directed to so notify the County Board of Taxation.

The Stipulation of Settlement and Dismissal which provided that the sum of $40,097 for current expenses would be added to the amount previously certified to be raised by local taxation for current expenses of the Red Bank Regional High School District for the 1976-77 school year is hereby set aside.

The Commissioner concurs with the amount of money found necessary for utilization by the Board in the litigants' agreement. The amount of $40,097 will be made available to the Board from unbudgeted State aid. Accordingly, there will be no additional tax certification for school purposes for the 1976-77 school year.

IT IS ORDERED that the matter be and is hereby dismissed.

Entered this 10th day of March 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

In the Matter of the Tenure Hearing of Thomas Sciarrillo, School District of the City of Garfield, Bergen County.

COMMISSIONER OF EDUCATION

DECISION

For the Complainant Board of Education, Michael J. Mella, Esq.

For the Respondent, Robert C. Gruhin, Esq.

The Board of Education of the City of Garfield, Bergen County, hereinafter "Board," certified charges of unbecoming conduct to the Commissioner of Education against Thomas Sciarrillo, hereinafter "respondent," a teaching staff member with a tenure status in its employ. Respondent, who was not suspended from his teaching position pending a determination of the charges, denies the allegations set forth and seeks their dismissal.

Hearings were conducted in the matter on January 14 and February 25, 1975 at the office of the Bergen County Superintendent of Schools by a hearing examiner appointed by the Commissioner. The report of the hearing examiner is as follows:

The Board is organized according to the provisions of *N.J.S.A.* 18A:12-16 It consists of seven members, each of whom is appointed by the Mayor of the City of Garfield. The Board, at a special meeting conducted on July 30, 1974, attended by five of the seven members, determined to certify charges filed with it by the Mayor. The Mayor, by letter (C-1) dated July 10, 1974, alleges the following:

***

"1. On July 7, 1974, at approximately 8:00 P.M. while walking into the council meeting, I [the Mayor] was pulled aside by Mr. Sciarrillo [respondent]. At that time, he stated to me that he had heard that there was an opening for the principalship in the school system and stated, 'What are you going to do for me?'

"2. I informed Mr. Sciarrillo that the appointment is made by the Board of Education and that he should contact them regarding his chances.

"3. Mr. Sciarrillo became indignant and made the following accusations. He said, 'I know for a fact that the last principal appointment was made for money. Money was handed out and I could name names, and one of those names is yours.'

"4. He also stated that he knew who was paid and how much money was involved.

"Of course, the statements made by Mr. Sciarrillo are totally false and in

You are viewing an archived copy from the New Jersey State Library.

my opinion, his attack against myself, as a city official, and against the Board of Education are scandulous (sic), outlandish, and slanderous, and I feel that his conduct is unbecoming that of an employee; it is insubordinate and otherwise improper, and for those reasons I am making these charges***." (C-1)

Respondent has been employed as a teaching staff member since 1964. He is presently assigned as a teacher of science and health for grades six, seven, and eight. (Tr. I-109-110)

The Mayor testified that the date of July 7, 1974, set forth in his letter complaint is incorrect; the date should read July 2, 1974. (Tr. I-32)

The Mayor testified that he first met respondent sometime during the summer of 1973. (Tr. I-14) The Mayor explained that at that time he and his wife owned and operated a tavern. He testified that he recalls first meeting respondent while sitting outside his tavern on a warm September day. (Tr. I-26) Respondent passed by in his automobile and stopped to talk. (Tr. I-14) The Mayor testified that respondent told him he was interested in a job opening, a promotion, in the school and that he possessed the necessary qualifications for appointment. The Mayor testified he explained to respondent that he, the Mayor, did not appoint anyone to positions of employment with the Board. The Mayor testified that he explained further that "***the only appointment I [the Mayor] make is [to membership on] the Board of Education and I will have to speak to them [with respect to the promotion].***" (Tr. I-15) The Mayor testified he did not know which job, or promotion, respondent was interested in at that time. Thereafter, the Mayor did speak with the President of the Board with respect to respondent. (Tr. I-28) The Mayor testified that respondent was appointed to the position of guidance counselor shortly thereafter (Tr. I-16) and that the next time he and respondent met was at City Hall on July 2, 1974, when the events alleged in the charges, *sub judice,* were said to have occurred.

The hearing examiner observes that respondent was not appointed to the position of guidance counselor by the Board. Rather, respondent had, at the time of his conversation with the Mayor during 1973, applied for and was appointed to the position of curriculum leader for the 1973-74 school year. He applied for the position during June 1973 and was notified of his appointment by letter (R-4) dated August 14, 1973. (Tr. I-58-59) Respondent testified that he did talk with the Mayor during September or October 1973, and that he informed the Mayor of his interest in a principalship vacancy. (Tr. I-135, 166) The Board President testified that a principalship vacancy did exist sometime in July 1973. This vacancy was created by the Board's reassignment of one of its elementary principals to the position of assistant superintendent. (Tr. I-59) Respondent had, in fact, applied for this principalship vacancy which, the Board President explained, was subsequently filled by another candidate on November 8, 1973. (Tr. I-60-61; R-8, at p. 3)

The Board President, who is employed as a teaching staff member by another board of education, testified he first met respondent during 1966 while

You are viewing an archived copy from the New Jersey State Library.

he, the President, was doing his student teaching. (Tr. I-56-57) Thereafter, they knew each other on a professional and social basis. (Tr. I-57, 60) The Board President was appointed to membership by the Mayor (Tr. I-42) on March 1, 1973, and was elected President on March 1, 1974. (Tr. I-58)

The President explained that while the Board was considering the principalship vacancy respondent occasionally telephoned him to inquire as to the status of his candidacy. (Tr. I-60) The Board President testified that when the Board appointed a candidate other than respondent to the principalship vacancy at the November 1973 meeting, he overheard respondent at the conclusion of the meeting utter a profanity and query how much the appointee paid for her position. (Tr. I-61) The vice-president of the Board testified that he, too, overheard respondent utter substantially the same remarks. (Tr. I-91) The President testified he then informed respondent that if he had any proof with respect to anyone paying for his employment he, the President, would accompany that person to the Bergen County Prosecutor's office. The President testified he and the vice-president informed the other members of the Board of what respondent was to have stated. He testified that the Board elected not to pursue the matter because the members believed that respondent was upset and disappointed by not being appointed to the principalship vacancy. (Tr. I-62)

Respondent testified that at the conclusion of the November 1973 meeting the President came to him and expressed his regrets that he, respondent, was not the successful applicant. (Tr. I-110-111) Respondent denies uttering any profanity and denies voicing any allegation with respect to anyone paying for any appointment. (Tr. 111-112) The president of the Garfield Education Association attended the November 1973 meeting of the Board. He testified that he did not see respondent talk with any Board members after the meeting nor did he hear respondent utter the remarks attributed to him by the two officials of the Board. (Tr. II-205)

The Mayor testified that he did not talk with respondent between September 1973 and July 2, 1974, the date when the conversation in the charges, *sub judice,* was alleged to have occurred. (Tr. I-16) The Board President testified that he did not talk with respondent subsequent to the November 8, 1973 meeting until May 1974 when applications for a second principalship vacancy caused by an incumbent's retirement began to be accepted. It is this principalship vacancy which is the subject of the charges herein. The President testified that respondent telephoned him during May 1974 in regard to the vacancy. The President testified he instructed respondent that if he wished to apply he should follow appropriate procedures and file an application. (Tr. I-63)

Respondent testified he did contact the President prior to submitting an application for the vacancy. He testified that, while he did not ask the President for anything, he did say that he was going to apply for the vacancy and "***anything you can do for me I will appreciate.***"(Tr. I-131) Thereafter, respondent filed a formal application for the vacancy, the receipt of which was acknowledged by the Superintendent by letter (R-5) dated June 13, 1974. In the meantime, however, on May 9, 1974 the Board appointed respondent to teach

You are viewing an archived copy from the New Jersey State Library.

high school science in its 1974 summer school program and so notified him by letter (R-6) dated May 20, 1974.

The Mayor testified that on July 2, 1974, he arrived at his office at approximately 7:30 p.m. and prepared for the meeting which was to begin at 8:00 p.m. The Mayor explained that he then attended a committee meeting with Council which ended near 8:00 p.m. While proceeding to the meeting in the Council chambers, he passed respondent who was standing in the corridor. The Mayor testified respondent stated that he knew a principalship vacancy was open and asked what he, the Mayor, was going to do for him. The Mayor testified he asked respondent what he meant and that respondent stated:

> "***the fact is I know the last time an appointment was made money was involved and your name [the Mayor's] was injected. I [respondent] know how much was involved and who got what***." (Tr. I-17)

The Mayor testified that in response he said:

> "***[L]ook, all I do is I make the appointments to the Board and they make their own appointments. I can't tell them what to do but I will speak to [the Board President] and relay the message to him.***" (Tr. I-17-18)

The Mayor repeated that his response to respondent's alleged assertions was to state that, "***I told him [respondent] I would speak to [the Board President] and from there on I went into the council chambers.***" (Tr. I-18) It is not established in the record what "message" the Mayor was to relay to the President or for what purpose he would speak to the President as a result of this conversation.

The Mayor testified that respondent talked with him on this occasion for a minimum time of ten seconds to a maximum of one minute. (Tr. I-40) He also testified that no one was in the immediate area of the conversation at the time. (Tr. I-24)

Respondent admits talking with the Mayor during the evening of July 2, 1974 in regard to the principalship vacancy. Respondent testified that he told the Mayor that a principalship was vacant and asked what the Mayor could do for him (Tr. I-118), or whether the Mayor could do anything for him, or what the Mayor was going to do for him. (Tr. I-139) Respondent testified that prior to his conversation with the Mayor he was in the corridor talking with an employee of the City of Garfield. (Tr. I-118) The employee affirmed he was talking with respondent on July 2, 1974, but did not hear the conversation between respondent and the Mayor. (Tr. I-174)

Respondent testified that he decided to speak to the Mayor regarding the principalship vacancy because "***he [the Mayor] did in fact appoint the members of the Board of Education and also I spoke to him because of his position in the City. I felt that he would be a good source [to whom] to speak.***" (Tr. I-132) Respondent denies he said anything with respect to

You are viewing an archived copy from the New Jersey State Library.

payment for a position (Tr. I-14); he denies making allegations against the Mayor or anyone else (Tr. I-120); and he denies saying anything with respect to anyone receiving money for improper reasons. (Tr. I-119-120)

The Mayor testified that subsequent to July 2, 1974, while playing golf with the Board President, he informed him of respondent's accusations with respect to illicit payments. The Mayor testified that the President then had Board counsel prepare the letter complaint of July 10, 1974, *ante,* which the Mayor signed, and the complaint was then filed with the Board. (Tr. I-35)

The President corroborated that the Mayor informed him of respondent's alleged accusations while the two played golf on or about July 5 or 6. The President testified that the Mayor believed the alleged accusations of respondent were an attack upon his integrity and he wanted his name cleared. (Tr. I-65)

The Board, subsequent to being informed by the President of his conversation with the Mayor, invited respondent to attend an informal meeting on July 9, 1974 to discuss the matter. (Tr. I-184) Respondent testified that on July 8, 1974, the day before the scheduled informal meeting, while he was teaching summer school, the Superintendent informed him of the Board's desire to talk with him. (Tr. I-115) Respondent testified that neither the Superintendent nor he had any knowledge of the purpose of the meeting. (Tr. I-145) Respondent, therefore, contacted a Board member to discover why the Board wanted to meet with him. The Board member did not know the purpose of the meeting. Consequently, respondent did not appear at the meeting scheduled for July 9 because the then existing agreement between the Association and the Board required that a written statement of reasons be given whenever a teaching staff member was called to appear before the Board. Respondent testified he did not receive such a written statement nor did he know the purpose of the meeting. Therefore, he did not attend. (Tr. I-146-147)

The hearing examiner observes that, at this juncture, the Mayor's complaint had not yet been reduced to writing.

Respondent, on cross-examination, testified that subsequent to being informed of the scheduled July 9 meeting he also contacted a friend of his who is an attorney. (Tr. I-153) Respondent explained that since his attorney knew the Board members he might be able to ascertain the purpose of the meeting. Respondent asserted that he contacted this attorney only to attempt to establish the purpose of the meeting. (Tr. I-153)

The Board President testified that prior to the scheduled meeting of July 9, 1974, he received a telephone call from respondent's attorney. The attorney explained to the President that respondent knew the purpose of the scheduled July 9 meeting and "***did not want to see the lid blow off the town so to speak and unless we [the Board] dropped the entire matter [respondent] was going to the [Bergen] County Prosecutor's office.***" (Tr. I-184-185) Respondent denies being the source of any threat to file a complaint with the Bergen County Prosecutor's office. (Tr. I-153)

You are viewing an archived copy from the New Jersey State Library.

Subsequent to respondent's failure to attend the July 9 meeting, the President testified that the Board directed counsel to take the Mayor's statement and prepare the written charges as certified herein. (Tr. I-65)

The Acting Board Secretary notified respondent by letter (R-7) dated July 11, 1974 of the charges filed with it by the Mayor. Respondent was also notified that a hearing with respect to the charges was scheduled by the Board on July 16, 1974. Respondent was advised that he could appear with legal representation and could offer evidence in opposition to the charges. Respondent did attend the July 16 meeting with counsel and denied the truth of the Mayor's charges, *ante*. Thereafter, the Board certified the charges on July 30, 1974 to the Commission for adjudication.

A last matter remains. Respondent testified that while he cannot recall the precise date, he did in fact file a complaint with the office of the Bergen County Prosecutor of an alleged bribery attempt in connection with the appointment of a principal in the employ of the Board. (Tr. I-153) The hearing examiner observes that the complaint had to be filed on or before July 22, 1974, the date an investigator from the Prosecutor's office took the Mayor's statement. (P-1) The Assistant Prosecutor, by letter (P-3) dated October 25, 1974, notified Board counsel that its investigation had been completed and that no further action was to be taken on respondent's complaint.

This concludes the factual presentation of the matter.

Respondent relies on the First and Fourteenth Amendments of the United States Constitution, as well as Article 1, Paragraph 6 of the New Jersey Constitution, to support his demand that the charges herein be dismissed. Respondent argues that the conversation he had with the Mayor on July 2, 1974, was private in nature and, while denying the substantive statements attributed to him by the Mayor, asserts that whatever he said is protected under his rights to express himself freely. Consequently, respondent maintains that the substance of a private conversation between two persons may not be adversely used against one of the participants in a matter such as that herein. The hearing examiner will consider this argument, *post*.

Respondent also argues that because the matter turns on the question of the application of the federal and State constitutionally protected rights of free speech, the Commissioner has no jurisdiction to hear the matter. The hearing examiner observes that the Commissioner does, in fact, have jurisdiction to hear matters involving constitutional issues so long as the issues presented to him are not novel in nature and have already been adjudicated by a court of competent jurisdiction. See *Frank Schults et al. v. Board of Education of the Township of Teaneck, Bergen County*, 86 *N.J. Super.* 29 (*App. Div.* 1964).

Respondent argues next for dismissal of the charges on the grounds that the Board failed to arrive at a finding of fact as to the merits of the charges prior to certification to the Commissioner on July 30, 1974. The hearing examiner observes that the Board's responsibility with respect to its consideration of

You are viewing an archived copy from the New Jersey State Library.

charges filed with it prior to certification to the Commissioner is clearly set forth at *N.J.S.A.* 18A:6-11, amended by Chapter 304, Laws of 1975, as follows:

> "Any charge made against any employee of a board of education under tenure during good behavior and efficiency shall be filed with the secretary of the board in writing, and a written statement of evidence under oath to support such charge shall be presented to the board. The board of education shall forthwith provide such employee with a copy of the charge, a copy of the statement of the evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto. After consideration of the charge, statement of position and statements of evidence presented to it, the board shall determine by majority vote of its full membership whether there is probable cause to credit the evidence in support of the charge and whether such charge, if credited, is sufficient to warrant a dismissal or reduction of salary. The board of education shall forthwith notify the employee against whom the charge has been made of its determination, personally or by certified mail directed to his last known address. In the event the board finds that such probable cause exists and that the charge, if credited, is sufficient to warrant a dismissal or reduction of salary, then it shall forward such written charge to the commissioner for a hearing pursuant to N.J.S. 18A:6-16, together with a certificate of such determination. Provided, however, that if the charge is inefficiency, prior to making its determination as to certification, the board shall provide the employee with written notice of the alleged inefficiency, specifying the nature and allow at least 90 days in which to correct and overcome the inefficiency. The consideration and actions of the board as to any charge shall not take place at a public meeting."

It is observed that the amended statute of reference did not become effective until February 7, 1976. The statute in existence at the time the Board certified the charges herein reads as follows:

> "If written charge is made against any employee of a board of education under tenure during good behavior and efficiency, it shall be filed with the secretary of the board and the board shall determine by majority vote of its full membership whether or not such charge and the evidence in support of such charge would be sufficient, if true in fact, to warrant a dismissal or a reduction in salary, in which event it shall forward such written charge to the commissioner, together with certificate of such determination."

In neither instance, either with the amendment or prior to the amending legislation, did the Board ever have authority to arrive at a finding of fact with respect to tenure charges filed with it. Boards of education were, and still are, strictly prohibited from doing so to avoid being the prosecutor, judge and jury of such complaints. The responsibility to hear and determine tenure charges, subsequent to a finding of fact, is vested solely with the Commissioner of Education. *N.J.S.A.* 18A:6-9; *In re Fulcomer,* 93 *N.J. Super.* 404 (*App. Div.* 1967)

You are viewing an archived copy from the New Jersey State Library.

Next, respondent moves to dismiss the instant charges on the grounds that two of the Board members who voted to certify the charges to the Commissioner on July 30 were present at the meeting of July 16, 1974, when respondent appeared before the Board, with counsel, and denied the Mayor's allegations. Respondent reasons that the two Board members' votes were tainted by their presence at the July 16 meeting. Consequently, because the vote to certify was four to zero, with one abstention, the vote, if the two members' ballots are discounted, would stand at two to zero, with one abstention. The other two members who cast affirmative votes to certify were not present at the July 16 meeting. (Tr. II-297) Thus, respondent argues there was not a majority vote to certify as required by *N.J.S.A.* 18A:6-11.

The hearing examiner finds no procedural error with respect to the vote of the two Board members whose affirmative votes to certify are challenged by virtue of their presence at the July 16 meeting. *N.J.S.A.* 18A:6-11, prior to the amendment, and more so subsequent to the passage of the amendment, requires the Board to *consider* the evidence in support of the charge. Respondent has failed to establish his claim that the two specific Board members whose votes he questions acted in bad faith, or as the result of bias or prejudice.

Finally, the hearing examiner will consider respondent's claim that the substance of the conversation between him and the Mayor on July 2, 1974, may not be used as the basis of a tenure charge against him grounded upon his constitutionally protected right to free speech.

The New Jersey Courts have on prior occasions considered teachers' challenges to alleged violations of First and Fourteenth Amendment rights to free speech and due process. Chief Justice Weintraub, writing for the Court in *Board of Education of Union Beach et al. v. New Jersey Education Association et al.,* 53 *N.J.* 29 (1968) observed:

> "***Individuals severally or in association, of course have the right to denounce a public body, its officers, and its programs, in the most searing terms, and even with a wide margin of error.***" (at p. 40)

This principle was tempered by the Court in the same opinion wherein it was held:

> "***It need hardly be said that freedom of speech does not include the right to use speech as an instrument to an unlawful end.***" (at p. 42)

In *Pietrunti v. Board of Education of Brick Township,* 128 *N.J. Super.* 149 (*App. Div.* 1974), *cert.* den. 65 *N.J.* 573 (*Sup. Ct.* 1974), *cert.* den. 419 *U.S.* 1057 (1975) the Court in a per curiam decision addressed the parameters applicable to a teacher's exercise of free speech when, in quoting *Pickering v. Board of Education,* 391 *U.S.* 563, it held, *inter alia*:

> "***'The problem [with respect to a teacher's exercise of free speech] in any case is to arrive at a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of

You are viewing an archived copy from the New Jersey State Library.

the State, as an employer, in promoting the efficiency of the public services it performs through its employees.'***"

(128 *N.J. Super.* at p. 167)

The hearing examiner, in the context of the guidance offered by the Court, finds that the conversation which occurred between the Mayor and respondent on July 2, 1974, does not fall within the parameters of constitutionally protected free speech as alleged. This is so because the alleged content of the conversation in addition to the investigation by the Bergen County Prosecutor's Office, establishes that an accusation of bribery had been made against the Mayor by respondent. This being so, respondent's cloak of protection afforded by his constitutional right to free speech must give way to the interest of the State to determine whether such an allegation is true. Obviously, the Bergen County Prosecutor's office determined that sufficient reason existed to investigate respondent's complaint that bribes were being taken for positions of employment with the Board.

The hearing examiner finds that portion of the allegation (C-1), in which respondent stated that the Mayor's name was mentioned in connection with a bribe for an appointment, to be true. The hearing examiner also finds that respondent sufficiently believed that accusation to be true for he reported the matter as he properly should. Consequently, he may not be found to have committed conduct unbecoming a teacher for making such an allegation and reporting it to the proper authorities.

The hearing examiner also finds to be true that respondent, in the same conversation of July 2, 1974, inquired of the Mayor what was going to be done for him. In the context of the whole of the conversation which is found to be true, respondent's query must be considered improper. There is no allegation that respondent offered money to the Mayor in exchange for a principal appointment, nor is there any evidence to establish that such an offer was made. The very fact that respondent alleged to the Mayor that money was improperly being exchanged for appointment, and in the same conversation asked what was to be done for him, certainly colors the purity of the whole conversation. Respondent obviously was attempting to further his opportunity for appointment as a principal in the employ of the Board by speaking with the Mayor on July 2, 1974. The hearing examiner so finds. The hearing examiner leaves to the Commissioner the determination of an appropriate penalty, if any, which should be imposed as the result of these findings.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner and the exceptions and objections filed thereto by respondent.

The Commissioner adopts as his own the findings of fact and conclusions of law set forth by the hearing examiner. Specifically, the Commissioner knows

You are viewing an archived copy from the New Jersey State Library.

of no authoritative source, nor has any been cited to him, which automatically clothes the substance of a private conversation with the cloak of constitutional protection. The record herein clearly shows that respondent believed there were illicit payments for promotions in the schools operated by the Board, and he reported such beliefs to the Bergen County Prosecutor's Office. There has been no showing that respondent deliberately misstated his beliefs, even though the allegations were not proven.

What is cause for concern is respondent's efforts to attain professional advancement outside the scope of proper application procedures. His efforts to secure the assistance of the Mayor and the Board President to achieve professional advancement may not, under any circumstance, be condoned.

Conversely, each board member and other appointed or elected public official, must be assiduous to avoid any action which may be viewed as an attempt to improperly influence the appointment of a person to any position in the public schools. (See *Leroy Lynch et al. v. Board of Education of the Essex County Vocational School District, Essex County,* 1974 *S.L.D.* 1308, aff'd State Board of Education, October 1, 1975 for a discussion of proper board policies regarding staff appointments.)

The Commissioner finds that respondent's service to the Board from 1964 to this point has been unblemished. While his efforts to receive the principalship appointment are found to have been beyond the scope of proper professional procedures, the Commissioner finds that the total circumstances herein warrant no disciplinary measures be taken.

Accordingly, the Commissioner of Education hereby dismisses the charge of unbecoming conduct against Thomas Sciarrillo.

COMMISSIONER OF EDUCATION

March 10, 1977

You are viewing an archived copy from the New Jersey State Library.

In the Matter of the Application of the Board of Education of the Borough of Milltown to Establish a Sending-Receiving Relationship with the Board of Education of the Borough of Spotswood, Middlesex County.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Russell Fleming, Jr., Esq.

For the Respondent, Golden, Shore & Paley (Philip H. Shore, Esq., of Counsel)

On October 6, 1976, the State Board of Education handed down a decision which held, *inter alia,* that the sending-receiving relationship which had theretofore existed between the Board of Education of the Borough of Milltown, hereinafter "Milltown Board," and the Board of Education of the City of New Brunswick must be continued to the date of June 30, 1977, but might then be severed. *In the Matter of the Application of the Board of Education of the Borough of Milltown to Terminate Its Sending-Receiving Relationship with the Board of Education of the City of New Brunswick, Middlesex County,* 1976 *S.L.D.* 854 The decision was grounded in, and ensued from, a report and recommendations of a hearing examiner appointed by the State Board and differed from such report only with respect to the effective date of severance. The State Board otherwise adopted the report of the hearing examiner "***as its own***." (at p. 864)

Thus the adoption also embraced those sections of the report of the hearing examiner wherein it was recommended that the Commissioner of Education "retain jurisdiction" in the controversy until such time as an alternate interim sending-receiving relationship or permanent regionalization plan had been developed by the Milltown Board for its high school pupils and submitted to the Commissioner for approval.

The Milltown Board has, pursuant to such direction, now submitted what the Commissioner regards as an "interim" proposal for a sending-receiving relationship; namely, that for a five-year period the Milltown Board send its high school pupils to the Borough of Spotswood for an appropriate educational program. The Board of Education of the Borough of Spotswood, hereinafter "Spotswood Board," concurs with the establishment of such proposed relationship and has resolved to proceed toward its implementation.

The Commissioner has reviewed the joint resolutions and hereby does approve the establishment of the new sending-receiving relationship but for a two-year term rather than the five-year proposal embodied in the agreement of the parties. Such limited approval will be considered for an extension at a later date.

You are viewing an archived copy from the New Jersey State Library.

This approval for a two-year term, rather than for five years, will allow for a period of scrutiny of other problems concerned with high school programs and facilities in the Middlesex County area. Such problems have only recently come to the fore but may not properly be addressed at the present time because of the practicalities of the situation and the need to rapidly plan for the enrollment of pupils in September 1977. Staffing must be arranged. Budgets must be finalized and expenditures planned. Accordingly, the Commissioner determines this interim approval is required to be granted without delay.

The Commissioner further determines, however, that the instant proposal may not be the desirable permanent arrangement which was envisioned at the time of the State Board's decision in this matter and that further review is required. He therefore directs the Middlesex County Superintendent of Schools to prepare a written report concerned with the present and future adequacy of high school programs of education in the Middlesex County area and to set forth therein the alternative arrangements which may be desirable and feasible for the placement of Milltown pupils or the pupils of other districts. He requests that such report be completed for submission on or before the date of January 1, 1978.

For the reasons hereinbefore set forth the sending-receiving relationship between the Milltown Board and the Spotswood Board is approved effective for the 1977-78 academic year and continuing to the date of June 30, 1979. The plans to effectuate such relationship may now go forward and it is directed that they be implemented with expedition.

COMMISSIONER OF EDUCATION

March 10, 1977

You are viewing an archived copy from the New Jersey State Library.

River Dell Regional Board of Education,

Petitioner,

v.

Mayor and Council of the Boroughs of Oradell and River Edge, Bergen County,

Respondents.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Stein, Joseph & Rosen (Marc Joseph, Esq., of Counsel)

For the Respondent Borough of River Edge, Ned J. Parsekian, Esq.

For the Respondent Borough of Oradell, Everett I. Smith, Esq.

Petitioner, the River Dell Regional Board of Education, hereinafter "Board," appeals from an action of the Mayors and Councils of its constituent communities of River Edge and Oradell, hereinafter "governing bodies," certifying to the Bergen County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The facts of the matter were adduced at a hearing conducted on December 29, 1976 at the State Department of Education, Trenton, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

At the annual school election held March 2, 1976, the Board submitted to the electorate a proposal to raise $4,078,675 by local taxation for current expense costs of the school district. This item was rejected by the voters and, subsequent to the rejection, the Board submitted its budget to the governing bodies for determination of the amounts necessary for the operation of a thorough and efficient River Dell Regional school system for the 1976-77 school year, pursuant to the mandatory obligation imposed upon the governing bodies by *N.J.S.A.* 18A:13-19.

After consultation with the Board, the governing bodies made their determination and certified to the Bergen County Board of Taxation an amount of $4,033,675 for current expense costs for 1976-77. The amount in dispute is shown as follows:

	Current Expense
Board's Proposal	$4,078,675
Governing Bodies' Proposal	4,033,675
Amount Reduced	$ 45,000

You are viewing an archived copy from the New Jersey State Library.

The hearing examiner observes that the gravamen of the matter herein is not the amount of money by which the governing bodies reduced the Board's proposal because settlement in that regard has been tentatively reached. The Board agrees to a reduction of $22,500 and the governing bodies agree to have $22,500 restored to the Board for its use during the 1976-77 school year. The crux of the matter is the insistence of the governing body of River Edge to have the Board resolve, in writing, to submit all relevant data with respect to its proposed future budgets to the respective governing bodies at least three weeks prior to the public hearing, which hearing is required by *N.J.S.A.* 18A:22-10. The River Edge governing body asserts that the Board has failed to provide it with a written detailed explanation of proposed school budgets until the time of election. The River Edge governing body complains that the Board has provided the requested detail subsequent to a defeated budget, but not before the public hearing as in the instant matter. Consequently, the River Edge governing body argues that the failure of the Board to provide it with the requested data precluded it from arriving at a reasoned and informed judgment on the budget prior to the annual school election.

The Board argues that in the first instance it may not resolve, in writing, to require future boards of education to submit any data to the governing bodies at any time prior to the annual school election. The Board explains that because it is a non-continuous body it may not bind future boards of education unless specifically authorized by law. The Board contends that while there is no legal requirement for it to submit a detailed statement with respect to its proposed budget to the governing bodies prior to the public hearing, it has in the past and continues to meet with the respective governing bodies during the last week of each December to explain its proposed budget in detail. The Board contends that it also provides the governing bodies with written data in support of its proposed budgets at this meeting.

The hearing examiner observes that the River Edge governing body admittedly was invited to the December meeting in regard to the Board's 1976-77 school budget, but declined the invitation because it had received no data from the Board prior to the scheduled meeting. The Board did make available to the Oradell governing body its proposed 1976-77 school budget in a six-page written form (P-1) set forth by major line items. The Board also provided the Oradell governing body with a three page anticipated revenue report. (P-2) The Board Secretary testified that these two reports (P-1; P-2) were distributed to the Oradell governing body at the beginning of the December meeting and collected at the conclusion of the meeting. Between this December meeting and the defeat of its proposed budget by the voters on March 2, 1976, no other data with respect to the budget was submitted to the governing bodies by the Board. The hearing examiner observes that the Board did distribute to the citizens of Oradell and River Edge a flyer (R-1) dated February 11, 1976, setting forth its proposed budget for 1976-77 in a general fashion.

Once the Board's proposed budget was defeated by the voters, the Board Secretary did submit a 101 page report (P-4) to the governing bodies which report represents "***the backup (work) sheets supporting our proposed (defeated) 1976-77 school year budget for your [the governing bodies] use in

You are viewing an archived copy from the New Jersey State Library.

understanding our proposed budget." (P-5; P-6) The hearing examiner observes that it is this kind of detail set forth in the extensive report (P-4) which the River Edge governing body insists upon receiving three weeks prior to public hearings to be held on future proposed school budgets. It is further observed that the Board Secretary testified that while this detailed report existed prior to the election, even if the governing bodies had requested copies for perusal, such request would have been denied. This is so, the Board Secretary testified, because the report contained an amount with respect to teachers' salaries that had been under negotiation at that time.

Thus the issue for determination is concerned with the responsibility of the Board with respect to the submission of supporting data to the governing bodies of its constituent communities prior to the public hearing and, conversely, the responsibility and/or authority, if any, of the governing bodies with respect to arriving at judgments on the Board's proposed school budget.

Firstly, *N.J.S.A.* 18A:13-17 requires a regional board of education to present to its electorate for approval the amount of local taxation it deems necessary to operate its schools during the subsequent school year. Prior to the election *N.J.S.A.* 18A:22-7 requires a regional board of education to prepare its budget for each subsequent year on or before the first Tuesday in January. *N.J.S.A.* 18A:22-8 requires that the budget "***shall be prepared in such detail and upon such forms as shall be prescribed by the commissioner and to it shall be annexed a statement so itemized as to make the same readily understandable***." Thereafter, a regional board of education must conduct a public hearing on its proposed budget between the first Tuesday in January and January 25. *N.J.S.A.* 18A:22-10

There is nothing in Title 18A, Education Law, which would require any board of education to transmit to the governing body or bodies its supporting documentation on its proposed budget either before the public hearing or before the annual school election.

Notwithstanding the absence of a legislative directive with respect to the board sharing supporting documentation of its proposed budget prior to the annual school election, *N.J.S.A.* 18A:13-19 does direct that the governing body or bodies take an active role in fixing school appropriations once the board's proposals are rejected by the voters. (See *Board of Education of East Brunswick v. Township Council of East Brunswick,* 48 *N.J.* 94 (1966).) Because the governing bodies' role in this regard is so decisive, it appears incumbent upon a board of education to provide as much information as is possible prior to the election, not only to the governing bodies but to the electorate as well.

In the instant matter, the Board attempted to orally explain its proposed budget for 1976-77 at a December meeting. The River Edge governing body had received no written documentation prior to the meeting; consequently, it refused to attend. The Board did provide the Oradell governing body with two reports (P-1; P-2) at the meeting, both of which were collected at the close of the meeting. The hearing examiner can understand the Board's concern with respect to teachers' salaries negotiations, but surely reasonable men sitting

You are viewing an archived copy from the New Jersey State Library.

together for the common purpose of educating the communities' children can discuss school needs. Furthermore, *N.J.S.A.* 18A:22-8 does require that the Board annex an itemized statement to its budget prior to the public hearing to "***make the same readily understandable***."

The Board argues that, had the River Edge governing body attended the December meeting, it too would have received a copy of the distributed reports. (P-1; P-2) The River Edge governing body argues that to receive such reports at the beginning of the meeting is not timely and that the untimely submission of that data would be compounded by the Board collecting those reports at the conclusion of the meeting.

The hearing examiner must point out that the matter controverted herein would have been amicably settled had the parties agreed to a sharing of data. It is true that this Board may not bind a future board regarding the submission of data to the governing bodies in support of future budgets. It is also true that the River Edge governing body has no authority to approve or disapprove any proposed budget item by the Board until and if the Board's proposals are defeated by the voters. It does appear, however, that had the parties herein been a degree more cooperative the whole matter would have been settled at the local level.

The hearing examiner observes that the Board has available to it $554,332 in unbudgeted current expense State aid, of which $45,000 may be authorized for expenditure by the Board. Because the Board agrees to a reduction of $22,500 the hearing examiner recommends that the Commissioner authorize the Board to expend $22,500 more in current expense State aid which authorization would have no affect upon the local tax rates.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner to which neither party filed written exceptions or objections.

The Commissioner adopts as his own the findings of fact and conclusions of law set forth by the hearing examiner. Specifically, the record supports the conclusion that had the parties extended more cooperation to each other in regard to the sharing of data used to support the proposal for school costs the dispute could have been settled at the local level. Neither the membership of this Board, nor the membership of any board of education, may act to bind future boards of education except as specifically provided by law. *Luther McLean v. Board of Education of the Borough of Glen Ridge et al., Essex County,* 1973 *S.L.D.* 217, aff'd State Board of Education 1974 *S.L.D.* 1411 Consequently, the Board may not adopt a resolution by which future boards of education would be bound to transmit data to the governing bodies at any fixed date prior to the annual school election.

You are viewing an archived copy from the New Jersey State Library.

It is the responsibility of a local board of education to fix the sum it deems necessary to be raised for school purposes by local taxation each and every year. *N.J.S.A.* 18A:13-17 This proposal shall be prepared in a manner that is "***readily understandable***." *N.J.S.A.* 18A:22-8 Thereafter, the proposal is presented to the electorate for its approval. *N.J.S.A.* 18A:13-17 In the Commissioner's judgment a harmonious relationship between local boards of education and the respective governing bodies can best be advanced by the sharing of data relevant to the financial operation of the schools.

The Commissioner hereby authorizes the River Dell Regional Board of Education to expend $22,500 from its unbudgeted current expense State aid during the 1976-77 school year. This authorization does not increase the local tax levy for 1976-77 school purposes in the communities of Oradell or River Edge.

COMMISSIONER OF EDUCATION

March 10, 1977

Peter Nicastro, t/a Nicastro Studio,

Petitioner,

v.

Board of Education of the City of Garfield, Bergen County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, H. Ronald Levine, Esq.

For the Respondent, Michael J. Mella, Esq.

Petitioner, a professional photographer whose studio is located in the City of Garfield, alleges that the photographic bid requirements and procedures employed by the Garfield Board of Education, hereinafter "Board," in regard to the procurement and use of yearbook photographs are arbitrary, capricious, monopolistic and otherwise improper.

The Board denies that its procedures concerning yearbook picture bidding and contracts are in any way illegal, improper or contrary to the best interests of either the pupils or the community of Garfield.

The matter is jointly submitted for Summary Judgment by the

You are viewing an archived copy from the New Jersey State Library.

Commissioner of Education on the pleadings, Stipulation of Facts, Briefs and exhibits. The essential relevant facts are as follows:

The Board, since the 1972-73 school year, has requested bids and awarded contracts for yearbook photography. From 1965 to 1972, petitioner was awarded contracts for such photography on the basis of bids issued by the high school itself. The Board requires that all photographs of seniors appearing in the yearbook be taken by the successful bidder. It is further required of that photographer to do additional photographic work without cost to the Board, yearbook staff or pupils of the high school. Included in such extra photography are pictures of faculty and staff, athletic contests, groups, pupil activities, and underclassmen. Those pictures are used in the yearbook or for other school purposes. The successful bidder's sole income is from orders placed by pupils for photographic portraits. No pupil, however, is either required to purchase any portraits, or to pay a sitting fee. (See Stipulation of Facts and attached annual bidding specifications from 1973-75.)

Petitioner, in his Brief, hereinafter "PB," asserts that the Board has no right to appoint one photographer to take all senior portraits and other yearbook pictures. He buttresses this assertion by incorporating by reference certain opinions of the Attorneys General of the States of Washington and Oregon. (PB; Exhibits B, C) Petitioner argues that the selection of one contracted photographer creates a monopoly and abrogates the right of a pupil to select freely among photographs of differing quality, characteristics and prices. (PB, at pp. 4-6)

Petitioner contends further that senior pupils who do order photographic portraits from the contract photographer are improperly compelled to subsidize the cost of photographs of underclassmen which are not only used in the yearbook but also utilized by the school for its records. In this regard, petitioner avers that the Board "***must act, in its usual 'fiduciary' responsibility for the benefit of all the pupils and not just for the benefit of a few.***" (PB, at p. 7) Petitioner asserts that such subsidization as may be necessary to provide the school with photographic prints for its records ought properly to be borne not by pupils who order portraits but by the Board. (PB, at pp. 7-8) *Melvin Willett et al. v. Board of Education of the Freehold Regional High School District, Monmouth County,* 1976 *S.L.D.* 282

Similarly, it is argued that those seniors who order portraits are unfairly forced to subsidize benefits for other seniors who, although they do not order portraits, have their printed pictures in the high school yearbook. In this regard petitioner avers that the contract photographer, who receives no compensation from either the Board or those who do not order portraits and who is presented specifications allegedly insufficient to enable him to make an informed bid, must gauge his price structure to compel subsidization from those who do order pictures. (PB, at pp. 9-12)

Petitioner submits that alternative approaches exist whereby either the Board or the yearbook account would guarantee that those who receive benefits

You are viewing an archived copy from the New Jersey State Library.

would pay in an equitable manner for services rendered. Petitioner advances as a viable procedure the establishment of a "sitting" fee for each portrait and a guarantee of free choice by each participating pupil of the quality and type picture desired. (PB, at pp. 12-14)

For the foregoing reasons, petitioner prays, *inter alia,* for an order of the Commissioner which would declare the Board's procedures arbitrary and capricious, set forth guidelines for proper bidding procedures, and enjoin the Board from requiring all photographic prints to be made by the successful bidder.

Respondent's Brief, hereinafter "RB," argues that the bidding specifications are sufficiently detailed to enable an experienced photographer to make an informed bid. In this regard the Board points out that bids are invited from only experienced photographers who have familiarity with the variables inherent in yearbook photography and who are well acquainted with the vagaries of the public's assessment of photographic quality. (RB, at pp. 4-5)

The Board contends that its right to appoint a single photographer is dictated by the necessity of maintaining both a reasonable timetable and uniform quality standards of photographic recordation for yearbook copy. (RB, at pp. 6-7) The Board avers that any benefit which is received from photographic services is of direct benefit to those individual pupils who bear the cost of portraits and that the requirement that they assume the cost thereof is neither illegal nor evidential of bad faith. The Board contends that its insistence on competitive bidding is designed "***to obtain the best cost factor for the students for quality photography.***" (RB, at p. 8) Similarly, the Board points out that no pupil is required to purchase portraits from the successful bidder.

The Board, contending that purchasers of senior portraits are not being improperly charged for the benefit of underclassmen and those seniors who do not purchase portraits, argues that any such cost factor is more than offset by a lowering of prices on expectation of volume business. (RB, at pp. 10-11)

Finally, the Board asserts that the instant Petition of Appeal should be dismissed by reason of both the equitable doctrine of laches and the doctrine of unclean hands. The Board contends that petitioner, who in the 1971-72 school year and in prior years accepted the very specifications of which he now complains, may not three years later properly raise a legal argument that those specifications from which he received monetary advantage are *ultra vires.* (RB, at p. 12)

The Commissioner has carefully reviewed the relevant arguments of law as they apply to the stipulated factual context of the dispute. It is noted that the Board questions petitioner's standing as an unsuccessful bidder to challenge the bidding procedure inasmuch as nowhere in the petition does he claim to be a citizen and taxpayer in Garfield. (RB, at p. 3) *Albert F. Ruehl Co. v. Board of Trustees of Schools for Industrial Education,* 85 *N.J. Super.* 4 (*Law Div.* 1964) Such argument was not raised in timely fashion at the conference of counsel on December 4, 1975, when issues were carefully delineated and agreed upon.

You are viewing an archived copy from the New Jersey State Library.

Accordingly, the Commissioner, relying upon petitioner's Verified Petition which states that for twenty years he has operated a photographic business in Garfield, proceeds to a determination of the agreed upon issues.

The production of a high school yearbook, although not typically a curricular offering, offers valuable opportunity for pupils to apply academic skills in such areas as marketing, journalism, layout, creative writing, advertising, group dynamics, budgeting, and creative design. While it is necessary to provide faculty advisors and sponsors for such a complex activity, the process offers an ideal opportunity for upperclassmen to enter into vital decision making processes. Such activities are to be encouraged since they furnish opportunity for pupils to use many of the skills taught in curricular offerings. One such area is creative layout which is typically an evolving expression of a selected theme. Its evolving nature makes it impossible to formulate months in advance of the pupils' senior year the type of detailed specifications which petitioner recommends. The Commissioner finds the specifications which the Board has used to be sufficiently detailed for an experienced photographer to submit an informed bid.

Petitioner assumes correctly that there is necessarily subsidization by pupils purchasing portraits in order to guarantee that pictures of underclassmen, athletic contests, pupil activities and seniors not purchasing portraits be included in the yearbook. It is apparent that many pupils in Garwood willingly accept such cost factors. In this regard it must be recognized that an important advantage accrues as much to those who do purchase such photographs as to those who do not. The intrinsic value of a yearbook, being historical in nature, is not in seeing the pictures of only those who chose or were financially able to purchase portraits, but also in the comprehensive recordation of the total school experience of which activities and one's faculty and fellow pupils are essential elements. Such historical value accrues to portrait purchasers among whom the costs therefore may be borne by voluntary participants. As was stated by the Commissioner in *Melvin C. Willett v. Board of Education of the Township of Colts Neck, Monmouth County,* 1966 *S.L.D.* 202, aff'd 1968 *S.L.D.* 276:

> "***It should be clearly understood that the Commissioner's determination herein that pupils cannot be required to bear the costs of school programs is limited to field trips and such other activities as are part of the regular classroom program of instruction or course of study. It does not extend to and is not applicable to such other school affairs as dances, concerts, dramatic productions, athletic events and the like, for which admission charges are ordinarily made. Such activities, while certainly part of the total school curriculum, are not part of the classroom teaching program. They occur after normal school hours and attendance at them is voluntary. *** The expenses of these latter elective activities are often underwritten by charging participants or spectators a fee. The Commissioner finds no infirmity in such practice although he would prefer, as would most public school educators, that all such events could be made free.***" (at p. 206)

See also *Willett,* 1976 *S.L.D.* 282.

You are viewing an archived copy from the New Jersey State Library.

Petitioner's suggestion that the Board should authorize a sitting fee to be paid by all pupils is totally without merit, since it is antithetical to the constitutional and statutory mandate that public education shall be free. New Jersey State Constitution, *Article* VIII, *Section* IV, *paragraph* 1; *N.J.S.A.* 18A:38-1; *Willett, supra* (1966) Such inequities as may result from the aforementioned subsidization which benefit either the school or non-purchasing pupils are doubtless more than offset by price reduction on volume of business and, in any event, are so insignificant that they fail to invalidate the orderly processes which guarantee timely and uniform photographic recordation of good quality. It has the further advantage of providing for the enjoyment of all, and without stigma, the photographs of those whose financial status precludes the payment for sitting fees or portraits. The Commissioner so holds.

Pupils are not required to purchase portraits and are free to procure them elsewhere if they so choose. Accordingly, absent compulsory participation, petitioner's charge that the procedure is monopolistic is similarly without merit. The record is replete with evidence that pupils, class officers, yearbook staff, advisors and administrators review and reach a determination as to who shall be the successful bidder. Such procedure exemplifies the life situations with which pupils will be confronted in our democratic society and, as such, is deemed beneficial.

The Commissioner perceives within the Board's bidding and contract procedures neither violation of statute nor arbitrary, capricious, monopolistic procedures. Nor is there evidence of favoritism or other abuse of the Board's discretionary power. Absent such finding, the Board's procedures are entitled to a presumption of correctness. As has been previously stated:

> "***it is not a proper exercise of a judicial function for the Commissioner to interfere with local boards in the management of their schools unless they violate the law, act in bad faith (meaning acting dishonestly), or abuse their discretion in a shocking manner. Furthermore, it is not the function of the Commissioner in a judicial decision to substitute his judgment for that of the board members which are by statute delegated to the local boards. Finally, boards of education are responsible not to the Commissioner but to their constituents for the wisdom of their actions.***" *Boult and Harris v. Board of Education of Passaic,* 1939-49 *S.L.D.* 7, 13, affirmed State Board of Education 15, affirmed 135 *N.J.L.* 329 (*Sup. Ct.* 147), 136 *N.J.L.* 521 (*E.&A.* 1948)

Absent evidence of impropriety, it is unnecessary to consider the applicability of the equitable doctrine of laches or the doctrine of unclean hands.

The Petition of Appeal, being without merit, is hereby dismissed.

COMMISSIONER OF EDUCATION

March 10, 1977

You are viewing an archived copy from the New Jersey State Library.

George Hillman,

Petitioner,

v.

**Board of Education of Caldwell-West Caldwell,
Essex County,**

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Goldberg, Simon & Selikoff (Theodore M. Simon, Esq., of Counsel)

For the Respondent, McCarter & English (Steven B. Hoskins, Esq., of Counsel)

Petitioner, a tenured teaching staff member in the employ of the Board of Education of Caldwell-West Caldwell, hereinafter "Board," avers that he was denied an adjustment increment and longevity payment during the 1975-76 academic year without just cause and in violation of his rights to due process of law and requests the compensation he alleges he should have received. The Board denies the allegations and asserts its action with respect to withholding petitioner's adjustment increment and longevity payment was a legal and proper exercise of its authority and seeks summary judgment in its favor. Petitioner opposes the Board's Motion for Summary Judgment and demands that the matter proceed to a plenary hearing.

The matter is referred directly to the Commissioner of Education for adjudication on the record, including the pleadings, exhibits and Briefs of the parties in support of their respective positions.

The facts of the matter are these. The Board, at a special meeting conducted on June 30, 1975, determined to withhold petitioner's employment and salary increment for the 1975-76 school year. (C-5) Thereafter, petitioner was notified by letter dated July 11, 1975 from the Assistant Superintendent of Schools of the Board's action and advised that:

> "***These increments are being withheld because of your immediate supervisor's evaluations and recommendations." (C-6)

Two written evaluations of petitioner's teaching performance were prepared during the 1974-75 academic year. (C-1; C-4) The first evaluation, prepared by the school principal and dated December 13, 1974, may be characterized as significantly less than satisfactory. (C-4) The principal initially commented that, of a total enrollment of seventeen pupils in petitioner's class, nine were present. Petitioner was able to account for fifteen of the seventeen enrolled pupils but could not identify or locate the remaining two pupils. The remainder of the evaluation set forth criticism of petitioner's classroom

You are viewing an archived copy from the New Jersey State Library.

management, petitioner's physical departure from his classroom to prepare dittoes for classroom work, his failure to report to his mathematics laboratory assignment, his failure to have properly planned his lessons, his weakness with respect to not providing a variety of instructional activities, his unsatisfactory method of maintaining a daily attendance record, more criticism of petitioner leaving his class unattended; his pupil seating arrangement; and, finally, criticism again of petitioner's failure to report to his assigned mathematics laboratory with the final admonition that "***[r]epeated occurrences will leave you open to charges of inefficiency."(C-4)

Petitioner reviewed this written evaluation as did the Assistant Superintendent. Petitioner acknowledged his review by signing the report and stating that:

> "[My] signature does not mean that I am in agreement with the evaluation, and I reserve the right for future comment [and] action." (C-4)

Petitioner was next evaluated on June 4, 1975, and a report (C-1) was prepared and signed by the assistant principal who evaluated petitioner, petitioner himself and the school principal. This evaluation, while relatively more positive than the evaluation report (C-4) of December 13, 1974, contained criticisms of petitioner's teaching performance and classroom management. The report stated that petitioner's pupil attendance record keeping had improved and that the pupils were attentive and ready to work, while petitioner was available to the pupils who needed his assistance. The report further stated that petitioner "***was courteous and friendly and was of assistance on some occasions.***" (C-1)

The report further stated that three pupils spent much of the class time daydreaming or reading a magazine on motorcycles. The supervisor concluded that had petitioner planned and prepared various activities to meet the individual needs of the pupils, they would not have wasted their time in such a fashion. Petitioner's pupil seating arrangement was criticized, as well as the content arrangement of ditto sheets which were used in the class. In general the assistant principal criticized the lack of a choice of instructional activities presented by petitioner and petitioner's action of placing a troublesome pupil in another room or in the library to be supervised by any "passersby." (C-1)

The assistant principal concludes the evaluation by stating:

> "***Previous evaluations have identified areas where improvements were required. Mr. Hillman [petitioner] has not rectified important areas of weakness and therefore I recommend that an increment not be granted for the 1975-76 school year." (C-1)

The Board asserts in its Answer that the principal and the assistant principal met with petitioner during June 1975 to discuss the contents of the evaluation report. (C-1) (Board's Answer, at p. 2) Petitioner signed the report as having read the document and further stated thereon that:

You are viewing an archived copy from the New Jersey State Library.

"In my opinion this evaluation [C-1] does not reflect my teaching ability. It is contrived and bias (sic); and my affixed signature above does not, in any manner, infer an adoption of its validity." (C-1)

Subsequent thereto, the Board took action on June 30, 1975 to withhold petitioner's adjustment increment and longevity payment and notified him on July 11, 1975 as hereinbefore reported.

The Commissioner observes that a clarification of the controverted Board action of withholding petitioner's increment and/or longevity payment is in order. The Superintendent of Schools stated in a letter (C-3) dated November 19, 1975, that petitioner was first employed by the Board for the 1965-66 school year, at which time he was placed on the ninth step of the Board's bachelor's degree plus 16 credits scale of its salary policy. Since at least 1973-74, persons on that scale reached a maximum salary when they reached the sixteenth step. During 1973-74 petitioner reached the maximum step and the salary was $15,600. (C-9) The maximum salary at the sixteenth step of the scale for 1974-75 increased to $16,600 (C-8) and for 1975-76 the maximum salary went to $17,300. (C-7)

While not specifically part of the dispute herein, petitioner's salary increment for 1974-75 was withheld by the Board. The effect of that action was that petitioner's salary remained at $15,600 for the 1974-75 year, even though the salary guide called for $16,600. The Board's action controverted herein with respect to withholding petitioner's 1975-76 salary increment resulted in petitioner remaining at a salary of $15,600, even though the maximum salary of his appropriate scale is $17,300. Petitioner seeks to recover the difference between $15,600 and $17,300 as his adjustment increment, or the amount of $1,700.

With respect to the controverted longevity payment, the Commissioner observes that the Board's stated policy on longevity payments, made part of its 1975-76 teachers' salary guide provides in pertinent part as follows:

"LONGEVITY

"Teachers who attain 17-18 salary credit maximum years on the A.B. and B.A. plus 16 columns and teachers who attain the 18th salary credit maximum on the M.A. and M.A. plus 16 column will be paid $630 in 1975-76. *Teachers who attain 19-24 salary credit maximum years will be paid in 1975-76 $920 across all lanes* [salary scales] ***. *These monies are to be non-accumulative.*" (*Emphasis supplied.*) (C-7)

Petitioner, by virtue of his having attained 19 salary credit maximum years for 1974-75, would have been eligible for the longevity payment of $920 had the Board not taken the action controverted herein. (C-3) Consequently, petitioner seeks to recover the $1,700 with respect to his salary and the $920 longevity payment for a total recovery amount of $2,620.

The Board argues that *N.J.S.A.* 18A:29-14 provides the authority to

You are viewing an archived copy from the New Jersey State Library.

withhold increments, as well as longevity payments, so long as it observes the basic elements of fair play and provides the affected employee with the elemental requirements of due process as articulated by the Commissioner in *J. Michael Fitzpatrick v. Board of Education of the Borough of Montvale, Bergen County,* 1969 *S.L.D.* 4.

N.J.S.A. 18A:29-14 provides in full as follows:

> "Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year by a recorded roll call majority vote of the full membership of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the member concerned. The member may appeal from such action to the commissioner under rules prescribed by him. The commissioner shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. The commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals. It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment."

In *Fitzpatrick, supra,* the Commissioner, relying on the guidance provided by the Court in *Kopera v. West Orange Board of Education,* 1958-59 *S.L.D.* 96, affirmed State Board of Education 98, remanded to Commissioner 60 *N.J. Super.* 288 (*App. Div.* 1960), decision on remand 1960-61 *S.L.D.* 57, affirmed New Jersey Superior Court, Appellate Division, January 10, 1963 (1961-62 *S.L.D.* 223) held:

> "***Even though a board of education has the power to withhold a salary increment, such authority cannot be wielded in a manner which ignores all the basic elements of fair play. Conceding further that a salary increment may be denied for reasons other than unsatisfactory teaching performance, the most elemental requirements of due process demand at least that the employee to be so deprived be put on notice that such a recommendation is to be made to his employer on the basis of the unsatisfactory evaluation and that he be given a reasonable opportunity to speak in his own behalf. This is not to say that deprivation of a salary increase requires service of written charges, entitlement to a full scale plenary hearing or the kind of formal procedures necessary to dismissal of tenured employees. But certainly any employee has a basic right to know if and when his superiors are less than satisfied with his performance and the basis for such judgment. Without such knowledge the employee has no opportunity either to rectify his deficiencies or to convince the superior that his judgment is erroneous.***" (1969 *S.L.D.,* at p. 7)

The Board argues that petitioner was notified of his less than satisfactory teaching performance on two separate occasions during the 1974-75 academic year. First, petitioner was notified by virtue of the principal's evaluation (C-4)

You are viewing an archived copy from the New Jersey State Library.

dated December 13, 1974, and then again by the assistant principal's evaluation (C-1) dated June 4, 1975. The Board argues that on both occasions petitioner had the opportunity to convince his superiors that their judgment was wrong. The Board also argues that between the two evaluations petitioner had the opportunity to improve his performance but failed to do so. The Board contends that petitioner knew full well that there was a likelihood of the controverted action herein occurring not only through the two specific evaluations, but also based on his experience during 1974-75 when that year's salary increment was also withheld.

The Board asserts with respect to the longevity payment of $920 that *N.J.S.A.* 18A:29-14 provides it with the authority to withhold such payments for unsatisfactory teaching performance and cites *Elsie Seybt v. Board of Education of the Borough of Hawthorne, Passaic County,* 1975 *S.L.D.* 593, aff'd State Board of Education 1976 *S.L.D.* 1169.

Finally, the Board maintains that while petitioner was informed of its controverted action and the reasons therefor by letter (C-6) dated July 11, 1975, two days beyond the statutory requirement of ten days, such delay does not result in any prejudice to him. The Board asserts that the legislative purpose of requiring notice within ten days of an action to withhold increments is to provide the affected employee with timely notice so that he may appeal. Because petitioner has appealed the action herein, the Board reasons that he has not been harmed by the *de minimus* delay of two days and cites *Robert Longo v. Board of Education of the City of Absecon, Atlantic County,* 1975 *S.L.D.* 336. The Board also likens the ten day notification requirement of *N.J.S.A.* 18A:29-14 to the ten day requirement for the issuance of a summons in a civil action which, it asserts, has not been strictly enforced and cites *McLaughlin et al. v. Bassing et al.,* 51 *N.J.* 410 (1968).

For all these reasons, the Board demands summary judgment in its favor by way of a dismissal of the instant Petition of Appeal.

Petitioner opposes the Board's Motion for Summary Judgment because he asserts that issues of material fact are in dispute. Petitioner complains that he has not received adequate notice of the Board's action, that he has not received an adequate statement of reasons, that he has had no opportunity to refute the allegations of unsatisfactory teaching performance, and that the conclusions set forth in both evaluations (C-1; C-4) are false and biased. Petitioner argues that because such facts are in dispute, summary judgment may not be granted and cites *Frank Rizzo, Inc. v. Alatsas,* 27 *N.J.* 400 (1958); *Mazzilli v. Accident and Casualty Insurance Company,* 26 *N.J.* 307 (1958); and *Bouley v. Borough of Bradley Beach,* 42 *N.J. Super.* 159 (*App. Div.* 1956). Petitioner also argues against the matter being adjudicated by way of summary judgment by asserting that a presumption of validity must attach to his allegations and cites *Ruvolo v. American Casualty Company,* 39 *N.J.* 490 (1963); *Rizzo; Mazzilli;* and *West Side Trust Company v. Gascoigne,* 39 *N.J. Super.* 467 (*App. Div.* 1956). Finally, petitioner argues that the Board itself raises an issue of material fact when it states that no prejudice has occurred to him by his notice (C-6) which was two days late.

You are viewing an archived copy from the New Jersey State Library.

Petitioner argues that he is entitled to actual notice from the Superintendent that a recommendation to withhold his salary increment and longevity payment was to be made and that the only notice he received was in the assistant principal's evaluation (C-1) of June 4, 1975, where he stated he would recommend that action. Petitioner states that he is entitled to an adversary hearing before the Board so that he can confront witnesses against him. Petitioner contends that the Board may not properly assert that he had knowledge of why his adjustment increment and longevity payment was withheld for 1975-76 inasmuch as his salary increment was withheld for 1974-75.

Petitioner asserts that now, at the very least, he is entitled to a plenary hearing before the Commissioner so that the Commissioner can factually determine whether the evaluations upon which the payments were denied are reasonable and cites *Kopera, supra.* For these reasons, petitioner contends he was not afforded due process of law with respect to the controverted action herein.

Petitioner argues with respect to the longevity payment that the Board does not have authority to withhold such a payment at *N.J.S.A.* 18A:29-14. Firstly, petitioner maintains that because the term "longevity payment" does not exist in Title 18A, Education Law, the authority for a board to grant such a payment is at *N.J.S.A.* 18A:29-15 which is reproduced here in full:

> "Nothing contained in this article shall be construed to interfere with or discontinue any salary schedule now in force; provided, such schedule shall meet the requirements of this article, nor to prevent the adoption of any salary schedule which shall meet its minimum requirements, nor to prevent the payment of extra compensation for additional service, nor to prevent the payment of any bonus pursuant to law, but no bonus payment may be made in lieu of an employment or adjustment increment."

Petitioner asserts that the longevity payment is, in fact, a bonus payable pursuant to the cited statute for years of service given to the Board. Petitioner argues that such bonus payments are not, and may not be, considered a salary or part thereof. Petitioner concludes that because *N.J.S.A.* 18A:29-14 addresses employment increment and adjustment increment, both of which are directly related to a salary schedule by definition at *N.J.S.A.* 18A:29-6, no authority exists for a board to withhold a bonus payment, or in the instant matter a longevity payment, for any reason.

Thus, petitioner opposes the Board's Motion for Summary Judgment and demands that the matter proceed to a full plenary hearing before the Commissioner consistent with the Commissioner's responsibility in such matters as articulated by the Court in *Kopera, supra.*

The Commissioner observes that *N.J.S.A.* 18A:29-14 allows for a teaching staff member whose employment or adjustment increment has been withheld to appeal such an action to him for review. The parameters of the responsibility of

You are viewing an archived copy from the New Jersey State Library.

the Commissioner in such instances have been articulated by the Court in *Kopera, supra,* when it quoted with approval a Brief by the Attorney General as follows:

> "***Under this view of the substantive law, the Commissioner could not properly redetermine for himself whether petitioner had in fact been unsatisfactory as a teacher; that issue would be irrelevant as a matter of law. The only question open for review by the Commissioner would be whether the Board had a reasonable basis for its factual conclusion.***"
> (60 *N.J. Super.* at p. 295)

And,

> "***we think the Commissioner should have determined (1) whether the underlying facts were as those who made the evaluation claimed, and (2) whether it was unreasonable for them to conclude as they did upon those facts, bearing in mind that they were experts, admittedly without bias or prejudice, and closely familiar with the *mise en scene;* and that the burden of proving unreasonableness is upon the appellant." (*Id.*, at p. 296)

In his decision on remand in *Kopera, supra,* the Commissioner added a further dimension of consideration in such matters when he stated:

> "***To withhold an increment on such a salary schedule, it is not necessary to show shortcomings on the part of a teacher sufficient to justify dismissal under the Teachers' Tenure Act.***"
> (1960-61 *S.L.D.* at p. 62)

The Commissioner was also concerned with the withholding of a salary increment in *William Myers v. Board of Education of the Borough of Glassboro, Gloucester County,* 1966 *S.L.D.* 66. He said:

> "***The evaluation of a teacher's performance is often a matter of total impression, based upon both objective evidence and subjective judgment. No generalization concerning the amount and type of classroom observation required for a valid evaluation is possible; frequently, as in the present case, the responsiveness of the teacher to suggestions for improvement of his teaching becomes more significant than the number of classroom visits made by the evaluator. See *Haspel v. Board of Education of Metuchen,* 1963 *S.L.D.* 78, affirmed State Board of Education, October 9, 1964, affirmed Superior Court, Appellate Division, June 10, 1965; *Charen v. Board of Education of Elizabeth,* decided by the Commissioner October 27, 1965. Similarly, justification for withholding a salary increment for unsatisfactory performance may be found in a single, serious infraction of the rules of the school, or in many incidents. In the context of dismissal, but with equal force here, it was said in *Redcay v. State Board of Education,* 130 *N.J.L.* 369, 371 (*Sup. Ct.* 1943), affirmed 131 *N.J.L.* 326 (*E.&A.* 1944):
>
> > '***Unfitness for a task is best shown by numerous incidents. Unfitness for a position under the school system is best evidenced by

You are viewing an archived copy from the New Jersey State Library.

> a series of incidents. Unfitness to hold a post might be shown by one incident, if sufficiently flagrant, but it might also be shown by many incidents. Fitness may be shown either way.***'
>
> "The quantum of proof required to sustain a decision to withhold a salary increment is less than that required to establish cause for dismissal of a teacher under tenure.***" (at p. 68)

The controlling law with respect to the Board's authority to withhold salary increments is found in the decision of *Westwood Education Association v. Board of Education of the Westwood Regional School District,* Docket No. A-261-73 New Jersey Superior Court, Appellate Division, June 21, 1974 which is set forth in its entirety as follows:

> "Essentially for the reasons stated by the trial judge in his oral opinion, we affirm his determination that a local board of education, pursuant to *N.J.S.A.* 18A:29-14, has sole discretion to withhold a member's salary increment for inefficiency or other good cause and that this right is not negotiable under the provisions of *N.J.S.A.* 34:13A-5.3. See *Assoc. of N.J. State Col. Fac. v. Dungan,* 64 *N.J.* 338 (1974).
>
> "Appellant, relying upon previous decisions of the Commissioner of Education, contends that *N.J.S.A.* 18A:29-14 has no application to salary schedules in excess of statutory minima, unless the local board first adopts a salary policy pertaining to such increments. We find no basis, statutory or otherwise, for the Commissioner's limiting construction and hold this contention to be without merit. *cf. Kopera v. Board of Education of West Orange,* 60 *N.J. Super.* 288 (*App. Div.* 1960).
>
> "Finally we call attention to the views expressed in *Dunellen Bd. of Education v. Dunellen Education Association,* 64 *N.J.* 17, 31-32 (1973) and reiterated in *Dungan, supra,* 64 *N.J.* at 356 that some 'timely voluntary discussions' of the subject matter herein involved between the parties is desirable.
>
> "Affirmed."

See also *Clifton Teachers Association, Inc. v. Board of Education of Clifton,* 136 *N.J. Super.* 336 (*App. Div.* 1975).

The Commissioner, discounting the argument of the Board that petitioner was aware of his less than satisfactory performance because his increment was withheld for 1974-75, finds that petitioner was advised during 1974-75 that his teaching performance was less than satisfactory on December 13, 1974, and again on June 14, 1975. Petitioner also had the opportunity to register his disagreement with the written evaluations (C-1; C-4) which he did on the face of the documents.

In its notice (C-6) to petitioner of its action to withhold his 1975-76 salary increment and longevity payment, the Board stated that it relied upon the

You are viewing an archived copy from the New Jersey State Library.

evaluations and recommendation of his superiors. The Commissioner observes that while the notice to petitioner dated July 11, 1975, eleven days after the date of the Board's action, a one day delay is not sufficient to set aside the action of the Board. The intent of the notification requirement in *N.J.S.A.* 18A:29-14 is to give the affected employee opportunity to appeal the action to the Commissioner. The Commissioner so holds. Local boards of education are advised to strictly comply with the stated requirements of that law.

The Commissioner observes with respect to the reasons for the Board's action herein that it is not necessary for the Board to have a quantum of proof "***sufficient to justify dismissal under the Teachers' Tenure Act.***" *Kopera, supra* Evaluation of the performance of an employee of a local board of education may be grounded in classroom observation, subjective professional judgment and a total impression of effectiveness in the performance of duties. *Mary Donaldson v. Board of Education of the City of North Wildwood,* 65 *N.J.* 236 (1974); *Myers, supra* The Commissioner finds nothing in the record before him to support petitioner's allegations that the evaluation reports were false, biased or prejudiced, or that he was deprived of procedural due process.

Finally, the Commissioner observes that the controverted longevity payment herein is not a bonus payment pursuant to *N.J.S.A.* 18A:29-15 as argued by petitioner. Rather, a longevity payment, within the context of the Board's policy, is an employment increment pursuant to *N.J.S.A.* 18A:29-6. The definition of an employment increment therein is:

> "***an annual increase of $250.00 granted to a member for one 'year of employment'***."

It is recognized here that the longevity payments are non-accumulative. No authority exists for the Board to grant "bonus" payments *per se.* Having found that the longevity payment in the instant matter is an employment increment, the board does have the authority to withhold such a payment for "***inefficiency or other good cause***."

The Commissioner finds and determines that the action of the Board of Education on June 30, 1975 to withhold the employment increments of George Hillman is, in all respects, proper and legal. The Board's Motion for Summary Judgment is hereby granted. The Petition is dismissed.

COMMISSIONER OF EDUCATION

March 10, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Borough of Laurel Springs,

Petitioner,

v.

Mayor and Council of the Borough of Laurel Springs, Camden County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Borough of Laurel Springs, hereinafter "Board," Charles J. Clarke, Jr., Esq., which challenges the reduction imposed upon its 1976-77 school budget by the Mayor and Council of the Borough of Laurel Springs, hereinafter "governing body," *pro se.* The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposal for the amount to be raised by local taxation for the 1976-77 school year:

Current Expense	$448,006

The proposal was defeated. Thereafter, the Board and governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$448,006	$436,805.85*	$11,200.15*

*In the amended resolution, Council rounds the figures to $436,806 and $11,200.

Subsequently, the parties of interest entered into a Stipulation of Settlement and Dismissal which provided that the sum of $11,200 for current expense costs would be added to the amount previously certified to be raised by taxes for the current expenses of the Laurel Springs School District for the 1976-77 school year.

Thereafter the governing body certified to the Camden County Board of Taxation the additional sum of $11,200 to be raised by local taxation, making the total sum available to the Board from local taxation for current expenses for the 1976-77 school year $448,006.

The Commissioner having found the aforementioned resolutions and the Stipulation of Settlement to be in order and properly dispositive of the dispute, now therefore

You are viewing an archived copy from the New Jersey State Library.

IT IS ORDERED that the matter be and is hereby dismissed.

Entered this 10th day of March 1977.

COMMISSIONER OF EDUCATION

Board of Education of the City of Perth Amboy,

Petitioner,

v.

Mayor and Council of the City of Perth Amboy and the Board of School Estimate of the City of Perth Amboy, Middlesex County,

Respondents.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Antonio & Flynn (Alfred D. Antonio, Esq., of Counsel)

For the Respondents, David Pliskin, Esq.

Petitioner, the Board of Education of the City of Perth Amboy, hereinafter "Board," appeals from an action of the Mayor and Council of the City of Perth Amboy, hereinafter "governing body," certifying to the Middlesex County Board of Taxation a lesser amount of local tax appropriations for school purposes for the 1976-77 school year than was proposed by the Board in its budget submitted to the Board of School Estimate.

The matter is referred directly to the Commissioner of Education for adjudication on the record including the pleadings, exhibits and written documentation of the parties in support of their respective positions. The principal facts of the matter are these:

The Board certified to the Board of School Estimate the sum of $10,477,260 of which $7,485,887 was to be raised by local taxation as the amount necessary for the current expense purposes for 1976-77. Subsequent to the public hearing conducted March 11, 1976 on the Board's proposed budget, the Board of School Estimate certified $6,985,887 to the governing body as the amount to be raised by local taxation. This sum is $500,000 less than that proposed by the Board. The governing body certified this lesser amount to the Middlesex County Board of Taxation.

You are viewing an archived copy from the New Jersey State Library.

The Board asserts that the governing body's action was arbitrary, capricious and unreasonable and contends that the restoration of the $500,000 reduction is necessary and essential for it to conduct a thorough and efficient educational program in its schools during 1976-77. The governing body maintains that it acted properly and after due deliberation and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system. As part of its determination, the governing body suggested specific line items of the budget in which it believed economies could be effected as follows:

Account Number	Item	Reduction
CURRENT EXPENSE:		
J110B	Sal., Bd. Secy. Off.	$17,500
J110F	Sal., Supt. Off.	35,530
J130B	Oth. Exp., Bd. Secy. Off.	1,000
J130F	Oth. Exp., Supt. Off.	1,000
J211	Sal., Prins. Off.	99,425
J212	Sal., Supvr. of Instr.	44,063
J214A	Sal., Sch. Librs.	45.060
J214B	Sal., Guid. Cnslrs.	44,500
J214C	Sal., Ch. St. Tm.	29,400
J215A	Sal., Secys. Prins. Off.	19,950
J215C	Sal., Oth. Instr. Staff	9,975
J220	Textbooks	20,000
J230A	Sch. Lib. Books	16,000
J230C	A-V Mats.	3,650
J250A	Misc. Supls., Instr.	9,600
J530	Repl. of Veh.[1]	11,000
J650A	Cust. Supls.	5,000
J720A	Contr. Servs. Upkp. Gds.	33,725
J720C	Oth. Exp., Repl. Equip.	7,000
J730C	Purch. New Instr. Equip.	2,875
	Career Education[2]	60,046
TOTAL		$516,299[3]

The Commissioner will consider only those reductions in the amount of $500,000 recommended by the governing body. The reduction of $60,046 in the career education program by the governing body will therefore be considered as a reduction of $43,747 ($60,046-$16,299).

---

[1]Board has already purchased a vehicle at a cost of $9,283 thereby eliminating the amount of $1,717 for this proposed expenditure. (P-1, at p. 5)

[2]The governing body does not specify any line items which should be reduced from career education. (R-1, at p. 6)

[3]The governing body has recommended total reductions exceeding its actual reduction by $16,299.

You are viewing an archived copy from the New Jersey State Library.

The Commissioner observes that, in addition to the $1,717 the Board no longer requires in line item J530 Replacement of Vehicles, the Board also agrees to a reduction of $24,000 in line item J211 Salaries, Principals' Offices, and to a reduction of $5,000 in line item J650A Custodial Supplies. (P-1, at pp. 2, 5) Consequently, the amount in dispute is $469,283 which is arrived at by subtracting $1,717, $24,000 and $5,000 from the actual reduction of $500,000.

The Commissioner also observes that the 1975-76 audit report (C-1) of the Board's financial accounts discloses that the sum of $427,612 remained as an unappropriated current expense balance on June 30, 1976. The governing body argues that the balance must be applied to the total amount in dispute which would reduce the controverted moneys to $41,671. The governing body then suggests that should its reduction of $60,046, adjusted to $43,747 from the career educational program, be upheld, the dispute would be settled.

The Commissioner does not agree. In the first instance, while there is no statutory mandate with respect to a board of education maintaining an unappropriated current expense balance, it is unreasonable to expect a $10,000,000 school budget to have no provision for unexpected emergencies that may arise. Compared to the Board's original proposal of $10,477,260 as the amount necessary for the operation of its schools, its unappropriated current expense balance of $427,612 represents four percent of that total. The Commissioner finds the amount of $427,612 to be a reasonable sum for the Board to maintain as an unappropriated current expense balance.

There appears no necessity to deal fully, *seriatim,* with each of the areas in which the governing body recommended reduced expenditures. As the Commissioner said in *Board of Education of the Township of Madison v. Mayor and Council of the Township of Madison, Middlesex County,* 1968 *S.L.D.* 139:

> "***The problem is one of total revenues available to meet the demands of a school system***. The Commissioner will indicate, however, the areas where he believes all or part of Council's reductions should be reinstated. It must be emphasized, however, that the Board is not bound to effect its economies in the indicated items but may adjust its expenditures in the exercise of its discretion as needs develop and circumstances alter.***"
>
> (at p. 142)

The Commissioner observes that the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, provides the Board with an amount of unbudgeted current expense State aid equivalent to the $500,000 reduction controverted herein. While such legislation makes the sum available in State aid, the authorization to expend those moneys is provided by the Commissioner only upon a proper showing that such moneys are essential for a thorough and efficient educational program in the City of Perth Amboy. (See *Board of Education of East Brunswick v. Township Council of East Brunswick,* 48 *N.J.* 94 (1966).)

The Commissioner has reviewed the written documentation of the parties (P-1; R-1) and notices that a substantial portion of the amount controverted

You are viewing an archived copy from the New Jersey State Library.

herein represents moneys necessary and essential for the Board to continue staff positions from prior years. The Commissioner shall restore those moneys necessary to support staff positions which existed in prior years; those moneys requested to fund new positions, specifically an additional supervisor of instruction, two secretarial positions, and one vice-principal's position which the Board itself agreed to eliminate, shall not be restored.

The Commissioner shall present in chart form those specific curtailments recommended by the governing body which the Board has proved necessary for the conduct of a thorough and efficient program of education.

Account Number	Item	Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
J110B	Sal., Bd. Secy. Off.	$ 17,500	$ 17,500	$ 0
J110F	Sal., Supt. Off.	35,530	35,530	0
J130B	Oth. Exp., Bd. Secy. Off.	1,000	0	1,000
J130F	Oth. Exp., Supt. Off.	1,000	0	1,000
J211	Sal., Prins. Off.	99,425	75,425	24,000
J212	Sal., Supvr. of Instr.	44,063	22,031	22,031
J214A	Sal., Sch. Librs.	45,060	45,060	0
J214B	Sal., Guid. Cnslrs.	44,500	44,500	0
J214C	Sal., Ch. St. Tm.	29,400	29,400	0
J215A	Sal., Secys. Prins. Off.	19,950	9,975	9,975
J215C	Sal., Oth. Instr. Staff	9,975	0	9,975
J220	Textbooks	20,000	10,000	10,000
J230A	Sch. Lib. Books	16,000	8,000	8,000
J230C	A-V Mats.	3,650	1,825	1,825
J250A	Misc. Supls., Instr.	9,600	4,800	4,800
J530	Repl. of Veh.	11,000	9,283	1,717
J650A	Cust. Supls.	5,000	0	5,000
J720A	Contr. Servs. Upkp. Gds.	33,725	0	33,725
J720C	Oth. Exp. Repl. Equip.	7,000	7,000	0
J730C	Purch., New Instr. Equip.	2,875	2,875	0
	Career Education	43,747	43,747	0
	TOTALS	$500,000	$366,952	$133,048

The Commissioner finds and determines that the Board of Education of the City of Perth Amboy requires authorization to expend an additional amount of $366,952 of its unbudgeted current expense State aid for the maintenance of a thorough and efficient system of public schools in its district for the 1976-77 school year. The Commissioner hereby grants the Board such authorization which has no effect upon the local tax rate for education in the City of Perth Amboy.

COMMISSIONER OF EDUCATION

March 10, 1977

You are viewing an archived copy from the New Jersey State Library.

Margaret Pelose,

Petitioner,

v.

Board of Education of the Township of South Brunswick, Middlesex County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Mandel, Wysoker, Sherman, Glassner, Weingartner & Feingold (Jack Wysoker, Esq., of Counsel)

For the Respondent, Picone and Geller (Willard Geller, Esq., of Counsel)

Petitioner, a teacher employed for three academic years by the Board of Education of the Township of South Brunswick, hereinafter "Board," was not reemployed for the 1976-77 academic year. Petitioner alleges that the Board violated the provisions of *N.J.S.A.* 18A:27-3.2 by its failure to provide her written reasons for her non-reemployment and that such failure also violates her attendant rights to due process. Petitioner demands reinstatement to her former position and moves for Summary Judgment in her favor. The Board asserts that its action with respect to the non-reemployment of petitioner is in all respects proper and it opposes petitioner's Motion for Summary Judgment.

Oral argument on petitioner's Motion was heard September 7, 1976 at the State Department of Education, Trenton, by a representative of the Commissioner of Education. The matter is referred directly to the Commissioner on the Briefs, affidavits, exhibits, and pleadings submitted by the respective parties. The facts are these:

Petitioner was first employed by the Board as a teacher for the 1973-74 academic year. She continued in that employment for the 1974-75 and 1975-76 academic years. Petitioner was notified by letter dated April 27, 1976, signed by both the Board Secretary and the Superintendent of Schools, as follows:

> "At the Regular Meeting of the Board of Education held on April 26th, 1976, the Board of Education decided not to renew your contract for the 1976-77 school year." (C-1)

Petitioner, by letter (C-2) dated May 3, 1976, addressed to the Board Secretary, requested "***specific reasons for the nonrenewal of my contract." The Superintendent responded to that request by letter dated May 26, 1976 by which petitioner was advised in full as follows:

> "The Board of Education did not reappoint you for the 1976-77 school year because you were not recommended for reappointment." (C-3)

You are viewing an archived copy from the New Jersey State Library.

Petitioner, by letter dated May 31, 1976, expressed her dissatisfaction to the Superintendent in regard to the stated reason for her non-reemployment and stated, *inter alia,* the following:

> "***I am requesting specific reasons for this non-renewal based upon N.J.S.A. 18A:27-3.2 and upon Donaldson vs. Bd. of Ed. North Wildwood 65-NJ 236 (1974).
>
> "At this time I am also requesting an appointment before the Bd. of Education concerning this matter.
>
> "Your immediate cooperation on this matter will be appreciated." (C-4)

The Superintendent responded by letter dated June 18, 1976 in which petitioner was advised that:

> "The meeting which you have requested with the Board of Education has been scheduled for Monday, June 21st at 8:30 P.M. at the Board of Education Office." (C-5)

Petitioner asserts that she did not receive the letter (C-5) until the morning of June 21, 1976. The Commissioner observes that the letter (C-5) did not set forth more specific reasons for petitioner's non-reemployment than that reason set forth in the Superintendent's letter (C-3) dated May 26, 1976, *ante.*

In any event petitioner and a representative of the South Brunswick Education Association, hereinafter "Association," on behalf of petitioner advised the President of the Board by letter dated June 21, 1976, the day the meeting between the Board and petitioner was scheduled, of the following:

> "The South Brunswick Education Association is representing *** [petitioner] in the appearance before the Board of Education regarding the non-renewal of her contract for 1976-77 school year.
>
> "Ms. Pelose received word today, 6/21/76 that her requested appearance has been scheduled for this evening's meeting at 8:00 P.M. In addition I am pointing out that this notice was sent to the wrong address.
>
> "As a result of this insufficient notice, we are requesting that this appearance be rescheduled for a mutually acceptable time and that this be done as soon as possible. This will enable us to make all the necessary arrangements for the meeting.
>
> "There is another factor of concern to us regarding this issue. A letter was sent to the Superintendent on 6/1/76 requesting specific reasons for the non-renewal as stated in N.J.S.A. 18A:27-3.2 and Donaldson v. Board of Education North Wildwood 65-N.J. 236 (1974). At this time we also requested an appearance before the Board. As you can see the appearance was scheduled without sufficient notice but the specific reasons for

You are viewing an archived copy from the New Jersey State Library.

non-renewal have yet to be received. We must have the specific reasons before we can be expected to address ourselves to their nature.

"We are awaiting these specific reasons along with adequate notification for the date of our appearance." (C-6)

Thereafter, the Superintendent advised petitioner by letter (C-7) dated June 22, 1976, that the meeting scheduled for June 21, 1976, had been rescheduled for July 6, 1976.

The Superintendent advised the representative of the Association by letter dated July 1, 1976 that:

"***Margaret Pelose [petitioner] knows full well the reason for her non-recommendation for reemployment by Mr. Nadler. The specific reasons were stated in the March 11, 1976 teacher evaluation and contract recommendation report.***" (C-8)

The Superintendent then quoted the March 11, 1976 teacher evaluation (C-9) and contract recommendation report which was prepared by the principal. In that report the principal describes petitioner's strengths and weaknesses as a teacher, followed by his recommendation with respect to her continued employment. The principal stated that, because of poor planning skills demonstrated by petitioner and the limited possibility for improvement, he recommended that petitioner not be reemployed for 1976-77.

Petitioner does not dispute receiving a copy of this report (C-9), nor does she dispute the occurrence of a conference with the principal on March 15, 1976 to discuss the report in detail.

Petitioner argues that the Board did not provide timely written reasons for its action of her non-reemployment despite her two written requests dated May 3, 1976 (C-2) and May 31, 1976 (C-4), respectively. Petitioner does not deny the receipt, on or about July 3, 1976, of the Superintendent's letter (C-8) dated July 1, 1976 addressed to the representative of the Association. Petitioner asserts that the letter does not erase the fact that written reasons were not provided her within thirty days of either of her two written requests, contrary to *N.J.S.A.* 18A:27-3.2.

The statute of reference provides in full as follows:

"Any teaching staff member receiving notice that a teaching contract for the succeeding school year will not be offered may, within 15 days thereafter, request in writing a statement of the reasons for such nonemployment which shall be given to the teaching staff member in writing within 30 days after the receipt of such request."

Petitioner attests in her affidavit (C-10) that while she was fully aware of the principal's recommendation set forth in his March 11, 1976 report (C-9), she

You are viewing an archived copy from the New Jersey State Library.

had no knowledge of whether the Board's action of non-reemployment was based solely on that report or on other factors. Petitioner contends that the Board is required to provide a statement of reasons which must be specific and explanatory and cites *Donaldson v. Board of Education of North Wildwood,* 65 *N.J.* 236 (1974) and *Barbara Hicks v. Board of Education of the Township of Pemberton, Burlington County,* 1975 *S.L.D.* 332.

Petitioner asserts that the failure of the Board to set forth its reasons for her non-reemployment made her scheduled appearance before the Board a futile exercise. Petitioner explains that the purpose of such an appearance is to provide her the opportunity to convince the Board that it erred in determining not to continue her employment. She maintains that because she had not been informed of the reasons for the Board's action, the scheduled appearance of July 6, 1976, would be useless. Consequently, petitioner elected to file the instant matter challenging the Board's determination not to reemploy her. She did not meet with the Board on July 6, 1976. Petitioner cites *Kathleen Mullelly v. Board of Education of the Township of Maple Shade, Burlington County,* 1976 *S.L.D.* 388, *John Gish v. Board of Education of Paramus, Bergen County,* 1974 *S.L.D.* 1150, aff'd State Board of Education 1975 *S.L.D.* 1085, aff'd 145 *N.J. Super.* 96 (*App. Div.* 1976) in support of the doctrine that an informative statement of reasons for non-reemployment of a nontenure teacher is a prerequisite to an informal appearance before the Board.

Next, petitioner argues that the legislative use of the word "shall" in *N.J.S.A.* 18A:27-3.2 mandates that the Board provide timely notice of its reasons for non-reemployment. Petitioner also cites *N.J.A.C.* 6:3-1.19 and 6:3-1.20 in support of the requirement that the Board afford timely notice of its reasons. Petitioner asserts that *N.J.S.A.* 18A:27-3.2 is clear and unambiguous. As such, petitioner argues, it must be construed and enforced as written and cites *Application of Howard Savings Institution of Newark,* 32 *N.J.* 29 (1960); *Gengemi v. Berry,* 25 *N.J.* 1 (1957); and *Strauss v. State,* 131 *N.J. Super.* 571 (*Law Div.* 1974).

Petitioner contends that the Board's violation of *N.J.S.A.* 18A:27-3.2 must result in her reinstatement to a teaching position. To do otherwise, petitioner argues, would be equivalent to a change in the statutory language from "shall" to "may" in regard to timely notice of reasons. Petitioner argues that the failure to reinstate her in the Board's employ would result in the application of a double standard with respect to the statute. Teaching staff members must request written reasons for non-reemployment within fifteen days after such notification. Petitioner asserts, hypothetically, that if the affected teaching staff member requested written reasons on the sixteenth day, the Board would not have to honor such request. Petitioner states that the Board must also adhere to the precise provisions of the law.

Petitioner asserts that her reinstatement would be consistent with the principles of fundamental fairness and justice articulated by the New Jersey Supreme Court in *Donaldson, supra.* She contends that the Court held no controlling inference may be drawn as to the Legislature's intent from its silence in regard to penalty in the event of violation of enacted legislation.

You are viewing an archived copy from the New Jersey State Library.

Consequently, petitioner argues that, notwithstanding the absence of an explicit penalty for violation of *N.J.S.A.* 18A:27-3.2, nothing would prohibit her reinstatement under the circumstances of the instant matter.

Petitioner maintains that if the Board is simply directed to afford her the opportunity to be heard on the reasons for non-reemployment, such relief is inappropriate and contrary to the interests of justice. This is so, petitioner argues, because such relief would ignore the clear wording of the statute; it would nullify the intent of the law; and it would defeat the purpose of sufficient early notice so that the affected person could seek employment elsewhere. Petitioner also argues that the Board has already replaced her with another person and would not be likely to alter the situation as the result of an informal appearance before it.

Finally, petitioner argues that it is unreasonable to believe that the Board could sit as an impartial decision maker at her informal appearance because it is she who challenges the Board's action. Consequently, petitioner contends that the absence of an impartial decision maker constitutes a denial of due process and cites *Goldberg v. Kelly,* 397 *U.S.* 254, 25 *L.Ed.* 287, 90 *S.Ct.* 1011 (1970); *Simard v. Board of Education,* 473 *F.Supp.* 988, 993 (*2nd Cir.* 1973); and *Skehan v. Bloomsburg State,* 501 *F.2nd* 31, 38 (*3rd Cir.* 1974). Petitioner also contends that the United States Supreme Court has held that boards of education cannot sit impartially if a teacher has been critical of it and cites *Pickering v. Board of Education,* 391 *U.S.* 563 (1968) and *Ferguson v. Thomas,* 430 *F.2d* 852, 856 (*5th Cir.* 1970).

Finally, petitioner argues that the failure of the Board to fully comply with *N.J.S.A.* 18A:27-3.2 constitutes a deprivation of procedural due process and cites the New Jersey Constitution, *Art.* I, *Par.* 1, as the equivalent to the Fourteenth Amendment to the United States Constitution. Petitioner maintains that *N.J.S.A.* 18A:27-3.2, enacted subsequent to the *Donaldson* decision, is founded upon the same principles as are constitutional procedural due process rights. Petitioner argues that it has been consistently held that a fundamental requisite of due process of law is the opportunity to be heard at a meaningful time and in a meaningful manner and cites *Goldberg v. Kelly, supra; Fuentes v. Shevin,* 407 *U.S.* 67; and *Vitarelli v. Seaton,* 359 *U.S.* 535 (1959). Petitioner argues that the same opportunity to be heard as set forth in the cited federal cases has also been recognized by the courts in New Jersey and cites *Fantony v. Fantony,* 36 *N.J. Super.* 375 (*Chan. Div.* 1955); *Kase v. Kase,* 18 *N.J. Super.* 12 (*App. Div.* 1952); and *Kochman v. Keansburg Board of Education,* 124 *N.J. Super.* 203 (*Chan. Div.* 1973).

For all these reasons, petitioner demands judgment in her favor.

The Board argues against the matter being decided on Summary Judgment. The Board asserts there are material questions of fact which may only be presented at a plenary hearing. The Board bases its opposition to petitioner's Motion for Summary Judgment on a series of cases including *Ruvolo v. American Casualty Co.,* 39 *N.J.* 490 (1963); *Judson v. Peoples Bank & Trust Company,* 17 *N.J.* 67 (1954); *Frank Rizzo, Inc. v. Alatsas,* 27 *N.J.* 400 (1958);

You are viewing an archived copy from the New Jersey State Library.

United Advertising Corporation v. Metuchen, 35 *N.J.* 193 (1961); *Devlin v. Surgent,* 18 *N.J.* 148 (1955); *Mulligan v. New Brunswick,* 83 *N.J. Super.* 185 (*Law Div.* 1964); *Felbrant v. Able,* 80 *N.J. Super.* 587 (*App. Div.* 1963); and *McDermott v. Botwick,* 38 *N.J. Super.* 528 (*App. Div.* 1956).

The Board argues that petitioner frustrated the exact principles of *Donaldson, supra,* upon which she now seeks reinstatement, by failing to appear at the scheduled meeting of July 6, 1976. The Board contends that petitioner's failure to attend the meeting shows that she is not interested in refuting the reasons upon which the Board determined not to continue her in its employ.

The Superintendent attests in his affidavit (C-11) filed in support of the Board that, while his letter (C-3) of May 26, 1976 which sets forth the reason for petitioner's non-reemployment as "she was not recommended" was not as detailed as his later letter (C-8) dated July 1, 1976 with respect to reasons, the fact remains that petitioner had knowledge why she was not reemployed. This is so, the Superintendent asserts, because petitioner was aware of the principal's recommendation set forth in his report (C-9) dated March 11, 1976.

Consequently, the Superintendent asserts and the Board argues that, within the intent of *N.J.S.A.* 18A:27-3.2, petitioner did in fact receive timely notice of the reasons for her non-reemployment. The Board seeks to have the matter proceed to plenary hearing to fully establish that petitioner had knowledge of why she was not reemployed.

It is within this context that the Commissioner is called upon to render an adjudication on petitioner's Motion for Summary Judgment. The Commissioner is not persuaded by the argument of the Board that issues of material fact exist. Petitioner admits the receipt of the report (C-9) prepared by the principal on March 11, 1976, and the petitioner also admits that she conferred with the principal on March 15, 1976 at which time the contents of the report were discussed in detail. Consequently, no question exists with respect to petitioner having knowledge that the principal recommended her employment not be continued for the 1976-77 academic year. Petitioner's Motion herein is grounded upon the Board's failure to provide her a statement of reasons for its action of not continuing her employment contrary to the expressed provisions of *N.J.S.A.* 18A:27-3.2. Thus, in the Commissioner's view, the dispute may be adjudicated as a matter of Summary Judgment because no issue of material fact exists and the applicable law is clear.

The Commissioner observes that in response to petitioner's timely letter request (C-2) for a statement of reasons, the Superintendent responded that she was not reemployed because she was not recommended. (C-3) Such a response to a valid request for a statement of reasons from a nontenure teacher whose employment has not been renewed is not consistent with the New Jersey Supreme Court's directive set forth in *Donaldson, supra,* the Commissioner's prior determination in *Hicks, supra,* the statute *N.J.S.A.* 18A:27-3.2 nor the State Board rules and regulations, *N.J.A.C.* 6:3-1.19 and 6:3-1.20.

You are viewing an archived copy from the New Jersey State Library.

In *Donaldson, supra,* the Court held with respect to the statement of reasons that:

> "***The teacher is a professional who has spent years in the course of attaining the necessary education and training. When he is engaged as a teacher he is fully aware that he is serving a probationary period and may or may not ultimately attain tenure. If he is not reengaged and tenure is thus precluded he is surely interested in knowing why and every human consideration along with all thoughts of elemental fairness and justice suggest that, when he asks, he be told why. Perhaps the statement of reasons will disclose correctible deficiencies and be of service in guiding his future conduct; perhaps it will disclose that the nonretention was due to factors unrelated to his professional or classroom performance and its availability may aid him in obtaining future teaching employment; perhaps it will serve other purposes fairly helpful to him as suggested in *Drown* (435 *F.2d* at 1184-1185); and perhaps the very requirement that reasons be stated would, as suggested in *Monks* (58 *N.J.* at 249), serve as a significant discipline on the board itself against arbitrary or abusive exercise of its broad discretionary powers.***" (65 *N.J.* at 245)

In *Hicks, supra,* the Commissioner held that the written statement of reasons be furnished by the Board, if requested, prior to its providing the affected teacher an informal opportunity to be heard. This is so, the Commissioner reasoned, because undoubtedly at the informal appearance the teacher would want to try to refute the stated reasons and convince the Board it erred.

The statute, *N.J.S.A.* 18A:27-3.2, is clear and unambiguous. A statement of reasons shall be given upon request to a teaching staff member whose employment has not been renewed. The use of the word "shall" by the Legislature is clear in its intent. Boards of education are required to provide such statement of reasons within thirty days of such request. Had the Legislature intended that a board simply had the authority to provide a statement of reasons if it elected to do so, the Legislature would have so stated and used the word "may." The Commissioner is mindful of the Court's admonition regarding statutory construction and interpretation as set forth in *Caputo v. Best Foods, Inc.,* 17 *N.J.* 259 (1955):

> "***We are concerned here not with what the Legislature meant to say, but the meaning of what it did say.***" (at p. 263)

(See also *Evelyn Lenahan v. Board of Education of the Lakeland Regional High School District, Passaic County,* 1972 *S.L.D.* 577.)

The State Board of Education adopted its own rules set forth in *N.J.A.C.* 6:3-1.19 and 6:3-1.20 to implement the provisions of *N.J.S.A.* 18A:27-3.1 through *N.J.S.A.* 18A:27-3.3. It is clear that the rules intend the statement of reasons to be of assistance to the teacher in improving those areas found deficient. In the instant matter the reason provided petitioner for

You are viewing an archived copy from the New Jersey State Library.

non-reemployment being "because you were not recommended" is contrary to the applicable statutes and rules and violates petitioner's right to be provided the reasons for non-reemployment.

The Commissioner finds that the Board failed to provide a statement of reasons, in a timely fashion, to petitioner for its determination not to continue her in its employ, contrary to the provisions of *N.J.S.A.* 18A:27-3.2. The Superintendent's letter (C-8) dated July 1, 1976 to the representative of the Association does not alleviate such a failure. While the letter does specify a statement of reasons, it was not provided petitioner nor her representative within thirty days of petitioner's second written request (C-4) dated May 31, 1976, and was dated fifty-eight days after her first request (C-2) of May 3, 1976.

Notwithstanding this finding, the Commissioner finds no authority in law to grant petitioner's request for reinstatement. Had the Board failed to notify petitioner by April 30 of its determination with respect to her continued employment as required by *N.J.S.A.* 18A:27-10, specific relief is authorized by the Legislature as set forth in *N.J.S.A.* 18A:27-11. The Legislature obviously intended *N.J.S.A.* 18A:27-3.2 to be procedural guidance to boards of education in regard to the non-reemployment of teachers pursuant to *Donaldson, supra.* Had the Legislature intended that a violation of *N.J.S.A.* 18A:27-3.2 would result in the specific relief of reemployment, it would have so provided. The Commissioner so holds. *Caputo, supra; John Cervase v. Board of Education of the City of Newark, Essex County,* 1972 *S.L.D.* 10, affirmed State Board of Education 15 In addition, it is clear that the Board has substantial reasons not to reemploy petitioner as a teacher.

The Commissioner has on prior occasions devised appropriate remedies for violation of a person's rights where such remedies were not prescribed by statute. In *Dianne Nashel v. Board of Education of the Town of West New York et al., Hudson County,* 1968 *S.L.D.* 183 appropriate remedy was molded by the Commissioner, absent specific statutory prescription, to make whole a nontenured teacher whose employment was improperly terminated at the end of her third month of pregnancy in contravention of *N.J.S.A.* 18A:6-30.1. In *Elizabeth Rockenstein v. Board of Education of the Township of Jamesburg, Middlesex County,* 1974 *S.L.D.* 260 the Commissioner found that the Board did not reemploy Rockenstein for constitutionally proscribed reasons. While the Commissioner directed that Rockenstein be reinstated by the Board to her teaching position, he denied her request for lost back pay. Petitioner Rockenstein filed a Motion for Reconsideration of that portion of the Commissioner's decision denying her back pay. In *Elizabeth Rockenstein v. Board of Education of the Borough of Jamesburg, Middlesex County,* 1975 *S.L.D.* 191, aff'd State Board of Education 199, aff'd Docket Nos. A-3916-74, A-4011-74 New Jersey Superior Court, Appellate Division, July 1, 1976, the Commissioner held:

> "***Petitioner is entitled to be made whole for her lost earnings and other benefits of which she was deprived by the Board's improper nonrenewal of her teaching contract. Petitioner should not be required to pursue the matter beyond the established forum of administrative review in order to

You are viewing an archived copy from the New Jersey State Library.

be made whole. This determination is grounded on the maxim that it is in the interest of the State that there should be an end to litigation and that no one should be vexed twice for the same cause of action. 50 *C.J.S. Judgments,* § 592 Petitioner argues rightly that our system of jurisprudence requires that where there is a wrong there must be a remedy and that the only appropriate remedy is to make the wronged party whole.***

"***Based upon equitable principles, she is therefore entitled to be compensated for the loss of earnings occasioned by the Board's failure to reemploy her in contravention of her constitutional and statutory rights.***" (at 197)

In the instant matter petitioner was denied a statement of reasons by the Board for her non-reemployment for the 1976-77 academic year. Thus, petitioner must be made whole to the extent possible.

The Commissioner finds and determines that the Board of Education of the Township of South Brunswick shall compensate Margaret Pelose that sum of money she would have received had she been employed by the Board as a teaching staff member from September 1, 1976 to the date of this decision. The Commissioner further directs that the Board tender to Margaret Pelose this amount in a lump sum payment to be made at the next regularly scheduled pay period.

COMMISSIONER OF EDUCATION

March 10, 1977

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, March 10, 1977

For the Petitioner-Cross-Appellant, Mandel, Wysoker, Sherman, Glassner, Weingartner & Feingold (Jack Wysoker, Esq., of Counsel)

For the Respondent-Appellant, Picone and Geller (Willard Geller, Esq., of Counsel)

The State Board affirms that part of the Commissioner's decision which states that there is no authority in law to grant petitioner's request for reinstatement. The part of the Commissioner's decision ordering the board to compensate petitioner from September 1, 1976 to date of Commissioner's decision (March 10, 1977), is hereby reversed, since petitioner was aware of the reasons for her non-reemployment.

August 3, 1977
Pending Superior Court of New Jersey

You are viewing an archived copy from the New Jersey State Library.

Richard Bates,

Petitioner,

v.

Board of Education of the Township of Parsippany-Troy Hills, Morris County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Goldberg, Simon & Selikoff (Theodore M. Simon, Esq, of Counsel)

For the Respondent, Schenck, Price, Smith & King (Alten W. Read, Esq., of Counsel)

Petitioner is a nontenured teacher employed by the Board of Education of the Township of Parsippany-Troy Hills, Morris County, hereinafter "Board," whose employment was terminated pursuant to a sixty days' notice clause in his contract. Petitioner alleges that the termination of his employment by the Board is improper and in direct violation of the intent of *N.J.S.A.* 18A:27-10. The Board denies the allegations and asserts that its action to terminate petitioner's employment according to the terms of his contract is in all respects proper and legal.

A hearing was conducted in this matter on March 18, 1975 at the State Department of Education, Trenton, by a hearing examiner appointed by the Commissioner of Education. Subsequent thereto the parties filed Briefs in support of their respective positions. The report of the hearing examiner is as follows:

Petitioner was employed as a teaching staff member by the Board for the 1973-74 academic year and assigned as a teacher of industrial arts. On or about March 28, 1974, the Board offered and petitioner accepted an employment contract (J-2) for the 1974-75 academic year. Thereafter, by letter dated July 26, 1974, the Board Secretary advised petitioner that on the day before the Board had

> "***authorized termination of your teaching contract and employment for 1974-75, effective sixty (60) calendar days from September 1, 1974 ***. It further authorized that you not perform your teaching duties during that sixty (60) calendar day period. The reason for the termination of your contract is that you have not provided effective discipline of students in your classes." (J-3)

The hearing examiner observes that petitioner's employment contract for 1974-75 contains a sixty days' notice of termination clause. (J-2)

You are viewing an archived copy from the New Jersey State Library.

Petitioner, who elected not to testify, argues in his Brief that the Board had knowledge of his total teaching performance on March 28, 1974 when it renewed his employment contract (J-3) for 1974-75. Petitioner asserts that it was fundamentally unfair for the Board to terminate his employment contract on July 25, 1974 for the reasons cited. On March 28, 1974, it had renewed his employment for 1974-75 notwithstanding the fact that the Board's administrators had full knowledge of both positive and negative aspects of his performance.

The Board elicited testimony from the department chairman, two assistant principals, and the principal of the school to which petitioner was assigned, with respect to the action controverted herein.

The department chairman testified that sometime in February 1974, he attended a meeting with the aforementioned administrators in regard to petitioner's continued employment for the 1974-75 academic year. (Tr. 21) The department chairman testified that while there was concern with respect to petitioner's control and discipline of his pupils, agreement was reached that with continued assistance petitioner might overcome his deficiency. Consequently, the administrators agreed at that time to recommend to the Board that petitioner's employment be renewed for the subsequent year. The department chairman testified that subsequent to this February 1974 meeting he advised petitioner that his continued employment was recommended and that improvement in pupil control and discipline was expected. (Tr. 23)

The hearing examiner observes that the assistant principal in charge of curriculum and instruction corroborated the department chairman's testimony with respect to the February 1974 meeting, as did the principal. (Tr. 46, 77) The testimony of these staff members established that, while the decision was made to recommend petitioner's reemployment, there was concern with his lack of pupil control and discipline.

The record shows that the department chairman prepared a written observation report (J-11) of petitioner's teaching performance for the period of March 5, 6, and 7, 1974. The record also shows that one assistant principal prepared a written observation report of petitioner's performance dated March 8, 1974. (J-12) In both instances the observations occurred prior to March 28, 1974, the date the Board and petitioner executed the controverted 1974-75 employment contract. (J-3) Both observation reports (J-11, J-12) discuss pupil control and discipline problems.

The department chairman testified that, subsequent to his observations dated March 5, 6, and 7, he informally observed petitioner. The department chairman testified that, in one instance, a pupil was injured in petitioner's classroom and petitioner did not know how it occurred. (Tr. 26-28) On another occasion in April he observed petitioner grappling with and voicing a threat to a pupil. (Tr. 33) One assistant principal testified that, subsequent to his observation (J-12) of March 8, 1974, he informally observed petitioner with his feet on his desk during class. (Tr. 52) The assistant principal in charge of

You are viewing an archived copy from the New Jersey State Library.

discipline testified that during May 1974, he informally observed a pupil in the rear of petitioner's classroom with an unlighted cigar in his mouth. (Tr. 66) This assistant principal also testified that in his judgment petitioner's discipline and control problems deteriorated subsequent to his being offered the controverted 1974-75 employment contract. (J-2; Tr. 74)

The department chairman testified that he requested to meet with the principal and two assistant principals on May 28, 1974 in regard to petitioner's continued employment. The department chairman testified that he believed he had made an error in judgment with respect to petitioner's continued employment. The principal testified that based on his informal observations of petitioner's classroom control and behavior problems he, too, believed an error was made in regard to continuing petitioner's employment. (Tr. 83)

Consequently, the administrators met with petitioner on May 28, 1974, and expressed their concerns to him in regard to classroom control and discipline problems. The collective testimony of the witnesses shows that petitioner was requested to resign and he initially agreed. (Tr. 38, 57, 67, 87) Petitioner subsequently refused to resign. The principal then prepared a report (R-2) to the Assistant Superintendent in Charge of Personnel recommending the exercise of the sixty day notice of termination clause.

Petitioner's sole argument herein is that prior to February 28, 1974, the administrators were aware of his control and discipline problems. Yet, his employment contract was renewed. Petitioner asserts that the Board must now be estopped from terminating his employment because it had prior knowledge of that problem.

The hearing examiner finds that petitioner did, in fact, have control and discipline problems in his classes beginning in the first month of employment during 1973-74. The department chairman noted such difficulty in a written observation of petitioner's performance dated October 3, 1973. (J-5) The department chairman noted similar difficulties with pupil control in an observation dated November 7, 1973. (J-8) The principal testified that he prepared two evaluations of petitioner. These evaluations, as distinguished from observations which are prepared after an actual classroom visitation, are usually prepared by the principal based on his general observation of petitioner's total performance and upon the classroom observations of other administrators. (Tr. 80, 94) The first written evaluation report dated December 1973 prepared by the principal is highly positive, although noting that petitioner "***has experienced some first year teaching problems.***" (J-9) The second evaluation (J-13) dated June 1974 prepared by the principal is highly critical of petitioner with respect to his total teaching performance. The principal testified with respect to his first evaluation (J-9) that while he did not specify the first year problems he did discuss thoroughly the issue of control and discipline with petitioner. (Tr. 77)

The hearing examiner finds that petitioner's performance with respect to pupil behavior and discipline was less than satisfactory for the whole of the

You are viewing an archived copy from the New Jersey State Library.

1973-74 school year. The hearing examiner further finds that subsequent to the execution of the 1974-75 employment contract petitioner's performance in these areas did not improve.

The Board argues that it has the right to terminate a nontenured teaching staff member's employment contract according to its own terms and cites *Eleanor Cossaboon v. Board of Education of the Township of Greenwich, Cumberland County,* 1974 *S.L.D.* 706 and *Sarah Armstrong v. Board of Education of the Township of East Brunswick, Middlesex County,* 1975 *S.L.D.* 112, rev'd State Board of Education 117, aff'd Docket No. A-3756-74, New Jersey Superior Court, Appellate Division, June 21, 1976.

The hearing examiner observes that petitioner does not advance any legal argument other than a violation of *N.J.S.A.* 18A:27-10 to support his claim. The sole issue to be decided herein is whether a board of education may reevaluate the performance of one of its nontenured teaching staff members once it has renewed such person's employment for the subsequent academic year and elect, based on such reevaluation, to exercise a termination clause of the employment contract.

In the instant matter the hearing examiner finds that petitioner's discipline problems continued after he was offered employment for the 1974-75 academic year. It is also clear that petitioner was aware of the concerns held by the administrators regarding his deficiencies in maintaining pupil discipline. Consequently, the hearing examiner finds that the action of the Board by which it elected to exercise the sixty day notice of termination clause in petitioner's contract is in all respects proper.

The hearing examiner recommends that the Petition of Appeal be dismissed.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner and observes that the parties filed no written exceptions or objections thereto.

The Commissioner adopts as his own the findings of fact and conclusions of law set forth by the hearing examiner. It is well established that the termination of an employment contract may be effected at the will of the employer or employee in accordance with the terms of the contract. *Luther McLean v. Board of Education of the Borough of Glen Ridge et al., Essex County,* 1973 *S.L.D.* 217, aff'd State Board of Education 1974 *S.L.D.* 1411 In the instant matter, the Board exercised the sixty day notice of termination clause on July 25, 1974, and tendered petitioner compensation for sixty days beginning September 1, 1974. (J-3)

Absent an affirmative showing that the Board acted improperly or in bad faith, the Commissioner will not substitute his judgment for that of the Board.

You are viewing an archived copy from the New Jersey State Library.

The Commissioner, having found no basis to intervene, hereby dismisses the Petition of Appeal.

COMMISSIONER OF EDUCATION

March 10, 1977

Board of Education of the Borough of Northvale,

Petitioner,

v.

Mayor and Council of the Borough of Northvale, Bergen County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Borough of Northvale, hereinafter "Board," Parisi, Evers & Greenfield (Irving C. Evers, Esq., of Counsel), which challenges the reduction imposed upon its 1976-77 school budget by the Mayor and Council of the Borough of Northvale, hereinafter "governing body," *pro se.* The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposal for the amount to be raised by local taxation for the 1976-77 school year:

Current Expense	$1,347,013

The proposal was defeated. Thereafter, the Board and the governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$1,347,013	$1,208,356	$138,657

Subsequently, the parties of interest entered into a Stipulation of Settlement and Dismissal which provided that the sum of $56,157 for current expense costs would be added to the amount previously certified to be raised by taxation for current expenses of the Northvale School District for the 1976-77 school year.

You are viewing an archived copy from the New Jersey State Library.

The aforementioned governing body's resolution certified to the Bergen County Board of Taxation the additional sum of $56,157 to be raised by local taxation, making the total sum available to the Board from local taxation for current expenses for the 1976-77 school year $1,264,513.

The Commissioner notices that the action of the governing body was completed before the enactment of *c.* 113, *L.* 1976, thus preventing the use of unbudgeted State aid which became available to the Board as of November 9, 1976.

The Commissioner having found the aforementioned resolutions and the Stipulation of Settlement to be in order and properly dispositive of the dispute; now therefore

IT IS ORDERED that the matter be and is hereby dismissed.

Entered this 10th day of March 1977.

COMMISSIONER OF EDUCATION

Board of Education of the City of East Orange,

Petitioner,

v.

Mayor and City Council of the City of East Orange and Board of School Estimate of the City of East Orange, Essex County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the City of East Orange, hereinafter "Board," Melvin Randall, Esq., which challenges the reductions imposed upon its 1976-77 school budget by the Board of School Estimate and the Mayor and Council of the City of East Orange, hereinafter "governing body," Julius Fielo, Esq. The principal facts of the matter are these:

On February 17, 1976, the Board certified to the Board of School Estimate the following amount which was deemed necessary to be raised by local taxation for the 1976-77 school year:

You are viewing an archived copy from the New Jersey State Library.

Current Expense $13,263,559

The Board of School Estimate on March 15, 1976, voted to reduce the Board's current expense budget by $4,657,684 to $8,605,875 and certified that amount to the governing body which in turn voted to further reduce the Board's current expense budget by an additional $500,000 as follows:

	Board's Proposal	Governing Body's Resolution	Reduction
Current Expense	$13,263,559	$8,105,875	$5,157,684

Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, the parties of interest entered into a Stipulation of Settlement and Dismissal which provides that the Board is authorized to expend the additional amount of $3,597,913 for current expense which is the total amount available to the Board as unbudgeted current expense State aid. It is further agreed by the governing body that it shall increase its previous certification to the Essex County Board of Taxation for school purposes in the amount of $41,002 for current expenses of the school district so that the aggregate tax levy certification for current expenses for the 1976-77 school year shall be $8,146,877.

The Commissioner of Education concurs with the Stipulation of Settlement. Accordingly, the amount of $3,597,913 will be made available to the Board from unbudgeted State aid. The remaining amount of $41,002 will be raised as the result of additional tax certification by the governing body for current expenses of the Board for the 1976-77 school year. The Petition of Appeal is hereby dismissed this 10th day of March 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Township of Hamilton,

Petitioner,

v.

Township Council of the Township of Hamilton, Mercer County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Henry F. Gill, Esq.

For the Respondent, Renee C. Ricciardelli, Attorney at Law

Petitioner, the Board of Education of the Township of Hamilton, hereinafter "Board," appeals from an action of the Council of the Township of Hamilton, hereinafter "Council," taken pursuant to *N.J.S.A.* 18A:22-37 certifying to the Mercer County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The facts of the matter were adduced at a hearing conducted on October 22, 1976 at the State Department of Education, Trenton, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

At the annual school election held March 9, 1976, the Board submitted to the electorate proposals to raise $16,666,632 by local taxation for current expense and $67,300 for capital outlay costs of the school district. These items were rejected by the voters and, subsequent to the rejection, the Board submitted its budget to Council for its determination of the amounts necessary for the operation of a thorough and efficient school system in the Township of Hamilton for the 1976-77 school year, pursuant to the mandatory obligation imposed on Council by *N.J.S.A.* 18A:22-37.

After consultation with the Board, Council made its determination and certified to the Mercer County Board of Taxation an amount of $16,541,032 for current expense and $32,700 for capital outlay. The pertinent amounts in dispute are shown as follows:

	Current Expense	Capital Outlay
Board's Proposal	$16,666,632	$67,300
Council's Proposal	$16,541,032	$32,700
Amount Reduced	$ 125,600	$34,600

The Board contends that Council's action was arbitrary, unreasonable, and capricious and documents its need for restoration of the reductions

You are viewing an archived copy from the New Jersey State Library.

recommended by Council with written testimony and a further oral exposition at the time of the hearing. Council maintains that it acted properly and after due deliberation and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system. Council also supports its position with written and oral testimony. As part of its determination, Council suggested specific line items of the budget in which it believed economies could be effected as follows:

CHART I

Account Number	Item	Board's Proposal	Council's Proposal	Amount Reduced
CURRENT EXPENSE:				
J110B	Sal., Asst. Supt. Secy.	$ 211,608	$ 211,108	$ 500
J130E	Other Exp., Legal Servs.	10,000	2,500	7,500
J130M	Other Exp., Prntg. & Pub.	7,000	–0–	7,000
J410A3	Sal., Nurses	242,835	173,635	69,200
J410B	Sal., Secy. & Nurs. Aides	26,188	18,188	8,000
J610A	Cust. Servs.	1,240,609	1,225,609	15,000
J710A	Sal., Upkeep of Grnds.	116,840	98,840	18,000
	TOTALS	$1,855,080	$1,729,880	$125,200
	*Note $400 discrepancy between line items and total reductions			400*
				$125,600
CAPITAL OUTLAY:				
L1220C	Site Improvement	13,800	11,200	2,600
L1230C	Remodeling	53,500	21,500	32,000
	TOTALS	$ 67,300	$ 32,700	$ 34,600

There appears no necessity to deal *seriatim* with each of the areas in which Council recommended reduced expenditures. As the Commissioner said in *Board of Education of the Township of Madison v. Mayor and Council of the Township of Madison, Middlesex County,* 1968 *S.L.D.* 139:

> "***The problem is one of total revenues available to meet the demands of a school system***. The Commissioner will indicate, however, the areas where he believes all or part of Council's reductions should be reinstated. It must be emphasized, however, that the Board is not bound to effect its economies in the indicated items but may adjust its expenditures in the exercise of its discretion as needs develop and circumstances alter.***"
>
> (at p. 142)

The hearing examiner, based on his review of the record, including the testimony elicited by the parties and the documentary evidence submitted, will set forth in chart form his recommendations with respect to each item reduced by Council:

You are viewing an archived copy from the New Jersey State Library.

CHART II

Account Number	Item	Amount of Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
J110B	Sal., Asst. Supt. Secy.	$ 500	$–0–	$ 500
J130E	Other Exp., Legal Servs.	7,500	–0–	7,500
J130M	Other Exp., Prntg. & Pub.	7,000	–0–	7,000
J410A3	Sal., Nurses	69,200	69,200	–0–
J410B	Sal., Secy. & Nurs. Aides	8,000	8,000	–0–
J610A	Cust. Servs.	15,000	–0–	15,000
J710A	Sal., Upkeep of Grnds.	18,000	–0–	18,000
	TOTALS	$125,200	$77,200	$48,000
CAPITAL OUTLAY:				
L1220C	Site Improvement	2,600	–0–	2,600
L1230C	Remodeling	32,000	28,598	3,402
	TOTALS	$34,600	$28,598	$ 6,002

In summary, the hearing examiner recommends that the Commissioner restore $77,200 to the current expense account of the budget for the 1976-77 school year. The "Report on Audit of Accounts July 1, 1975 to June 30, 1976," submitted after the hearing on the budget, shows a free appropriation balance in current expense of $1,035,035.58. The hearing examiner recommends a reduction of the unappropriated free balance be ordered by the Commissioner in the amount of the restoration, or $77,200.

Additionally, the hearing examiner recommends that $28,598 of unbudgeted State aid be restored to capital outlay pursuant to *c.*113, *L.*1976, making a total capital outlay appropriation for 1976-77 of $61,298. He observes for consideration by the Commissioner, that this capital outlay restoration does not increase the local school tax levy.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, the report of the hearing examiner and the exceptions filed by the Board. The Board contends that restoration of the salaries of school nurses from its unappropriated free balance is not a permanent restoration but "***merely permission to hire nurses out of surplus.***" (Board's Exceptions) The Commissioner concurs with the hearing examiner's finding that the restoration of nurses' salaries is necessary. The Commissioner is constrained to point out that the Board has ample moneys available for this purpose in its current expense unappropriated free balance.

The argument that the record is void of any testimony that would allow a field maintenance reduction is without merit. Rather, the burden of proof for

You are viewing an archived copy from the New Jersey State Library.

the necessity of a restoration of these funds must be borne by the Board.

The Commissioner is in agreement with the findings and conclusions of the hearing examiner that the Board has proven the necessity for the restoration of specific items which, taken in the aggregate, total $77,200. In the judgment of the Commissioner, the Board has adequate funds available in its current expense unappropriated free balance to effectuate the restoration of such items for the 1976-77 school year. Accordingly, the Commissioner directs that the Board transfer $77,200 from the unappropriated free balance to the current expense account.

Additionally, the Commissioner hereby authorizes the expenditure of $28,598 of unbudgeted State aid in the capital outlay account to make a total capital outlay appropriation for 1976-77 of $61,298 with no increase in the local school tax levy.

COMMISSIONER OF EDUCATION

March 10, 1977

Board of Education of the City of Asbury Park,

Petitioner,

v.

Board of School Estimate and Mayor and City Council of the City of Asbury Park, Monmouth County,

Respondents.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, McOmber & McOmber (Richard D. McOmber, Esq., of Counsel)

For the Respondents, Norman Mesnikoff, Esq.

Petitioner, the Board of Education of the City of Asbury Park, hereinafter "Board," appeals from actions of the Board of School Estimate and the Mayor and City Council of the City of Asbury Park, hereinafter "Council," taken pursuant to *N.J.S.A.* 18A:22-7 *et seq.* which resulted in the certification by Council to the Monmouth County Board of Taxation of lesser amount of appropriations for current expenses for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by respondents. The facts of the matter were adduced at a hearing conducted on October 8 and

You are viewing an archived copy from the New Jersey State Library.

14, 1976 at the State Department of Education, Trenton, and at the office of the Morris County Superintendent of Schools, Morris Plains, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

On February 26, 1976, the Board submitted to the Board of School Estimate a proposed current expense budget of $7,254,320, of which $3,736,941 was to be raised by local taxation. The Board of School Estimate reduced the amount to be raised by local taxation by $1,000,000 to $2,736,941. Council, upon its review of the budget, further reduced the amount to be raised by local taxation by $400,000 and certified to the Monmouth County Board of Taxation the amount of $2,336,941, thus reducing the amount to be raised by local taxes for the Board's current expense budget by $1,400,000.

The Board contends that Council's action was arbitrary, unreasonable, and capricious and documents its need for restoration of the reductions recommended by Council with written testimony and a further oral exposition at the time of the hearing. Council maintains that it acted properly and after due deliberation and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system. Council also supports its position with written testimony. Council delineated reductions in those line items wherein it believed economies could properly be effected in the amount of $1,565,809. (R-1) Council asserts, however, that the net savings effected by these reductions would amount to only $1,407,182, inasmuch as suggested reductions in staff positions currently held by higher salaried tenured personnel would result in a lesser saving since, in fact, lower salaried personnel with either less seniority or without tenure would be released. Absent an objection from petitioner, the reductions as delineated by Council were allowed by the hearing examiner to stand as the pertinent items in contention as follows:

Account Number	Item	Board's Proposal	Council's Proposal	Amount Reduced
CURRENT EXPENSE:				
J110B	Sal., Bd. Secy. Off.	$ 60,528	$ 43,868	$ 16,660
J110G	Sal., Asst. Supt.	56,000	–0–	56,000
J110H	Supt. Off., Secy.	34,840	22,740	12,100
J110L	Adm. Asst.	28,958	–0–	28,958
J120F	Legal Fees	25,000	12,500	12,500
J130N	Adm. Research	7,000	5,000	2,000
J214-2	Sal., Psychol.	58,025	18,025	40,000
J520A	Contr. Trans.	50,825	30,825	20,000
J710B	Sal., Maint.	92,236	61,491	30,745
J710B1	Maint. Overtime	8,000	4,000	4,000
J810A	PERS Contr.	62,480	32,480	30,000
J810B	Soc. Sec. Contr.	60,980	50,980	10,000
J820A3	Health Ins.	168,000	118,000	50,000
J820B	Workmens Comp. Ins.	35,944	25,944	10,000
J211A	V-Prin., Bangs Ave.	26,004	–0–	26,004
J211A	V-Prin., HS	82,149	27,149	55,000

You are viewing an archived copy from the New Jersey State Library.

J212	Sal., Coord.	112,010	–0–	112,010
J213	Sal., Tchrs.	3,395,348	2,723,708	671,640
J214A	A-V Pers.	34,130	–0–	34,130
J214B	Guid., Mid. Sch & HS	237,165	141,297	95,868
J215	Prin. Off. Secy., HS	39,319	31,319	8,000
J216	Other Instr. Sals.	68,794	–0–	68,794
J310	Sal., Att. Officer	8,481	–0–	8,481
J320	Att. Officer, Travel	500	–0–	500
J410	Nurses & Dent. Tech.	49,340	16,840	32,500
J610A	Security Guards	54,967	–0–	54,967
J610B	Sal., Custodians	151,560	132,614	18,946
J610B1	Custodians Overtime	14,000	9,000	5,000
J730	Instr. Equip. Repl.	20,719	2,469	18,250
J730	A-V Equip. Repl.	4,924	2,924	2,000
J730A1	Phys. Ed. Equip. Repl.	2,045	1,045	1,000
J730A2	Ind. Arts Equip. Repl.	16,387	2,387	14,000
J730A4	Music Equip. Repl.	13,538	3,477	10,061
J730B	Noninstr. Equip. Repl.	7,508	1,813	5,695
	TOTALS	$5,087,704	$3,521,895	$1,565,809

The hearing examiner proceeds to set forth in narrative form his recommendations concerning certain of these major line items in dispute. It should be noted that Council has sought to make its comparisons of 1976-77 budget appropriations using in many instances the year 1969-70 appropriations as a base line to show the increase in appropriations for the contested line items over a seven year period. Although the hearing examiner allowed such comparisons over the Board's objections both in written testimony and at the hearing and has considered the data presented, he finds 1969-70 expenditures less valid and pertinent than those of more recent years. As was stated by the Commissioner in *Board of Education of the City of Plainfield v. City Council of the City of Plainfield, Board of School Estimate and County Board of Taxation, Union County,* 1974 *S.L.D.* 913, the constitutional mandate of a thorough and efficient education:

> "***must be interpreted to mean that as a minimum such programs are entitled to a continuing sustenance of support, one marked by constancy and not by vacillation of effort.***" (1974 *S.L.D.* at *921*)

J110G Assistant Superintendent Salaries *Reduction $56,000*

The hearing examiner finds that the two positions which Council suggests may be eliminated are not new positions. The Board has clearly substantiated its need for these administrative positions in the areas of personnel and curriculum development. (P-2-2) Accordingly, it is recommended that full restoration of $56,000 be made by the Commissioner.

J110L Administrative Assistant to Superintendent *Reduction $28,958*

Council avers that the addition of this new position is not warranted by the increase of only 79 enrolled pupils since 1969-70. (R-1-2) The Board

You are viewing an archived copy from the New Jersey State Library.

contends that although the title is new, the position provides for necessary tasks which have heretofore been performed by the former Federal Aid Coordinator which position was abolished in accord with its administrative reorganization plan. (P-2-5) It is noted that federal programs and State programs exceed one million dollars of aid annually. (P-7-A-1)

The hearing examiner finds that the position of Federal Aid Coordinator has been abolished with a corresponding reduction in administrative costs in another line item. The tasks performed, however, are extensive and essential. Accordingly, the hearing examiner recommends restoration of $28,958. (Tr. I-60)

J214-2 Psychologist Salaries *Reduction $40,000*

Council contends that one of three part-time psychologist positions should be abolished and the work accomplished by two part-time psychologists. Council further contends that an increase from $35,000 in 1974-75 to $56,608 is unwarranted. (R-1-3) Conversely, the Board cites its need to comply with statutory requirements to classify and reevaluate pupils requiring special class placement and to process referrals for psychological evaluations. (P-2-7)

The hearing examiner finds convincing the Board's substantiation of its need for continuing services of three part-time psychologists but, in view of expenditures in 1975-76 totaling $48,121, recommends that the Commissioner sustain the reduction in the amount of $6,000.

J710B Maintenance Salaries *Reduction $30,745*

Council argues that the increase from four maintenance men in 1969-70 to nine in 1976-77 is unjustified since pupil enrollment has not increased proportionately. (R-1-4) The Board responds, *inter alia,* that its custodial staff has not increased over that employed in 1975-76 and further cites the opening of a new middle school in 1969-70 and another building addition in 1974 as justification for its present staff. (P-2-9)

The hearing examiner finds that the Board has in this instance borne its burden of proof for its need for nine maintenance employees, certain of which were added to the district maintenance staff by removing them from similar duties under the high school maintenance account, thus maintaining in the entire district a constant number of maintenance employees. (Tr. I-83-85) Accordingly, it is recommended that $26,745 be restored and that $4,000 of the reduction be sustained.

J810A PERS Contributions *Reduction $30,000*

Council argues that a doubling of this line item to $62,480 as compared to expenditures for 1974-75 of $29,000 is unnecessary. (R-1-4) The Board points out that its actual expenditure in this sector in 1975-76 was $54,793 and that the applicable employer contribution rate of 6.85 percent on salaries of $912,119 will require its full appropriation. (P-2-10)

The hearing examiner finds that the Board has budgeted conservatively in

You are viewing an archived copy from the New Jersey State Library.

respect to its fiscal obligation and recommends full restoration of $30,000.

J820A3 Health Insurance *Reduction $50,000*

Council avers that the Board expended only $113,344 for health insurance in 1974-75 as compared to its appropriation of $168,000 for 1976-77. The Board confirms that its costs in 1975-76 of $144,000 have been subjected to a 16 percent increase for the current year which will require $168,000 as budgeted. (P-2-12-13)

The hearing examiner, recognizing that the Board has in this instance met its burden of proof, recommends restoration of the full amount of the reduction of $50,000.

J211A Vice-Principal H.S. *Reduction $55,000*
J212 Coordinator Salaries *Reduction $112,010*

The hearing examiner takes note of testimony of the Superintendent that each of these accounts was, by inadvertent error, overbudgeted by one position. (Tr. II-57) An analysis of the documentation and testimony further convinces the hearing examiner that it is necessary not only that the existing vice-principalships be maintained and that one coordinator be assigned at Bangs Avenue School but also that there be provided two coordinators, district-wide. The coordinators' positions are new in name only and are essential for proper functioning of the educational program. (P-2-16; Tr. I-152-157; Tr. II-57) It is recommended, therefore, that $26,350 be restored to line item J211A (H.S.) and that the reduction be sustained in the amount of $28,650. It is further recommended that $75,166 be restored to J212 and that the reduction be sustained in the amount of $36,844.

J213 Teacher Salaries *Reduction $671,640*

Council argues that enrollment increases since 1969-70 do not justify the increase in the number of teachers that the Board has employed. (R-1-5, 8, 9, 11, 14) Council maintains that its proposed reduction of teaching staff would have minimal impact on class size or educational effectiveness.

The Board justifies its staffing patterns in terms of current educational approaches, large numbers of educationally deprived pupils requiring individual attention and remediation, and the existence of statutorily required programs of special education. (P-2-17, 29-33, 40-41, 47-49, 62-64)

The hearing examiner takes note that those seven teaching positions which the Commissioner determined could be eliminated in 1975-76 remain filled. *Board of Education of the City of Asbury Park v. Board of School Estimate and Mayor and City Council of the City of Asbury Park, Monmouth County,* 1976 *S.L.D.* 148 Testimony of the Superintendent, as well as an analysis of the Board's J213 line item documentation, convinces the examiner that, although the Board maintains these positions, it has made no provision in its salary account to pay those seven teachers. The Board is in fact operating its schools in 1976-77 with the same number of teachers it employed in 1975-76. Enrollment remains virtually constant. (Tr. I-104-109, 174-176; Tr. II-23; P-4)

You are viewing an archived copy from the New Jersey State Library.

The Board has budgeted in this J213 line item $3,395,348. It has contracts with teachers whose salaries, without increases which must yet be negotiated, now total $3,405,980. (P-4) If one deducts therefrom the salaries of those positions deemed unnecessary by the Commissioner in 1975-76, and adds thereto an estimation of yet-to-be negotiated salary increases, the total exceeds the amount which the Board budgeted. This is a portentous problem which must be resolved. It is apparent that budget provisions of the Board anticipated compliance with the Commissioner's guidance but that the Board's inaction to comply with such intent has created a grave condition threatening the Board's financial solvency.

An analysis of the documentation in evidence and the testimony at the hearing supports the conclusion that the Board's budgeted amount in J213 is necessary to sustain a continuing, effective educational program. *Plainfield, supra* It is, therefore, recommended that full restoration of $671,640 be made to this line item. It should be recognized, however, that such restoration will *not* fund the payment of salaries of those teachers deemed unnecessary by the Commissioner in his determination of the 1975-76 budget dispute. *Asbury Park, supra*

J214A Audiovisual Personnel, Elementary *Reduction $34,130*

The hearing examiner finds the Board's argument convincing as to its need for audiovisual personnel but recommends that the Commissioner determine that the position at the Middle School, may be staffed by a competent staff member at a lesser expense to the Board. It is recommended that $27,000 be restored to this line item and that the reduction in the amount of $7,130 be sustained.

J214B Guidance, Middle and High School *Reduction $95,868*

The hearing examiner finds that the Board has sustained its burden of proof of need for guidance personnel employed. An analysis of the expenditure of 1975-76 and the Board's appropriation for 1976-77 leads to the conclusion that the same personnel with increments may be employed with a reduction in the amount appropriated of $13,000 and that $83,868 must be restored. It is so recommended.

J610 Security Guards *Reduction $54,967*

The hearing examiner observes that $29,983 was expended for these services in 1975-76. (P-5) Allowing for increments, the Board will be able to provide these services in 1976-77 for a lesser amount than the $54,967 budgeted. Accordingly, it is recommended that this line item reduction be sustained in the amount of $22,748 and that $32,219 be restored.

There appears to be no necessity to deal *seriatim* with each of the remaining areas in which Council recommended reduced expenditures. As the Commissioner said in *Board of Education of the Township of Madison v. Mayor and Council of the Township of Madison, Middlesex County,* 1968 *S.L.D.* 139:

You are viewing an archived copy from the New Jersey State Library.

"***The problem is one of total revenues available to meet the demands of a school system***. The Commissioner will indicate, however, the areas where he believes all or part of Council's reductions should be reinstated. It must be emphasized, however, that the Board is not bound to effect its economies in the indicated items but may adjust its expenditures in the exercise of its discretion as needs develop and circumstances alter.***"

(at 142)

Accordingly, the further recommendations of the hearing examiner, based upon his analysis of the written and oral testimony are incorporated with the above recommendations in chart form as follows:

Account Number	Item	Amount of Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
J110B	Sal., Bd. Secy. Off.	$ 16,660	$ 16,660	$–0–
J110G	Sal., Asst. Supt.	56,000	56,000	–0–
J110H	Supt. Off., Secy.	12,100	12,100	–0–
J110L	Adm. Asst.	28,958	28,958	–0–
J120F	Legal Fees	12,500	–0–	12,500
J130N	Adm. Research	2,000	–0–	2,000
J214-2	Sal., Psychol.	40,000	34,000	6,000
J520A	Contr. Trans.	20,000	16,000	4,000
J710B	Sal., Maint.	30,745	26,745	4,000
J710B1	Maint. Overtime	4,000	3,000	1,000
J810A	PERS Contr.	30,000	30,000	–0–
J810B	Soc. Sec. Contr.	10,000	10,000	–0–
J820A3	Health Ins.	50,000	50,000	–0–
J820B	Workmens Comp. Ins.	10,000	8,000	2,000
J211A	V-Prin., Bangs Ave.	26,004	26,004	–0–
J211A	V-Prin., HS	55,000	26,350	28,650
J212	Sal., Coord.	112,010	75,166	36,844
J213	Sal., Tchrs.	671,640	671,640	–0–
J214A	A-V Pers.	34,130	27,000	7,130
J214B	Guid., Mid. Sch. HS	95,868	82,868	13,000
J215	Prin. Off. Secy., HS	8,000	–0–	8,000
J216	Other Instr. Sals.	68,794	50,122	18,672
J310	Sal., Att. Officer	8,481	8,481	–0–
J320	Att. Officer, Travel	500	500	–0–
J410	Nurses & Dent. Tech.	32,500	32,500	–0–
J610A	Security Guards	54,967	32,219	22,748
J610B	Sal., Custodians	18,946	18,946	–0–
J610B1	Custodians Overtime	5,000	3,000	2,000
J730	Instr. Equip. Repl.	18,250	18,250	–0–
J730	A-V Equip. Repl.	2,000	2,000	–0–
J730A1	Phys. Ed. Equip. Repl.	1,000	1,000	–0–
J730A2	Ind. Arts Equip. Repl.	14,000	14,000	–0–
J730A4	Music Equip. Repl.	10,061	5,972	4,089

You are viewing an archived copy from the New Jersey State Library.

J730B	Noninstr. Equip. Repl.	5,695	4,000	1,695
	TOTALS	$1,565,809	$1,391,481	$174,328

In conclusion, the hearing examiner advises the Commissioner that oral argument was heard on a Motion for Interim Relief brought by the Board wherein it was alleged that Council's cut of $1,400,000 in current expenses was so severe that immediate restoration of $919,985 was imperative in order to provide the Board at least $6,774,305 which was deemed necessary by the Commissioner for the 1975-76 school year. *Asbury Park, supra* (Tr. I-1-24) Rather than granting or denying the Motion, the hearing examiner, noting the severity of the reduction by Council which reduced the Board's current expense budget to an amount $754,441 less than its actual operating budget for 1975-76 (P-7-A1), agreed to issue at an early date a letter of advisement of his recommendations to the Commissioner. (Tr. I-196-198) Such a letter in advance of, *but not in lieu of,* a hearing examiner report was issued to the parties on November 16, 1976, recommending that, of the $1,400,000 reduction in certification, $174,328 be sustained and that there be a restoration ordered totaling $1,225,672 from sources as follows:

$ 856,522	Unbudgeted State Aid
177,947	Budgeted TPAF
191,203	Additional Local Property Tax
$1,225,672	Total

Subsequent to the issuance of that letter of advisement, however, the hearing examiner has been notified by the Division of Administration and Finance of the State Department of Education that the amounts of unbudgeted State aid available for restoration to the Board for 1976-77 are limited to the following:

Unbudgeted Current Expense Aid	$808,180
Budgeted TPAF	177,947
Total Unbudgeted Current Expense Aid	986,127
Less Allocation to Compensatory Bilingual Aid	129,605
Total Unallocated Current Expense Aid	$856,522

Accordingly, the hearing examiner recommends that the Commissioner restore to the Board's 1976-77 current expense budget $1,225,672 as follows:

Unallocated C.E. Aid, Including TPAF	$ 856,522
Additional Local Property Tax	369,150
	$1,225,672

This concludes the report of the hearing examiner.

* * * *

The Commissioner has carefully reviewed the respective contentions set

You are viewing an archived copy from the New Jersey State Library.

forth in written and oral testimony as well as other documents entered into evidence in the above-entitled matter. It is noted that no exceptions, pursuant to *N.J.A.C.* 6:24-1.17(b), were filed by either litigant concerning the findings set forth in the hearing examiner report.

The evidence comports with the findings of the hearing examiner, which findings the Commissioner adopts for his own. It is, therefore, determined that $1,225,672 of additional revenue for current expenses is necessary to assure a thorough and efficient system of public education in the Asbury Park School District for the 1976-77 school year.

Accordingly, the Commissioner directs that $856,522 be made available to the Board from unbudgeted current expense State aid which allocation, it is observed, will not affect the local property tax rate in Asbury Park. In addition, the Commissioner certifies to the Monmouth County Board of Taxation the additional amount of $369,150 for current expenses of the Board for the 1976-77 school year, so that the total amount to be raised by local property taxation for current expenses for 1976-77 shall be $2,706,091.

COMMISSIONER OF EDUCATION

March 14, 1977

Board of Education of the Township of Clark, Union County,

Petitioner,

v.

Henry T. Karamus,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

Petitioner, the Board of Education of the Township of Clark, hereinafter "Board," alleges in a letter filed with the Commissioner of Education on March 14, 1977, that a nominating petition filed on behalf of Henry T. Karamus for presentation of Mr. Karamus as a candidate for election to a seat on the Board at the annual school election of March 29, 1977, is defective. Specifically, the Board alleges that such nominating petition contained the names of two affiants who were not qualified to vote in the district in the annual school election and, thus, that the petition was legally flawed in the context of the clear prescription of the statute, *N.J.S.A.* 18A:14-11. The Board requested the Commissioner to so determine and to direct that the name of Henry T. Karamus be deleted from the ballot as a candidate for election to a seat on the Board.

You are viewing an archived copy from the New Jersey State Library.

Subsequent to the receipt of the Board's letter of appeal, the Business Administrator of the Board received a letter from Candidate Karamus wherein it was acknowledged that two of the affiants who had signed the nominating petition for Candidate Karamus "***were not voters***" and that, therefore, the petition was "disqualified." He requested the nominating petition be withdrawn.

It is observed that the defect in the nominating petition here in question is factually the same as in a recent dispute before the Commissioner. *Board of Education of the Union County Regional High School District No. 1, Union County v. Henry T. Karamus,* 1977 *S.L.D.*___ (decided March 9, 1977) Clark Township is a component district of the Union County Regional High School District No. 1 and the unqualified affiants who signed the nominating petition for Candidate Karamus for a seat on the Regional Board are the same persons who signed the instant nominating petition for a seat for Candidate Karamus on the Clark Board.

Accordingly, the Commissioner finds and determines that the imprinted name of Henry T. Karamus may not lawfully appear on the printed ballot at the annual school election of March 29, 1977 in Clark Township and he directs the Secretary of the Board to delete such name from the list of names of candidates to be inscribed thereon.

ORDERED this 14th day of March 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

"S.S." on behalf of "G.A.S.," a minor,

Petitioner,

v.

Board of Education of the Township of Neptune, Monmouth County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Stafford W. Thompson, Esq.

For the Respondent, Laird & Wilson (Andrew J. Wilson, Esq., of Counsel)

Petitioner, the mother of a pupil, hereinafter "G.S.," enrolled in the sixth grade of the Ridge Avenue School of the Board of Education of the Township of Neptune, hereinafter "Board," alleges that the Board acted improperly by its failure to certify tenure charges to the Commissioner of Education which she filed against a teaching staff member, hereinafter "C.J.," who holds a tenure status in its employ. The Board denies the allegations set forth and asserts that its determination not to certify tenure charges against C.J. is in all respects proper and legal. The Board seeks dismissal of the matter for failure of petitioner to state a cause of action upon which relief could be granted.

Oral argument on the Board's Motion to Dismiss was heard at the State Department of Education, Trenton, by a representative of the Commissioner. The transcript of that argument and the record, including the pleadings and exhibits, are referred to the Commissioner for determination.

Proceedings in this matter had been held in abeyance pending the possibility of settlement by the parties, which was not reached.

Petitioner filed a letter complaint (C-1) dated April 4, 1973 with the Board Secretary in which it is stated that her son, G.S., was involved in a fight with another pupil on the playground on March 28, 1973. Petitioner stated that the fight was stopped by C.J., the teacher against whom the charges were filed.

Petitioner complained that C.J., in the course of separating the two combatants, punched her son in the stomach, slapped him in the face and told him "***to get his black butt down to the office." (C-1) Petitioner asserts that her son required medical attention because of C.J. punching him in the stomach. Petitioner explained that she had a conference with C.J. and the school principal on April 2, 1973 at which time C.J. allegedly admitted punching and slapping G.S. Petitioner concluded her letter complaint by requesting the Board to certify tenure charges of unbecoming conduct to the Commissioner against C.J.

The Superintendent advised petitioner by letter (C-2) dated April 11, 1973, that prior to the receipt of her letter complaint (C-1) he had already been

You are viewing an archived copy from the New Jersey State Library.

advised by the school principal of the altercation involving her son. The Superintendent further advised petitioner that an investigation into the matter had been started and, following its conclusion, he would advise her of further measures he would take in regard to the teacher.

Thereafter, the Superintendent did advise petitioner by letter dated April 19, 1973, that the investigation had been completed and that:

> "***This office never has and never will tolerate abusive action by a teacher to a pupil. It is found in this instance, that [C.J.] was compelled to use physical force in breaking the choking hold that your son had on another youth. However, when [C.J.] slapped [G.S.] on the cheek in an attempt to control his near hysterical behavior, it is the opinion of this office that good judgment was not used. Other means of control could have been used.
>
> "[C.J.] has been a fine teacher, in good standing in this school system for many years. It is with regret that an official letter of reprimand has been issued to him and made a part of his personal folder.
>
> "This incident in its entirety has been reported to the Board of Education. If you have any further questions, please feel free to call this office." (C-3)

Subsequent to the receipt of this letter petitioner obtained legal counsel to pursue her complaint with the Board. The Board was so advised by letter dated May 15, 1973, and was also requested to:

> "***[advise petitioner] of the date when this matter was brought to the attention of the Board, and if the Board has made a determination whether the charges filed against the teacher by [petitioner] and the evidence in support thereof are sufficient, if true in fact, to warrant [C.J.'s] dismissal or reduction in salary.***" (C-4)

The Board thereafter advised petitioner by letter (C-5) dated May 25, 1973, that prior to the Board making a determination on the filed charges, she was invited to appear with witnesses to offer evidence in support of the charges.

The Board advised petitioner again by letter (C-6) dated June 14, 1973, that it would provide her the opportunity to present evidence and/or witnesses in support of the charges. The Board further advised petitioner that unless it heard from her by June 26, 1973, it would proceed to make its determination with respect to whether to certify the charges to the Commissioner at its regular meeting scheduled for June 27, 1973. (C-6)

The Board, on June 27, 1973, adopted the following resolution:

> "WHEREAS, a complaint was received on April 4, 1973, charging a teacher in the Neptune Township School System with corporal punishment and,

You are viewing an archived copy from the New Jersey State Library.

"WHEREAS, the incident was reported to the Education and Personnel Committee of the Board of Education on April 10, 1973, by the Superintendent of Schools who was thereupon directed to investigate the charges, and,

"WHEREAS, after a complete and thorough investigation made by the Superintendent of Schools and reported to the Board of Education at its work session on April 16, 1973, and there being no further witnesses or evidence offered by the [complainant],

"NOW THEREFORE, BE IT RESOLVED, that the Board of Education of the Township of Neptune, having heard and considered the report of the Superintendent of Schools and having considered the statement of the school administrators, is of the opinion that while the conduct of the teacher in breaking up the altercation between the students was justified, his handling of the student after breaking up the altercation might have been more circumspect, and a reprimand having been placed in the official records of the teacher, and it further appearing that there was no intent by the teacher to inflict pain or suffering, it is the opinion of the Board of Education that the charge is insufficient to warrant the dismissal or reduction in the teacher's salary and therefore, the Board of Education concludes that the charge is not of sufficient gravity to warrant certification to the Commissioner of Education for proceedings pursuant to N.J.S.A. 18A:6-10, et seq." (C-8)

The Board, in support of its Motion to Dismiss, asserted that it fully complied with the controlling statute, *N.J.S.A.* 18A:6-11, which requires that it determine whether the charges and evidence in support thereof, if proven true in fact, are sufficient to warrant dismissal or reduction in salary. The Board explained that the Superintendent investigated the matter and reported the results of that investigation to petitioner and to the Board. The Board asserted that on two occasions it requested petitioner to appear before it to produce additional evidence or witnesses in support of her charge. The Board explained that, in the absence of petitioner appearing before it and in the absence of additional evidence or witnesses to controvert the report of the Superintendent, it determined that the charges, under the circumstances, even if proven true, would not warrant C.J.'s dismissal or reduction in salary.

The Commissioner observes that *N.J.S.A.* 18A:6-11 was amended by *c.*304, *L.*1975, effective February 7, 1976. The amendment now requires boards of education to determine whether probable cause exists to credit the evidence in support of charges filed with it.

Under the provisions of the statute prior to the amendment, boards of education were required solely to determine whether the charges and evidence in support thereof, if proven to be true in fact, would warrant dismissal or a reduction in salary.

In the instant matter the Board erred in its resolution (C-8) adopted on June 27, 1973 by arriving at the finding of fact that "***there was no intent by

You are viewing an archived copy from the New Jersey State Library.

the teacher to inflict pain or suffering***" upon G.S. This finding should have more properly been made by the Commissioner subsequent to an adversary hearing. This error is not sufficient, in the Commissioner's judgment, to set aside the action of the Board in its determination not to certify tenure charges against C.J.

N.J.S.A. 18A:6-1 provides in full as follows:

> "No person employed or engaged in a school or educational institution, whether public or private, shall inflict or cause to be inflicted corporal punishment upon a pupil attending such school or institution; but any such person may, within the scope of his employment use and *apply such amount of force as is reasonable and necessary:*
>
> (1) *to quell a disturbance, threatening physical injury to others;*
>
> (2) to obtain possession of weapons or other dangerous objects upon the person or within the control of a pupil;
>
> (3) for the purpose of self-defense; and
>
> (4) for the protection of persons or property;
>
> and such acts, or any of them, shall not be construed to constitute corporal punishment within the meaning and intendment of this section. Every resolution, bylaw, rule, ordinance, or other act or authority permitting or authorizing corporal punishment to be inflicted upon a pupil attending a school or educational institution shall be void."
>
> (*Emphasis supplied.*)

In the instant matter, G.S. was involved in fisticuffs with another pupil on school grounds. C.J. attempted to stop the fighting and, according to the Superintendent, punched and slapped G.S. to break a choking hold he had on the other pupil. This is the extent of the evidence the Board had before it with respect to its determination not to certify the filed charges. There is no denial in the record that G.S. had a choking hold on the other pupil. Petitioner was clearly given the opportunity by the Board to controvert that portion of the Superintendent's report. (C-3)

The Commissioner has determined from his official records that C.J. has been employed by the Board for over twenty years and that he has an unblemished record. The Commissioner also notices that the Board placed a letter of reprimand in C.J.'s file. The Commissioner concurs in this action of the Board. The Commissioner, considering all the circumstances presented herein, finds that the Board of Education of the Township of Neptune has committed no fatal error with respect to its determination not to certify tenure charges against C.J. Accordingly, the Board's Motion to Dismiss is hereby granted.

COMMISSIONER OF EDUCATION

March 14, 1977

You are viewing an archived copy from the New Jersey State Library.

John C. Saccenti,

Petitioner,

v.

Board of Education of the Township of North Brunswick, Middlesex County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Mandel, Wysoker, Sherman, Glassner, Weingartner & Feingold (Jack Wysoker, Esq., of Counsel)

For the Respondent, Borrus, Goldin & Foley (Jack Borrus, Esq., of Counsel)

Petitioner, a nontenured social studies teacher employed by the Board of Education of the Township of North Brunswick, hereinafter "Board," alleges that the Board's nonrenewal of his teaching contract in the spring of 1974 was an illegal, retaliatory reprisal against him resulting from his outspoken conduct in negotiations and other activities on behalf of the North Brunswick Township Education Association, hereinafter "Association." Petitioner avers, *inter alia,* that the Board's actions were arbitrary, capricious and in violation not only of his constitutional rights of free speech and due process but also of his statutory rights to engage in employee organization efforts. *N.J.S.A.* 34:13A-5.3

The Board denies that it acted improperly or failed to afford petitioner due process. The Board further denies that it acted arbitrarily, capriciously, or in retaliation or reprisal against petitioner because of his Association activities.

A hearing in this matter was conducted in the Middlesex County Vocational and Technical High School, East Brunswick, and in the office of the Middlesex County Superintendent of Schools, New Brunswick, on fourteen separate days beginning on February 5, 1975, and concluding on February 18, 1976, by a hearing examiner appointed by the Commissioner of Education. Numerous exhibits were received in evidence at the hearing and Briefs were subsequently filed. A motion by petitioner to require the Board to present its case first and prove the truthfulness of reasons given for nonrenewal was procedurally denied by the hearing examiner. (Tr. I-8-12) A Motion to Dismiss for failure to present a *prima facie* case brought by respondent at the end of petitioner's case was procedurally denied by the hearing examiner and held in abeyance for final disposition by the Commissioner. (Tr. V-123-163) The hearing examiner's report follows setting forth first those uncontroverted facts which provide a contextual background surrounding the controversy.

Petitioner taught seventh and eighth grade social studies at the Board's Linwood Junior High School from March 1972 through June 1973. He applied

You are viewing an archived copy from the New Jersey State Library.

for but was not appointed to the position of social studies coordinator for the ensuing year. (J-7) Upon the opening of the Board's new North Brunswick High School in September 1973, he taught eighth grade social studies there until June 1974. During that year he served as the chief spokesman for the Association's negotiating team and as advisor to the school newspaper, the *Raider Review*. (R-1-4) On March 29, 1974, petitioner was notified by the Assistant Superintendent that he had not been recommended for reemployment. (J-12) Thereafter, he was notified by the Board Secretary that on April 9 the Board had resolved not to reemploy him and two other nontenured teachers for the 1974-75 school year. (P-11) After the decision in *Donaldson v. Board of Education of North Wildwood,* 65 *N.J.* 236 (1974) the Board, on June 26, 1974, furnished petitioner with the following reasons for nonrenewal of his contract:

> "***1. Your lesson plans were poorly done, disorganized, unproductive and it was obvious that little thought or imagination was put into planning.
>
> "2. There was a lack of meaningful interaction between teacher and student and among students.
>
> "3. On many occasions, students were merely passive listeners.
>
> "4. You demonstrated an inability to adapt the program to the level and needs of the pupils.
>
> "5. Your lack of patience in dealing with students was evident.
>
> "6. Your lessons were not planned so as to use class time economically.
>
> "7. It is the professional judgment of our administrative team that you not be offered employment for the 1974-75 school year.***" (J-1)

Petitioner requested and was granted an informal appearance wherein he and others spoke on his behalf before the Board on July 23, 1974 after which the Board reviewed the matter and on August 7 notified petitioner of reaffirmance of its initial determination. (J-13) Thereupon, petitioner filed the matter as a dispute before the Commissioner.

A summary of relevant testimony elicited on behalf of petitioner follows:

Petitioner testified that on a number of occasions he had become involved in conflict situations with his supervisors, his principal and the Board including but not limited to the following:

1. A dispute with the principal over petitioner missing a faculty meeting to attend a graduate class on October 29, 1974. Petitioner testified that the Superintendent had granted permission for him to be absent but that when he was absent without giving notice on October 29, the principal became irate and ordered him to attend *all* subsequent faculty meetings. He stated that he then

You are viewing an archived copy from the New Jersey State Library.

filed a grievance and that the matter was resolved in his favor by the Superintendent. (P-1, 2, 4, 7; Tr. I-21-29, 50; Tr. II-152-160; Tr. III-66)

2. Numerous disputes with the Board over procedural points in negotiating a successor agreement in which process petitioner was the head negotiator for the Association. Petitioner testified that at numerous times Board members showed visible annoyance and agitation and spoke in angry voices to him as spokesman for the Association team. (Tr. I-21, 73-83, 90; Tr. II-41-43)

3. A dispute with the principal in May 1973 wherein divergent philosophic views were expressed regarding pupil failures. (Tr. I-22-23)

4. Disputes with the principal over his classroom evaluations which petitioner characterized as biased and unfair in grievances filed November 29, 1973 and April 9, 1974. (P-3, 16; Tr. I-32)

5. A dispute with administrators and the Board over teachers' responsibilities in a newly instituted daily Learning Assistance Instruction period, hereinafter "LAI," in which petitioner in his capacity as building representative supported a grievance filed by the Association. (P-6) Petitioner testified that he spoke out against the additional responsibilities required by the LAI at a faculty meeting and was then harassed by the principal by frequent classroom observations which caused him to file yet another grievance in protest. (P-8, 9; Tr. I-35-46, 57; Tr. III-48)

6. A dispute with the principal over the copy to be printed in the *Raider Review*. In this regard petitioner testified that the principal raised his voice against him in a loud and threatening manner when emphasizing that he wanted nothing printed therein which was critical of the school or the principal. (Tr. I-69)

7. A dispute between petitioner and certain area coordinators who took umbrage at a communication from petitioner wherein he criticized them for removing their offices to a location separate from the area in which their teachers were located. Therein, petitioner stated, *inter alia*:

> "***By maintaining separate offices in the administrative office you have made yourselves unavailable to assist and communicate with your department members to the degree necessary for smooth and efficient departmental functioning.
>
> "***I would caution you that the price paid in terms of communication and cooperation within the department and the staff may be too high."
>
> (P-15)

Petitioner testified further that he considered his evaluations while teaching at Linwood School under a different principal to be favorable as contrasted to the severe criticisms of the principal at the North Brunswick High School. (Tr. I-19) He further stated that he and other teachers were employed for one week during the summer of 1973 to rewrite courses of study for the

You are viewing an archived copy from the New Jersey State Library.

ensuing year. (P-10, Tr. II-124, 132, 141) He stated that he was never told of any such problems as those given by the Board as reasons for his nonrenewal, which reasons he believes to be invalid and untruthful. (Tr. I-60-64, 99-103; Tr. XIV-84, 90) In this regard petitioner testified that he had such meaningful interaction with pupils that 500 pupils signed a petition requesting that he and another teacher remain as teachers and demonstrated on their behalf at the school after they were notified they would not be rehired. (Tr. I-101-104; P-13) Petitioner testified further that he was told by the principal in March 1974 that he would be favorably recommended only if he resigned. (Tr. I-92)

Pupils called on behalf of petitioner testified that they had observed that he planned well, gave individual attention, was patient, imaginative, efficient, well organized and a strict disciplinarian. They further attested that he adapted his lessons well to the needs of both slow and rapid learners. (Tr. I-127-134; Tr. III-4-11, 25-39, 85-92) A pupil who edited the *Raider Review* testified that, after the principal had discussed with him and petitioner the advisability of deleting certain articles from the publication, he heard loud and quarrelsome voices coming from the room where petitioner and the principal remained. The pupil testified that the principal had allowed a free exchange of opinion at their meeting and that no articles, including one lamenting the loss of petitioner to the school system (R-4), were in fact deleted. (Tr. II-5-12, 15-20, 35)

One pupil testified that, although petitioner had assigned him 104 detentions during the 1973-74 school year, he did not perceive such assignment to be unfair since he had been frequently talking and "goofing off" during class. (Tr. XIV-46)

One of petitioner's fellow teacher negotiators testified that the Board negotiators appeared visibly upset at times during negotiating sessions and that their hostility was directed primarily at petitioner as a "tough" spokesman for the teachers' negotiating team. (Tr. V-17-23) He testified that petitioner, nevertheless, was not prevented from making such comments as he wished. The then Association president, stated that he observed no hostility during negotiations other than a mere raising of voices. He related that during coffee breaks the members of both negotiating teams socialized freely and that at such times he observed no signs of animosity directed toward petitioner by members of the Board. (Tr. V-57-58, 61-65, 78)

One teacher who had observed petitioner's classes a number of times in a non-supervisory capacity during 1972-73 testified that he had observed meaningful interaction between petitioner and his pupils, that he considered his lessons to be well planned and presented and adapted to individual needs. (Tr. V-106-111) The curriculum coordinator who had reviewed petitioner's lesson plans during 1972-73 stated that, although he is not certificated as a supervisor, he believed petitioner's lesson plans both during that year and as entered in evidence for the 1973-74 school year (P-12) to be appropriate and consistent with the requirements of the school district. (Tr. XIV-53-56, 72-73)

A citizen, James Richards, testified that when he inquired of a Board member John Korzun the reasons why petitioner was not rehired, he was told

You are viewing an archived copy from the New Jersey State Library.

that it was because petitioner was a troublemaker and had designed strategies to embarrass the Board during negotiations and had led to a "slowdown" of teachers. He further testified that Mr. Korzun had stated to him that he would deny making such statements if he repeated them. (Tr. II-61)

It is argued in petitioner's Brief that the decision not to employ petitioner, if based in whole or in part on his actions as a negotiator or building representative or in pursuing grievances and disputes with his principal, is illegal and must be set aside. Petitioner asserts that the nonrenewal of a teacher's contract must not be based upon the teacher's engagement in constitutionally protected activities, actions or expressions. In this regard, *inter alia,* the following are cited: *Pietrunti v. Board of Education of Brick Township,* 128 *N.J. Super.* 149 (*App. Div.* 1974), *cert.* den. 65 *N.J.* 573 (1974); *Perry v. Sindermann,* 408 *U.S.* 593 (1972); *Marilyn Stein v. Board of Education of North Bergen, Hudson County,* 1975 *S.L.D.* 524, dismissed State Board of Education 531; *Elizabeth Rockenstein v. Board of Education of Jamesburg, Middlesex County,* 1974 *S.L.D.* 260, 1975 *S.L.D.* 191 (decided March 20, 1975), aff'd State Board of Education 199, aff'd Docket Nos. A-3916-74, A-4011-74 New Jersey Superior Court, Appellate Division, July 1, 1976.

Petitioner argues that his actions and activities, even if carried out in a vocal, persistent and militant fashion, may not legally contribute in whole or in part to a decision not to renew his employment. (Petitioner's Brief, at p. 20) In this regard petitioner cites *Harvard v. Bushberg Brothers,* 137 *N.J. Super.* 537 (*App. Div.* 1975) wherein the Court stated:

> "***[I]t is not necessary that the sex discrimination be the sole reason for the employment practice under attack. If discrimination on the basis of sex played at least a part and was a causal factor in the failure of complainant to be given the job of credit manager, discrimination in violation of the statute has been established.***" (at p. 540)

Similarly, petitioner cites, *inter alia, N.L.R.B. v. Ace Comb Company,* 342 *F.2d* 841 (8 *Cir.* 1965) wherein it was stated that:

> "***[T]he fact that a lawful cause for discharge is available is no defense where the employee is actually discharged because of his union activities.***" (at p. 847)

Petitioner asserts that the facts of the instant controversy demonstrate beyond question that the "***exercise of his protected statutory and constitutional rights (forceful and repeated, but undeniably challenging, irritating and resented) resulted in a nonrenewal of his teaching contract for the 1974-75 school year, regardless of whether there was other valid, non-constitutional reason to do the same.***" (Petitioner's Brief, at p. 26)

Petitioner maintains that his teaching performance during 1973-74 was consistent with that of the prior year when he was reemployed without reservation on the basis of favorable evaluation reports. (*Id.,* at p. 28) He charges

You are viewing an archived copy from the New Jersey State Library.

that the Board's listing of reasons in J-1 was but a pretext to mask the underlying resentment on the part of the Board, the principal and the area coordinator which, he alleges, stemmed from petitioner's exercise of free speech and organizational activities. (*Id.*, at p. 29) Petitioner grounds this accusation on the testimony of James Richards, *ante,* on the fact that a pupil strike and demonstration in support of petitioner had occurred four days prior to April 9 when the Board's decision was reached, and on the evident disagreements which had arisen between petitioner and his principal and area coordinator. (*Id.*, at pp. 32-37)

Petitioner argues that both the area coordinator and the principal developed a bias and resentment against him when he engaged in the aforementioned protected activities. He asserts that their recommendations for nonrenewal are fatally flawed and tainted by their bias, and that the actions of the Superintendent and the Board are likewise flawed because of their reliance upon their subordinates' recommendations. (*Id.*, at pp. 38-40) Accordingly, petitioner urges that the Commissioner direct the Board to reinstate petitioner to his former teaching position with lost earnings, less applicable mitigation. (*Id.*, at p. 42) *North Bergen Federation of Teachers, Local 1060, AFT, AFL-CIO and Beth Ann Prudente v. Board of Education of the Township of North Bergen, Hudson County,* 1975 *S.L.D.* 138; *Rockenstein, supra*

The hearing examiner herewith proceeds to summarize relevant testimony of witnesses called by the Board:

The principal testified in regard to the grievance filed by petitioner. (P-2) He said that he at no time refused to allow him to miss faculty meetings to attend his graduate class, but that he required notification in advance of his absence, which petitioner had failed to give. He further testified that he had advised petitioner that he should check with his graduate professor about the possibility of being late to class in order to attend at least part of any faculty meeting that coincided with a graduate class. (Tr. VI-9)

The principal related that during the summer of 1973, when petitioner was employed for one week to write a seventh grade social science course of study subject to review by the area coordinator, he became aware of a distinct conflict of opinion between petitioner and himself concerning pupil failures. In this regard he said that they agreed that pupils should fail if they did not work, but that they differed philosophically on the value of retention as it related to ultimate pupil success. (*Id.*, at p. 5)

The principal related that, in his own classroom evaluations of petitioner, he had made both favorable and unfavorable comments upon his teaching performance. (Tr. X-78) He stated that among his concerns were petitioner's propensity to call certain pupils by their last names against their wishes, and his use of "killer statements" in cutting off pupil responses which caused them to become passive listeners by stifling pupil initiative to recite. (Tr. VI-58, 63, 174-175; Tr. VII-5-7; Tr. X-52-53, 67) He similarly expressed displeasure over petitioner's lack of forward progress with required units. (Tr. VII-34)

You are viewing an archived copy from the New Jersey State Library.

The principal also testified of his anxiety over the high rate of pupil failure in petitioner's classes and over numerous pupil complaints both to himself and to guidance counselors that petitioner was rigid, inflexible, unreasonable, insulting, and demeaning. (Tr. VI-61, 66-67, 90; Tr. VII-30-33; Tr. X-53) In this regard he expressed concern that numerous pupils had requested transfers from petitioner's classes. (Tr. VII-30)

The principal also related his dissatisfaction over petitioner's lesson plan book which on one occasion had not been available when he visited the class, and which he found to be vague and lacking in specificity as applying to the particular needs of individual classes and pupils. He admitted, nevertheless, that no written instructions for plan books had been issued to the faculty at large. (Tr. VI-34, 47, 53-57; Tr. VII-13) Similar dissatisfaction was expressed by the principal over one incident when petitioner deprived his pupils of instruction while engaging in a colloquy with another faculty member outside his classroom while class was in progress. (Tr. VII-41; R-19)

The principal admitted that he was disturbed that his philosophy of what was appropriate to print in a school newspaper differed sharply from that of petitioner, but denied that he had at any time censored copy for the *Raider Review.* (Tr. VII-48-49)

The principal also related that he had grave concern over petitioner's approval of the economic aspects of prostitution as a research paper topic for a fourteen year old pupil, especially when the school library contained no adequate references to assist in the completion of such an assignment. This opinion on the unavailability of references was corroborated by the school librarian who stated that she had advised that pupil in petitioner's presence of the lack of source material for such a paper. (Tr. XIII-54-59) The principal testified that he became aware of this report, to which petitioner had assigned a failing grade, when he chanced upon an unattended pile of such reports lying on the school playground. He testified that when he asked petitioner about the reports, he was told that they had been given as examples to another pupil who was having difficulty completing his own report. The principal averred that, although some of the reports were satisfactory, it was of questionable educational value to provide a failing report as a model to a pupil who needed assistance. (Tr. VI-35-43)

In regard to petitioner's allegation that he had harassed him because of his Association activities, the principal testified as follows:

> "***I said, [to petitioner] 'John, there's absolutely no way I can or will interfere with you in terms of your negotiating role. I have nothing to do with that and it doesn't concern me. I want to run the school.'***"
>
> (Tr. VI-116)

The principal further testified that he reviewed petitioner's teaching performance with the social studies coordinator, and the vice-principal and determined not to recommend his reemployment. (Tr. VI-64) He stated that he

You are viewing an archived copy from the New Jersey State Library.

thereafter recommended to the Superintendent and the Board that petitioner not be offered reemployment for reasons in no way connected with his role as a negotiator but based solely on his professional conduct. He stated further that, when he met with the Superintendent and the Board to consider the matter, no one made any reference to petitioner's role as a negotiator but confined their considerations to petitioner's classroom observation reports, summary evaluation and his teaching performance. (Tr. VI-116-117) In regard to a recommendation for employment elsewhere, the principal testified that he had consistently advised petitioner that he would give him the best recommendation that he could. (Tr. VI-115)

Petitioner's social studies area coordinator for 1973-74 testified that, on the basis of his independent assessment, he concurred with the principal's recommendation not to reemploy petitioner. (Tr. VIII-124) He related that, when he had invited petitioner and others to make written comments on proposed sequential social studies offerings, petitioner's unprofessional comment on a proposed prejudice and discrimination unit was, "Bullshit." (Tr. VIII-68; R-27) He further stated that petitioner's unprofessional response to a suggested course on modern American women was: "***To offer the modern American man, the modern American adolescen[t], the modern American transvestite, the modern American Eun[uch] ***." (Tr. VIII-74; R-27) The principal stated also that another such comment on a suggested course entitled Black Man in America was: "***'as soon as you teach one entitled white man in America.'***" (Tr. VIII-70; R-27)

The area coordinator also testified that he had heard petitioner, in private conversations, use deprecating appellations in reference to minorities. He stated that he had cautioned him against the use of such language or any show of prejudice in teaching pupils and that although he was unaware that petitioner had ever used them in his teaching, their continued use in informal conversations was apparent throughout the year. (Tr. VIII-80-86, 159-160) He also related that although petitioner appeared reluctant to teach a required unit on prejudice and discrimination, he did so, but for a shorter period than that which was recommended. (Tr. VIII-121)

The area coordinator characterized petitioner as so rigid and unbending that numerous confrontations and discipline problems were engendered. (Tr. VIII-117, 152-153) He related that on one occasion he counseled petitioner as follows:

> "***[Y]ou know *** everytime you disagree with somebody, you don't have to send in a grievance. Have you ever thought of sitting down *** and getting it solved? *** I just felt that he was not being very professional in terms of his approach to problems.***" (Tr. VIII-122)

The coordinator further related that he found petitioner's lesson plans to be mediocre and that he saw no evidence that petitioner had adopted his recommendations concerning individualized approaches to teaching. He testified that petitioner's assignment of eighteen failing grades and eighteen incompletes

You are viewing an archived copy from the New Jersey State Library.

in one marking period exceeded by far the total of five failures and three incompletes given by the other two full-time eighth grade social studies teachers. (Tr. VIII-95, 98-99) The coordinator stated that, since pupils were homogeneously grouped, the grade distribution should have been more uniform. (Tr. IX-57)

A teacher called to testify on behalf of the Board related that petitioner had at one time cautioned her against supporting the principal lest she find herself ostracized by her fellow teachers. (Tr. XIII-7) She further stated that, on occasion during her planning period, she had observed petitioner outside his room talking to other faculty members while his class was in session.

Another teacher testified that she had observed that petitioner exhibited a hostility toward blacks, referred to them in derogatory fashion, and had expressed a desire to shorten the unit on prejudice and discrimination. (Tr. XIII-17-18)

It was testified by the director of guidance that by October 30, 1973, eighteen pupils had requested transfers from petitioner's classes, which total rose to forty-two requests from twenty-eight different pupils during the 1973-74 academic year, as compared with a schoolwide average of approximately three per teacher. (Tr. XII-14-18) He related that the reasons given by those pupils were that petitioner was unfair, cruel, rude, insulting and that he gave unreasonable punishments and assignments. He stated that requests for transfers were denied in order to preserve the integrity of team teaching units but that the complaints persisted throughout the year. (Tr. XII-20-28, 30, 35, 45)

Pupils called by the Board as witnesses testified, *inter alia,* that petitioner referred to them by their last names against their wishes and on occasion used deprecating terms such as fat, ugly, or liar. They stated that he used expletives such as hell, damn it and Jesus, and that he frequently yelled and slapped a pointer on the desk. They complained that he gave frequent detentions for insignificant offenses and gave them little or no extra assistance when their grades dropped to failing. One pupil testified that, when she submitted a punishment assignment, she was embarrassed by petitioner when he tore it up in front of her face before the class. (Tr. VII-70-79, 92, 109-118, 144-146; Tr. VIII-5-16, 27, 30; Tr. IX-60-64; Tr. X-8-17)

The pupil who had submitted a report on the economics of prostitution could not, in fact, recall the title of his report but related that the only sources of information he had found was a reference work in the library and a book in his home. He stated that petitioner had approved his topic and, although he had advised him that he would have difficulty procuring sources, petitioner had offered no assistance in that regard. (Tr. VII-109-112, 132)

Testimony by the assistant principal who had observed petitioner's classes was generally corroborative of that of the principal. He stated that he found petitioner to be too rigid and inflexible to meet the needs of pupils of lower academic ability and that he was lax in his classroom management. He testified

You are viewing an archived copy from the New Jersey State Library.

that, although he did not formally recommend teachers for renewal, he fully concurred with the principal's recommendation for nonrenewal. (Tr. XIII-66-69, 71-74, 81, 89, 92-97)

The Assistant Superintendent, who had regularly reviewed petitioner's classroom observation reports and evaluation reports, also testified that he concurred with the recommendation for nonrenewal. He testified that, in relation to petitioner's nonrenewal, he was aware of no discussion by the Board of petitioner's role as a negotiator or of any action of a Board member seeking a negative recommendation of petitioner because of his Association activities. (Tr. XIII-32-34) He further averred that petitioner's recommendation for employment elsewhere would not and could not be based on whether or not he resigned. (Tr. XIII-41)

The Superintendent testified that his own unfavorable recommendation of petitioner was based on a review of petitioner's written evaluations and on the principal's stated concerns that he did not plan properly, failed too many pupils, involved too few pupils in class discussions, generated a large number of complaints and referrals to guidance counselors, and his overall performance as a teacher. (Tr. XI-6, 12-14, 16-34, 39) The Superintendent related that, in June, after the opinion in *Donaldson, supra,* was issued, he reviewed the evaluation reports, conferred with his subordinates and articulated the statement of reasons for nonrenewal which was issued by the Board to petitioner in J-1. (Tr. XI-46, 79) He testified that he reached the conclusion that petitioner did not show the sensitivity that was required in working with people as a teacher. He testified further that he had no knowledge of any action against petitioner taken by the Board or any administrator as the result of his role as a negotiator. (Tr. XI-34-35, 87)

The Board President testified that, as an experienced negotiator, she noted no unusual problems during the negotiations in which petitioner participated. In this regard she testified as follows:

> "***[I]f anyone spoke loudly from our team to their team, it was our team representing our position just as when they spoke loudly to us, it was their team representing their position. And *** we were able, when we were away from the table, to speak to each other in very civil and very social terms.***" (Tr. XI-116)

The Board President testified further that in connection with petitioner's non-reemployment, there was no discussion by the Board concerned with his techniques or demeanor during negotiations. She denied that in any meetings of the Board petitioner was referred to in derogatory manner. (Tr. XI-100, 111-116) She testified that, when *Donaldson, supra,* was promulgated, the Board authorized issuance of a statement of reasons (J-1) and afforded petitioner an informal appearance at which he was not limited in presenting evidence or testimony on his behalf. She related that the Board made no decision on the evening of the informal appearance but gave opportunity for Board members to investigate the matter as they chose prior to making the determination on July

You are viewing an archived copy from the New Jersey State Library.

30 not to reemploy petitioner. The Board President testified that she knew of no retaliation against petitioner resulting from his negotiating activities, and that she had personally reviewed all of petitioner's written evaluations both prior to voting for his nonrenewal in March and subsequent thereto. (Tr. XI-103, 106-107, 111) She further testified that when the Board had made its initial determination on March 19 not to reemploy petitioner, she was oblivious to the existence of the numerous grievances which petitioner had filed with the administrators. (Tr. XI-136)

The testimony of other Board members at least two of whom made an independent assessment of all of petitioner's written evaluations, as well as that of those whose testimony was stipulated by the parties, was corroborative of the testimony of the Board President and indicative that substantial reliance was placed on the recommendation of administrators. (Tr. XI-154, 163-164, 151-166; Tr. XIII-108-111, 115)

John Korzun, the Board member who was alleged by James Richards to have referred to petitioner as a troublemaker, denied that he had used such an appellation. (Tr. XIII-120) He testified that he could not have accused petitioner of leading a slowdown of teachers, inasmuch as he had no knowledge of such a slowdown. Finally, he stated that Mr. Richards' reference to his alleged statement that he would deny assertions attributable to him stemmed from a remark he had made at a public Board meeting when he openly and in anger accused Mr. Richards of misquoting him and distorting the substance of their previous telephone conversation. (Tr. XIII-120-132)

The Board argues that its decision not to renew petitioner did not violate his constitutional or statutory rights but was properly grounded on his inadequate record as a teacher as reflected in his written evaluations and the adverse recommendations of his supervisors and administrators. (Respondent's Brief, at pp. 29-30) The Board contends that, absent proof that its decision was arbitrary, capricious, contrary to statute or constitutional protection, its action taken pursuant to *N.J.S.A.* 18A:27-10 is entitled to a presumption of correctness. *Thomas v. Board of Education of Morris Township,* 89 *N.J. Super.* 327, 332 (*App. Div.* 1965), aff'd 46 *N.J.* 581 (1966); *Sallie Gorny v. Board of Education of the City of Northfield et al.,* 1975 *S.L.D.* 669; *George A. Ruch v. Board of Education of Greater Egg Harbor Regional High School District, Atlantic County,* 1968 *S.L.D.* 7 In this regard the Board cites also, *inter alia, Porcelli v. Titus,* 108 *N.J. Super.* 301 (*App. Div.* 1969), *cert.* den. 55 *N.J.* 310 (1970) wherein the Court stated:

> "***We endorse the principle, as did the court in *Kemp v. Beasley,* 389 *F.2d* 178-189 (8 Cir. 1968), that 'faculty selection must remain for the broad and sensitive expertise of the School Board and its officials'***."
>
> (at p. 312)

Similarly the Board cites *Frederick J. Procopio, Jr. v. Board of Education of Wildwood, Cape May County,* 1975 *S.L.D.* 805, aff'd State Board of Education April 17, 1976 wherein was reaffirmed that which had been

You are viewing an archived copy from the New Jersey State Library.

previously stated by the Superior Court in *Michael A. Fiore v. Board of Education of the City of Jersey City, Hudson County,* Docket No. A-429-63 New Jersey Superior Court, Appellate Division, January 14, 1975 (1975 *S.L.D.* 177) as follows:

> "***The Legislature has committed the operation of local schools to district boards of education. It has provided a system of administrative appeals from such boards to the Commissioner, *R.S.* 18:3-14, and thereafter to the State Board, *R.S.* 18:3-15. The powers of boards of education in the management and control of school districts are broad. *Downs v. Board of Education, Hoboken,* 12 *N.J. Misc.* 345, 171*A.* 528 (*Sup. Ct.* 1934), affirmed *sub nomine Flechtner v. Board of Education of Hoboken,* 113 *N.J.L.* 401 (*E.&A.* 1934). Subject to statutes relating to tenure, they are vested with wide discretion in determining the number of employees necessary to carry out the program, the services to be rendered by each and the compensation to be paid for such services. Where a board, in the exercise of its discretion, acts within the authority conferred upon it by law, the courts will not interfere absent a showing of clear abuse. 78 *C.J.S., Schools and School Districts,* § 128, p. 920; *Boult v. Board of Education of Passaic,* 135 *N.J.L.* 331 (*Sup. Ct.* 1947), affirmed 136 *N.J.L.* 521 (*E. &A.* 1948). *** In short, we may not substitute our discretion for that of the local board, nor may we condemn the exercise of the board's discretion on the ground that some other course would have been wiser or of more benefit to the parties or community involved. *Boult, supra.* (136 *N.J.L.* at p. 523).***" (at p. 178)

The Board contends that petitioner has failed to prove what must be viewed as bare allegations of issues of constitutional dimensions and that the Petition of Appeal must, accordingly, be dismissed. In this regard, it cites *Trap Rock Industries, Inc. v. Kohl,* 63 *N.J.* 1 (1973). Similarly, the Board quotes *Zimmerman v. Board of Education of Newark,* 38 *N.J.* 65 (1962), *cert.* den. 371 *U.S.* 956 wherein the New Jersey Supreme Court stated:

> "***Inherent in the tenure legislation is the policy that a Board's duty to hire teachers requires more than merely appointing licensed instructors; it demands that permanent appointments be made only if the teachers are found suitable for the position after a qualifying trial period. In essence this constitutes a 'proving out' period. In another context, we said in *Cammarata v. Essex County Park Comm'n,* 26 *N.J.* 404, 412 (1958):
>
> > 'It is difficult to evaluate the character, industry, personality, and responsibility of an applicant from his performance on a written examination or through cursory personal interviews. Knowledge and intelligence do not alone [suffice] ***. The crucial test of his fitness is how he fares on the job from day to day when suddenly confronted by situations demanding a breadth of resources and diplomacy. Many intangible qualities must be taken into account, and, since the lack of them may not constitute good cause for dismissal under a tenure statute, the [employer] *** is entitled to a

You are viewing an archived copy from the New Jersey State Library.

> period of preliminary scrutiny, during which the protection of tenure does not apply, in order that it may make pragmatically informed and unrestricted decisions as to an applicant's suitability.'
>
> "The same thoughtful philosophy applies with manifold emphasis to the selection of school teachers. See *Morris, supra,* 149 *F.2d,* at p. 708.***" (at pp. 72-73)

The Board avers that the soundness of its judgment as based on the recommendation of its administrators is amply buttressed and validated within the context of the hearing by a showing of inadequacies in petitioner's professional performance. (Brief of Respondent, at pp. 50-55) *Phebe Baker v. Board of Education of Lenape Regional High School District et al., Burlington County,* 1975 *S.L.D.* 471

The Board, in conclusion, argues that petitioner as a nontenured teacher had no vested right in continued employment. *Gorny, supra* It is argued that petitioner displayed not only an inadequate teaching performance but also exhibited a negative and unprofessional attitude and conduct with pupils, administrators and other teachers. In this regard, the Board cites, *inter alia, Pietrunti, supra,* wherein the Court stated:

> "***A teacher is expected to exhibit loyalty to the district in which he or she is employed and to cooperate with the administration in seeking the educational goal. Appellant would relegate a teacher to a 'rank and file' member of an organization who seeks some communal goal of self-aggrandizement. It is the individuality each teacher brings to the educational scheme that contributes to educational success; that individuality, however, must be sublimated to the educational goal. *A teacher is expected to show a reasonable respect for the authority of his or her employer and to maintain a civility commensurate with his or her professional status.****" (*Emphasis added.*) (128 *N.J. Super.* at 165)

See also *Board of Regents v. Roth,* 408 *U.S.* 564 (1972).

The Board avers that petitioner's contract expired by its own terms and that its exercise of discretion in not renewing his employment was untainted and solely within its own discretionary statutory authority. *Procopio, supra; Gorny, supra*

The hearing examiner, after a careful examination of the extensive testimony and documentary evidence in the records, makes the following findings of fact concerning those seven conflict situations previously described:

1. Petitioner was at no time deprived by the principal of his privilege to attend graduate class. He had failed to give the principal the courtesy of advance notice of the necessity to miss a faculty meeting, a courtesy upon which the principal insisted. (R-8) Such notice was upheld by the Superintendent as a requirement for any future faculty meetings to be missed. (P-7) Nor is there

You are viewing an archived copy from the New Jersey State Library.

evidence in support of petitioner's allegation that this incident was a pertinent factor in the principal's recommendation for nonrenewal.

2. A successor agreement was negotiated by the Association and the Board with no emotionalism, conflicts or animation except those common to the process of collective negotiations, In this instance a successor agreement was achieved with a high degree of civility and without the necessity of resorting to impasse, fact-finding or mediation. (Tr. V-43, 86) Nor was petitioner restricted in his function as chief negotiator or made the object of excess anger or emotion during or after negotiation sessions. (Tr. V-44, 58, 65, 78) The record is devoid of credible evidence in support of petitioner's allegations that the Board retaliated against him because of his negotiation activities.

3. The divergent views of the principal and petitioner in regard to the appropriateness of retention of pupils were aired openly during the summer of 1973 but thereafter were never a continuing source of acrimony or conflict.

4. Petitioner was in disagreement with unfavorable evaluations by the principal but was allowed full opportunity to express his dissent in writing or in conference sessions. Neither the demeanor of the principal at the hearing, his written responses nor the record herein support petitioner's charge that he was the object of retaliation or reprisal by the principal.

5. Petitioner and the Association were allowed full opportunity to grieve the requirements placed on them by the LAI period. The matter was ultimately settled and the LAI program continued. The hearing examiner finds no evidence in the record to support a conclusion that petitioner was denied freedom of expression or made the object of retaliation for having exercised this right on behalf of the Association.

6. Similarly, the record is supportive of the conclusion that petitioner was given full opportunity to offer his opinions of material to be printed in the *Raider Review.* No censorship was exercised by the principal. Nor is there credible evidence within the record that the principal acted in retaliation against petitioner for his stance regarding articles in the school newspaper.

7. The record is supportive of the conclusion that petitioner exercised his freedom of expression by criticizing in something less than a tactful manner the relocation of the area coordinators' offices. It is true that petitioner's area coordinator and others took umbrage at the sharpness of his criticism and responded in kind. Nevertheless, in the opinion of the hearing examiner, the record fails to sustain a conclusion that, as a result of this exchange of opinion, petitioner was made the object of illegal retaliation or reprisal.

The hearing examiner finds nothing in New Jersey law that compels a Board to prove, as in a hearing on tenure charges, the reasons it gives to a nontenured teaching staff member for nonrenewal. Nevertheless, in such a forum relevant testimony often brings forth numerous pertinent facts. Accordingly, certain additional findings of fact are herein set forth since they enlarge the known contextual pattern surrounding this dispute.

You are viewing an archived copy from the New Jersey State Library.

Although petitioner related well to many pupils, he had, during the 1973-74 school year, serious problems of rapport with numerous of his pupils of varying abilities. Many of his difficulties with pupils, supervisors and administrators, resulted from tactless, unprofessional remarks and attitudes.

The hearing examiner concludes, after a careful review of the record, that the supervisors and administrators, all of whom unanimously recommended nonrenewal, did so on the basis of petitioner's total teaching performance which they found to be unsatisfactory as evidenced by their assessment of his classroom observations and evaluations which in their opinion did not meet a level of professionalism consistent with the standards and goals of the school district. In this regard petitioner's communications, observations and evaluations evidence a concern over his performance in the following areas:

1. Development of lesson plans (J-4, 5, 11; R-11, 14, 16, 21, 23, 24A, 24C, 31);

2. Assistance for slow learning and failing pupils (J-5, 6, 23);

3. Handling of pupil problems (J-6; R-11);

4. Individualization of instruction (J-9);

5. Assignment of work to pupils of differing ability (R-11, 23, 24A);

6. Involvement of all pupils in the teaching process (R-11, 24A);

7. Teacher-pupil working relationships (R-11, 12, 21, 24C, 31);

8. Professional relationships with other teaching staff members (R-19, 20, 21, 27, 30, 31; P-17).

These written concerns coordinate closely with the reasons given petitioner for nonrenewal. When considered *in pari materia* with the testimony of petitioner's superiors and that of the Board members, they lead to the conclusion that neither the Board nor its agents in their recommendations, decision or the reasons given for nonrenewal resorted to subterfuge or deception or in any way violated petitioner's constitutional or statutory rights. Absent such taint or flaw, and absent a showing that petitioner was denied due process, it is recommended that the Commissioner determine that the Board's decision was one of reasoned judgment made totally within its discretionary authority conveyed by statute. *N.J.S.A.* 18A:11-1 *et seq.; Boult, supra; Thomas, supra; Quinlan v. Board of Education of North Bergen,* 73 *N.J. Super.* 40 (*App. Div.* 1962); *Gorny, supra; Ruch, supra; Porcelli, supra; Procopio, supra* Accordingly, it is recommended that the Board's Motion to Dismiss, held in abeyance for action of the Commissioner, be granted.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record of the instant matter including

You are viewing an archived copy from the New Jersey State Library.

the hearing examiner report. No exceptions to the report were filed by either party pursuant to the provisions of *N.J.A.C.* 6:24-1.17(b). The hearing examiner's findings of fact are accepted by the Commissioner as his own. The Commissioner is constrained to repeat his statement *In the Matter of the Tenure Hearing of Joseph A. Maratea, Township of Riverside, Burlington County,* 1966 *S.L.D.* 77; aff'd State Board of Education 106; aff'd New Jersey Superior Court, Appellate Division, 1967 *S.L.D.* 351 as follows:

> "***The Commissioner is assiduous to protect school personnel in their employment when they are subjected to unfair and improper attacks or when they are unable to perform effectively because of conditions not of their own making or beyond their control.***" (at p. 106)

Such protection is no less applicable to nontenured teaching staff members. *Prudente, supra; David Payne v. Board of Education of the Borough of Verona, Essex County,* 1976 *S.L.D.* 543, aff'd State Board of Education 554; *Rockenstein, supra; Stein, supra* The Courts have similarly held that boards of education may not exercise their discretion in an arbitrary or unreasonable manner. *Cullum v. North Bergen Board of Education,* 15 *N.J.* 285 (1954)

In the instant matter petitioner has failed to sustain his burden of setting forth the preponderance of credible evidence required to support a determination that the Board was either motivated by or the perpetrator of such improbity. Accordingly, the Board's determination that petitioner should not continue to teach in its school is entitled to a presumption of correctness. *Thomas, supra; Kemp, supra; Porcelli, supra* Nor is the Board under a burden in such an action to prove its reasons for non-reemployment. As was said by the State Board of Education in *Long Branch Education Association and William Cook v. Board of Education of the City of Long Branch, Monmouth County,* 1976 *S.L.D.* 1150:

> "***In the matter of the reemployment of a nontenure teacher, it is not incumbent upon the Long Branch Board of Education to prove its reasons as in a hearing of charges against a tenured employee.***" (at p. 1151)

The Commissioner stated previously in *Pietrunti, supra,* that:

> "****[L]ocal boards of education which are required by constitutional prescription to operate thorough and efficient systems of public education, cannot be expected to carry out this mandate in an atmosphere of turmoil and conflict between school administrators and other employees.* ***" (*Emphasis supplied.*) (1972 *S.L.D.*, at pp. 427-428)

Civility and reasonable respect are required of every teaching staff member in his professional relationship with peers and supervisors. The Commissioner finds appropos the words of the United States District Court (Wyoming) in *Schmidt v. Fremont County School District No. 25, State of Wyoming et al.,* 406 *F. Supp.* 781 (1976). Therein, the Court said of a nontenured principal whose strident comments were directed at his peers, his school and his employing board:

You are viewing an archived copy from the New Jersey State Library.

> "***He was permitted to say what he wished to, but in so doing he hurt his image in the board's eyes.***" (406 *F. Supp.*, at p. 784)

And,

> "***[T]he evidence shows that the reasons of the defendant board for his termination were a disappointment in his performance, a lack of confidence in him, and a conclusion that it was in the best interests of the school to seek stronger leadership. These are matters in which the defendant school district, as an employer, had a legitimate interest. *The right to unfettered speech, to say one's mind without reserve and in strong tones, does not include a concomitant privilege of stoppering the ears of one's listeners to prevent them from using their faculties to make a judgment of the speaker, especially when they are public officials charged with a duty to do so.****" (*Emphasis supplied.*) (406 *F. Supp.*, at p. 787)

See also *Baker, supra.*

Petitioner, having failed to sustain the burden of proof of his allegations which the law imposes, is not entitled to the relief which he seeks. Accordingly, the Board's Motion to Dismiss is granted.

COMMISSIONER OF EDUCATION

March 15, 1977

Board of Education of the Township of Middletown,

Petitioner,

v.

Township Committee of the Township of Middletown, Monmouth County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Norton and Kalac (Peter P. Kalac, Esq., of Counsel)

For the Respondent, Peter P. Frunzi, Jr., Esq.

Petitioner, the Board of Education of the Township of Middletown, hereinafter "Board," appeals from an action of the Township Committee of the Township of Middletown, hereinafter "Committee," taken pursuant to *N.J.S.A.* 18A:22-37 certifying to the Monmouth County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than

You are viewing an archived copy from the New Jersey State Library.

the amount proposed by the Board in its budget which was rejected by the voters. The facts of the matter were adduced at a hearing conducted on June 28, 1976 at the State Department of Education, Trenton, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

At the annual school election held March 9, 1976, the Board submitted to the electorate proposals to raise $15,130,630 by local taxation for current expense costs of the school district. These items were rejected by the voters and, subsequent to the rejection, the Board submitted its budget to the Committee for its determination of the amounts necessary for the operation of a thorough and efficient school system in the Township of Middletown for the 1976-77 school year, pursuant to the mandatory obligation imposed on the Committee by *N.J.S.A.* 18A:22-37.

After consultation with the Board, the Committee made its determinations and certified to the Monmouth County Board of Taxation an amount of $14,905,260 for current expenses. The pertinent amount in dispute is shown as follows:

	Current Expense
Board's Proposal	$15,130,630
Committee's Proposal	14,905,260
Amount Reduced	$ 225,370

The Board contends that the Committee's action was arbitrary, unreasonable, and capricious and documents its need for restoration of the reductions recommended by the Committee with written testimony and a further oral exposition at the time of the hearing. The Committee maintains that it acted properly and after due deliberation and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system. The Committee also supports its position with written and oral testimony. As part of its determination, the Committee suggested specific line items of the budget in which it believed economies could be effected as follows:

Account Number	**Item**	**Board's Proposal**	**Committee's Proposal**	**Amount Reduced**
CURRENT EXPENSE:				
J110	Program Dir.	$ 17,500	$ 2,500	$ 15,000
J211	Sal., Prins.	649,080	643,080	6,000
J212	Sal., Supvr.-New	50,000	—0—	50,000
J213	New Staff	92,623	42,623	50,000
J220	Textbooks	35,877	27,877	8,000
J230	Lib. Books	21,623	10,000	11,623
J231	AV Aids	12,143	7,143	5,000
J240	Teach. Supls.	64,747	45,000	19,747
J250	Other Exps. Instr.	56,590	31,590	25,000

You are viewing an archived copy from the New Jersey State Library.

J520	Trans. Contr.	608,000	598,000	10,000
J550	Other Maint. Exps.	47,500	22,500	25,000
	TOTALS	$1,655,683	$1,430,313	$225,370

It is observed that the Board has an appropriation of $2,474,434 in unbudgeted State aid funds including categorical aid for compensatory and bilingual programs and that such categorical aid totals $31,132.

There appears no necessity to deal *seriatim* with each of the areas in which the Committee recommended reduced expenditures. As the Commissioner said in *Board of Education of the Township of Madison v. Mayor and Council of the Township of Madison, Middlesex County,* 1968 *S.L.D.* 139:

> "***The problem is one of total revenues available to meet the demands of a school system***. The Commissioner will indicate, however, the areas where he believes all or part of Council's reductions should be reinstated. It must be emphasized, however, that the Board is not bound to effect its economies in the indicated items but may adjust its expenditures in the exercise of its discretion as needs develop and circumstances alter.***"
>
> (at 142)

The hearing examiner sets down for consideration by the Commissioner the reinstatement of the following curtailments recommended by the Committee as being necessary to insure an adequate school program in the school district.

Account Number	Item	Amount of Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
J110	Program Director	$ 15,000	$ –0–	$15,000
J211	Sal., Prins.	6,000	–0–	6,000
J212	Sal., Supvr.-New	50,000	50,000	–0–
J213	New Staff	50,000	40,000	10,000
J220	Textbooks	8,000	8,000	–0–
J230	Lib. Books	11,623	–0–	11,623
J231	AV Aids	5,000	–0–	5,000
J240	Teaching Supls.	19,747	19,747	–0–
J250	Other Exps. Instr.	25,000	25,000	–0–
J520	Trans. Cont.	10,000	10,000	–0–
J550	Other Maint. Exps.	25,000	15,000	10,000
	TOTALS	$225,370	$167,747	$57,623

In summary the hearing examiner recommends that $167,747 of the reduction for current expense deemed appropriate by Committee be restored by the Commissioner for use by the Board in its conduct of a thorough and efficient educational program in Middletown for the 1976-77 academic year. The hearing examiner further recommends that the Commissioner consider restoration of this sum from unbudgeted State aid which would have no effect on the local tax levy for school purposes for the 1976-77 school year.

You are viewing an archived copy from the New Jersey State Library.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner and notes that no exceptions to it have been filed by counsel. The Commissioner accepts the recommendations of the hearing examiner and determines that an additional amount of $167,747 is required to be provided for use by the Board in the 1976-77 academic year. Such amount is available in unbudgeted State aid as the result of passage by the Legislature of *c.* 113, *L.* 1976 and no additional tax levy is required. This addition shall increase the adjusted current expense school budget to $15,073,007.

It is so ordered this 15th day of March 1977.

COMMISSIONER OF EDUCATION

"T.M.," parent of "F.L.," a minor,

Petitioner,

v.

Board of Education of the Lower Camden County Regional High School District Number One, Camden County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Nicholas J. Giampetro, Esq.

For the Respondent, Maressa, Daidone & Wade (John D. Wade, Esq., of Counsel)

T.M., mother of F.L., a sixteen year old pupil enrolled in the eleventh grade of the Overbrook Regional High School which is under the control of the Board of Education of the Lower Camden County Regional High School District Number One, Camden County, hereinafter "Board," alleges that the action of the Board by which F.L. has been suspended from school attendance for the remainder of the 1976-77 academic year is procedurally defective and is in violation of prior holdings of the Commissioner of Education. Petitioner seeks interim relief by way of home instruction pending a determination on the merits of the matter. The Board denies the allegations and opposes petitioner's Motion for Interim Relief.

You are viewing an archived copy from the New Jersey State Library.

Oral argument on the Motion was heard March 11, 1977 at the State Department of Education, Trenton, by a representative of the Commissioner. The matter is referred directly to the Commissioner for adjudication. The essential facts of the matter are these:

The Board conducted a disciplinary hearing for F.L. on January 3, 1977. F.L. was charged with attacking a specific teaching staff member with an automobile, a pair of scissors, and his fists. F.L. attacked the teacher with the scissors and with his fists during a meeting with school officials and his mother which was conducted to discuss an earlier attack upon the teacher by F.L. with an automobile. (C-4)

Subsequent to the hearing, the Board determined to suspend F.L. from school attendance until September 1977 at which time F.L. may apply for readmission to school enrollment. Petitioner enters no complaint with respect to proper notification of the hearing, the conduct of the hearing, or the findings of the Board that the charges are true in fact. Petitioner does not contest the propriety of the Board considering F.L.'s entire disciplinary record at the suspension hearing which, she asserts, consists of his threatening another teaching staff member on September 14, 1976; truancy on September 21, 1976; unacceptable behavior on September 27, 1976; smoking on October 8, 1976; loitering on October 18, 1976; leaving the school premises without permission on October 25, 1976; truancy on October 29, 1976; chronic lateness to school dated November 19, 1976; unacceptable behavior on November 30, 1976; involvement in fights on December 1 and December 8, 1976. (Petition of Appeal, at pp. 2, 3)

Petitioner alleges that F.L.'s behavioral pattern, manifested by the above-cited instances, has been generally marked by similar occurrences throughout his academic career. Petitioner complains that the Board failed in its responsibility, within the context of these circumstances, to identify and classify F.L. as a pupil in need of a program of special education pursuant to *N.J.S.A.* 18A:46-6 *et seq.* and *N.J.A.C.* 6:28-1.8.

The Commissioner notices that the Board's Child Study Team, hereinafter "Team," evaluated F.L. at his mother's request during October 1975. The Team chairman, in a report (C-3A) dated January 9, 1976, recommended that F.L. be continued in the regular school program. This recommendation was based on the consideration that F.L., who was on probation at that time, was to have been placed in a court-ordered residential facility and/or that F.L. was to be committed to a detention center by the court. (C-3A, at p. 2) The Commissioner notices that F.L. continued in his regular school program for the 1975-76 and 1976-77 academic year until his suspension.

A special report was prepared on May 19, 1976, when, according to the report, F.L. was before the Board in another disciplinary hearing. (C-3, at p. 2) The Director of the Team recommended that F.L. continue in the regular school program because he had not yet been placed in a residential facility.

Finally, the Commissioner notices that petitioner was not notified of her

You are viewing an archived copy from the New Jersey State Library.

right to be heard with respect to either report (C-3A; C-3) cited above, nor was she informed of her right to dispute the proposed recommended program pursuant to *N.J.A.C.* 6:28-1.9(b)3 and 6:28-1.9(b)4.

The Board agrees to have its Team reevaluate F.L., including a psychiatric evaluation, so that its recommendations shall be completed by March 31, 1977. The Board also agrees to abide by the provisions of *N.J.A.C.* 6:28-1.9(b)3 and 6:28-1.9(b)4 by which petitioner shall be informed of the evaluation results and her right to dispute the recommended placement of F.L. as of September 1977.

On this Motion the Commissioner has been presented no convincing arguments why the suspension of F.L. should be set aside. Thus, petitioner's request for such relief is denied.

Petitioner seeks home instruction for F.L. in the areas of history and English during the remainder of his suspension. The Board argues that because of the nature of the attack upon the teacher it would be difficult to secure the services of a properly certificated teacher to accept an assignment working with F.L. at his home. The Commissioner finds this argument speculative. It is obvious from the record that F.L. has encountered serious problems in a structured classroom setting, and it is further obvious that F.L. is presently facing a court hearing on charges brought by the teacher he attacked.

In the Commissioner's judgment, F.L. must be provided home instruction in the areas of history and English until and if the court shall make a determination which would be incompatible with home instruction.

The Commissioner hereby directs the Board to provide home instruction in history and English for F.L. Additionally, he directs that F.L. be reevaluated by the Board's Team and that petitioner be afforded the safeguards of notification and right to appeal pursuant to *N.J.A.C.* 6:28-1.9(b)3 and 6:28-1.9(b)4. An appeal of the Team's recommended program for F.L. must be taken pursuant to *N.J.A.C.* 6:28-1.10. Consequently, no further issues remain to be adjudicated in the instant matter. Therefore, the Petition of Appeal on the Commissioner's own Motion, is hereby dismissed.

COMMISSIONER OF EDUCATION

March 16, 1977

You are viewing an archived copy from the New Jersey State Library.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Nicholas J. Giampetro, Esq.

For the Respondent, Maressa, Daidone & Wade (John D. Wade, Esq., of Counsel)

This matter having originally been opened and decided by the Commissioner of Education (see *T.M.," parent of "F.L.," a minor v. Board of Education of the Lower Camden County Regional High School District Number One, Camden County,* 1977 *S.L.D.*___ (decided March 16, 1977)); and

It appearing that the Commissioner directed the Board to cause its Child Study Team to reevaluate F.L.; and

It appearing that F.L. was reevaluated by the Child Study Team on April 21, 1977 and diagnosed as being socially maladjusted; and

It appearing that the Child Study Team recommended the immediate placement of F.L. at the Archway School for on-going psychotherapy, counseling, behavior modification, and an appropriate instructional program; and

It appearing that the Board determined on May 2, 1977 to continue the suspension of F.L. until September 1977 (R-1); and

It appearing that F.L. has been suspended from school attendance since January 3, 1977 without benefit of any form of home instruction; and

It appearing that F.L. is in need of immediate assistance to become a contributing member of society; and

It appearing that no purpose would be served by continuing F.L.'s suspension until September 1977; NOW THEREFORE

The Commissioner of Education hereby directs the Board of Education of the Lower Camden County Regional High School District Number One to make arrangements forthwith to enroll F.L. in the Archway School. It is so Ordered on this 23rd day of May 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

Charles C. Colozzi, a Taxpayer, and President, Merchantville Taxpayers League,

Petitioner,

v.

Board of Education of the Borough of Merchantville, Camden County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Charles C. Colozzi, *Pro Se*

For the Respondent, Brown, Connery, Kulp, Wille, Purnell & Green (George Purnell, Esq., of Counsel)

Petitioner protests and characterizes as an act of irresponsibility a decision of the Board of Education of the Borough of Merchantville, hereinafter "Board," to salvage and reuse the south wing of the Merchantville School at an estimated cost of $125,000.

The Board has entered a Motion for Summary Judgment and Dismissal of the Petition of Appeal on grounds that the discretion and authority to make decisions on such matters is vested solely in the Board.

The matter is before the Commissioner of Education in the form of the Petition of Appeal, the aforementioned Motion for Summary Judgment, Briefs, transcript of oral argument conducted before the Commissioner's representative on December 22, 1976 at the State Department of Education, Trenton, and exhibits in evidence called for by the Commissioner's representative on that date. The relevant facts are as follows:

The south wing of the Merchantville School consists of four presently unused classrooms in a schoolhouse accommodating 469 pupils in grades K-8 and special education classes. (C-2) The schoolhouse, including the four south wing classrooms, is rated by the Board's architect to have a functional capacity of 598 pupils. (C-1) On March 9, 1976, the voters of Merchantville defeated proposals to raise by local taxation for the ensuing school year $948,696 for current expenses and $65,000 for capital outlay. (C-3) After reviewing the Board's budget, the governing body, pursuant to *N.J.S.A.* 18A:22-37, determined and certified to the Camden County Board of Taxation that $941,696 was necessary for current expenses (a reduction of $7,000) and that $65,000 as proposed by the Board was necessary for capital outlay. Thereafter, on November 5, 1976, the Petition of Appeal was filed before the Commissioner wherein it is alleged, *inter alia,* that:

1. The Board's proposed $125,000 renovation of the south wing which was built in 1909 and not used during the past three years is unnecessary to

You are viewing an archived copy from the New Jersey State Library.

accommodate the district's declining pupil enrollment.

2. The Board could, by demolition of the south wing at a cost of $25,000, realize a saving of at least $100,000 which would more wisely be expended to effectuate improvements and correct deficiencies in the now occupied school building.

3. The Board erred in posing to the voters an unnecessary appropriation in its 1976-77 budget.

4. The municipal governing body similarly erred in approving an unnecessary capital appropriation. *N.J.S.A.* 18A:22-8, 33, 37, 39

5. Neither the Board nor the municipal governing body may, without voter approval, validly expend or approve the expenditure of capital outlay moneys.

6. The voters were not afforded opportunity to be informed, to review or to discuss the proposed rehabilitation of the south wing pursuant to *N.J.S.A.* 18A:22-39.

The Board avers that the Commissioner, absent statutory violation, dishonesty or shocking abuse of discretion, may not substitute his judgment for that of the Board. In support of this contention the Board cites *Boult and Harris v. Board of Education of the City of Passaic,* 1939-49 *S.L.D.* 7 (1946), aff'd State Board of Education 15, 135 *N.J.L.* 329 (*Sup. Ct.* 1947), aff'd 136 *N.J.L.* 521 (*E.&A.* 1948) wherein it was stated by the Commissioner that:

> "***[I]t is not a proper exercise of a judicial function for the Commissioner to interfere with local boards in the management of their schools unless they violate the law, act in bad faith (meaning acting dishonestly), or abuse their discretion in a shocking manner. Furthermore, it is not the function of the Commissioner in a judicial decision to substitute his judgment for that of the board members on matters which are by statute delegated to the local boards. Finally, boards of education are responsible not to the Commissioner but to their constituents for the wisdom of their actions.***" (at p. 13)

See Respondent's Memorandum of Law, hereinafter "RM," at pp. 1-3.

Similarly cited is *Green Village Road School Association et al. v. Board of Education of the Borough of Madison, Morris County,* 1976 *S.L.D.* 700, aff'd State Board of Education 716, wherein the Commissioner stated:

> "***Absent a finding of bad faith, statutory violation or arbitrariness, the Commissioner will not substitute his discretion for that of the Board.*** Rather, the Board's determination is entitled to a presumption of correctness.***" (at p. 715)

In regard to petitioner's charge that its decision to rehabilitate the south

You are viewing an archived copy from the New Jersey State Library.

wing lacked wisdom and good judgment, the Board, without admitting to any lack of wisdom or sound judgment, cites *Peter's Garage, Inc. v. Burlington,* 121 *N.J.L.* 523 (*Sup. Ct.* 1939) wherein the Court stated:

> "***Courts cannot compel governing officials to act wisely, but it can and does compel them to act in good faith. And to say that governing officials must act in good faith is merely equivalent to saying that they must act honestly.***" (at p. 527)

The Board asserts that petitioner has not alleged that its determination to reopen the south wing was in violation of any statute, dishonest, or a shocking abuse of its discretionary authority. (Tr. 7-9) It is further asserted that mere disagreement by petitioner with the Board's determination constitutes no cause of action. (RM, at pp. 4-5)

The Board argues further that petitioner's allegations of violations of *N.J.S.A.* 18A:22-8, 33, 37, 39 are untimely or inapplicable since they refer either to alleged laws in the ballot of March 9, to municipal review of a defeated budget from which there is no citizen appeal provided by law, or to the framing of a ballot question on a special district tax or a project to be financed by a bond issue pursuant to *N.J.S.A.* 18A:22-39. (RM, at pp. 6-8; Tr. 17-19)

For these reasons the Board asserts that petitioner has failed to set forth a cause of action within the jurisdiction of the Commissioner which merits relief. Thus, the Board submits that Summary Judgment should be entered on its behalf and the Petition of Appeal dismissed.

Petitioner maintains, conversely, in his Memorandum, hereinafter "PM," that the instant appeal seeks to substitute neither petitioner's plan nor that of the Commissioner for that of the Board but to compel compliance with statutory prescription. (PM, at pp. 2-4)

Petitioner avers that the controverted south wing, built in 1909, is not only structurally unsound and unsuited to alteration, but unneeded because of declining pupil enrollment. It is further argued that, since the Board in April 1975 applied to and received from the State Department of Education permission to demolish the south wing, its present reversal of plans to refurbish that wing at substantial cost is a shocking abuse of its discretion.

Petitioner also charges that both the application in April 1976 to the State Department to refurbish the wing and the public question on the ballot to raise capital funds therefor were lacking in specificity. Thus, it is argued that the Board's actions should be set aside by reason of bad faith and statutory noncompliance. *N.J.S.A.* 18A:22-8 *et seq.* Specifically, petitioner charges that the Board failed to properly inform the public of its plans or to frame the public question on the annual school budget ballot with the degree of clarity required by *N.J.S.A.* 18A:22-39 which states:

> "Whenever the undertaking of any capital project or projects to be paid for from a special district tax or from the proceeds of an issue or issue of

You are viewing an archived copy from the New Jersey State Library.

bonds is submitted to the voters of a type II district at an annual or special school election for their approval or disapproval, the board shall frame the question***which shall state the project or projects so submitted and the amounts to be raised for each of the projects***."

Petitioner argues that:

"***The New Jersey Legislature effected this law in order to give the voters and taxpayers the intelligence and proper opportunity to approve or disapprove capital projects and to afford protection from projects that conceivably could be very massive, expensive***and detrimental to the financial status of any municipality. We, therefore, allege that these school laws covering capital project appropriations were not needed, were violated, and should not have been subject for governing body review and subsequent reversal of voters mandate.***" (PM, at p 6)

Petitioner further alleges that at the review of the Board's defeated budget, the governing body by its insufficient in-depth awareness of school needs and utter disregard for school laws and legal procedures exhibited a shocking abuse of discretion. Accordingly, petitioner prays that the Commissioner will deny respondent's Motion to Dismiss and advance the matter to a plenary hearing to determine the relevant facts. (PM, at pp. 6-7)

The Commissioner, having carefully considered and balanced the respective arguments of law set forth in oral argument and the Briefs, finds for the Board. *N.J.S.A.* 18A:22-39, as excerpted in pertinent part below, is inapplicable since the Board was not contemplating

"***any capital project or projects to be paid for from a special district tax or from the proceeds of an issue***of bonds***."

Rather, the Board sought to raise $65,000 for capital outlay at its annual school election on March 9 in full compliance with *N.J.S.A.* 18A:22-8, 33. It is a well accepted principle of statutory interpretation that:

"***In every case involving the application of a statute, it is the function of the court to ascertain the intention of the Legislature from the plain meaning of the statute and to apply it to the facts as it finds them. *Carley v. Liberty Hat Mfg. Co.,* 81 *N.J.L.* 502, 507 (*E. & A.* 1910). A clear and unambiguous statute is not open to construction or interpretation, and to do so in a case where not required is to do violence to the doctrine of the separation of powers. Such a statute is clear in its meaning and no one need look beyond the literal dictates of the words and phrases used for the true intent and purpose in its creation.****Watt v. Mayor and Council of the Borough of Franklin,* 21 *N.J.* 274, 277 (1956)

"***Where the wording of a statute is clear and explicit we are not permitted to indulge in any interpretation other than that called for by the express words set forth***." *Duke Power Co. v. Patten,* 20 *N.J.* 42, 49 (1959)

You are viewing an archived copy from the New Jersey State Library.

Petitioner's complaint of lack of information within the stated public question is without merit. Such a question on capital appropriations frequently embraces a number of capital outlay projects. In order that the voters may be advised of such details, the Legislature in its wisdom has compelled boards of education to hold public hearings on school budgets prior to the annual election at which time citizens may garner such information as they need to vote intelligently. *N.J.S.A.* 18A:22-10 *et seq.* Petitioner makes no allegation that the Board held no public hearing nor that he was denied information or opportunity to express his displeasure with budget items.

It is clear that petitioner disagrees with the municipal governing body's determination not to reduce or omit the capital outlay portion of the Board's budget. However, no allegation of dishonesty, collusion, or other illegality is made in the Petition. Accordingly, such disagreement, standing alone, does not constitute a cause of action. Nor does any provision exist in statutory or case law whereby any individual or body other than a board of education may appeal to the Commissioner a defeated budget as acted upon by a municipal governing body pursuant to *N.J.S.A.* 18A:22-37. *Andrew Zakutansky v. Board of Education of the City of Bayonne et al.,* (decided August 3, 1976) The Commissioner is unaware of any encumbrance upon the Board, within the given factual context, which would prevent it from expending capital outlay money in its budget without the express approval of the voters on a public question. The Constitution of the State of New Jersey mandates that there be a thorough and efficient system of free public education. When voters reject a proposed budget, the statutes provide for review and determination of that budget by the municipal governing body which determination may be appealed, but only by the board of education, to the Commissioner.

In the instant matter the governing body, having determined that the Board's rationale for its need for capital outlay funds was sound, certified the Board's proposed appropriation. Accordingly, the funds are available for the Board's use. To attack those actions after a delay of nearly eight months is untimely. The Commissioner so holds.

The Board, having deemed it both wise and expedient to renovate and reuse the south wing of the school, has directed its architect to prepare specifications therefor. (Tr. 28) In this regard, the Commissioner finds no abuse of the Board's discretionary authority. Nor does he deem it appropriate to substitute his opinion for that of the Board, which is statutorily empowered to make such determinations, when it acts in full compliance with the statutes and rules of the State Board. *Peter's Garage, supra; Green Village, supra; Boult and Harris, supra; Mrs. John Engle et al. v. Board of Education of the Township of Cranford, Union County,* 1974 *S.L.D.* 785, aff'd State Board of Education 1975 *S.L.D.* 1085; *John J. Caffrey, Jr. et al. v. Board of Education of the Township of Millburn, Essex County,* 1975 *S.L.D.* 630 As was said by the Court in *Quinlan v. Board of Education of North Bergen,* 73 *N.J. Super.* 40 (*App. Div.* 1972):

"***When an administrative agency has acted within its authority, its

You are viewing an archived copy from the New Jersey State Library.

actions will not generally be upset unless there is an affirmative showing that its judgment was arbitrary, capricious or unreasonable.***"

(at pp. 46-47)

The Commissioner perceives, within the Petition of Appeal and the rationale set forth in petitioner's oral argument or Memorandum, no point of law or allegation of impropriety which, given full credence as must be accorded when considering a Motion to Dismiss, sets forth a cause of action sufficient to grant petitioner's prayer for relief. Accordingly, Summary Judgment is entered for the Respondent Board. The Petition of Appeal is dismissed.

COMMISSIONER OF EDUCATION

March 16, 1977

Board of Education of the City of New Brunswick,

Petitioner,

v.

Mayor and Council of the City of New Brunswick, Middlesex County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Terrill M. Brenner, Esq.

For the Respondent, Joseph E. Sadofski, Esq.

The Board of Education of the City of New Brunswick, hereinafter "Board," by Petition of Appeal dated April 1, 1976, avers that the appropriation of money deemed necessary for school purposes for the 1976-77 school year by the Board of School Estimate, and later by the Mayor and Council of the City of New Brunswick, hereinafter "Council," is, in fact, insufficient for such purposes and will not permit the Board to provide a thorough and efficient system of education as mandated by the Constitution of the State of New Jersey. It demands restoration of the greater portion of those moneys reduced by Council in the specific categories, *post.*

The facts of the matter were adduced before a hearing examiner appointed

You are viewing an archived copy from the New Jersey State Library.

by the Commissioner of Education at the State Department of Education, Trenton, on June 28, 1976. The report of the hearing examiner follows:

On February 27, 1976, the Board adopted a proposed budget for the 1976-77 school year which called for a local tax levy of $9,726,247. The budget was then delivered to the Board of School Estimate which, on March 19, 1976, fixed the amount to be raised at $5,903,774.50, a reduction of $3,815,219.50 in current expense and $7,253 in capital outlay, from the amount which had been determined by the Board as appropriate and necessary. Thereafter, a certification of the lesser amount was approved by Council for certification to the Middlesex County Board of Taxation. The instant Petition of Appeal followed.

The Assistant Commissioner of Education in charge of Controversies and Disputes notified Council of procedures mandated by the State Department of Education for the resolution of budget disputes. In that same letter a pre-hearing conference was scheduled for the Board and Council with the Middlesex County Superintendent of Schools on April 20, 1976. Concurrently, Council was also directed to file an Answer to the Petition of Appeal. (Letter to City Clerk from Assistant Commissioner dated April 7, 1976) Council did not respond to that letter, nor did it attend the pre-hearing conference.

The hearing examiner thereafter conducted a second pre-hearing conference in the office of the Commissioner on May 10, 1976. Council did not appear at the hearing on June 28, 1976; instead, a police officer from the City of New Brunswick hand-delivered the written Arguments of the City of New Brunswick on the morning of the scheduled hearing. The Board replied to those Arguments on July 2, 1976.

Subsequent to the filing of the instant Appeal, *c.*113, *L.*1976 was enacted on November 9, 1976, establishing revised State aid monetary entitlements to all local school districts. The new law provided that the State would pay $280,526, the share required for the Teachers' Pension and Annuity Fund, hereinafter "TPAF," which had been budgeted by the Board, and that an additional amount of unbudgeted State aid in the amount of $779,581 was available for restoration to the Board's budget without affecting the current local property taxes in New Brunswick.

The Commissioner's records in the Division of Administration and Finance, hereinafter "DAF," show that the Board's free appropriations balances for current expense and capital outlay for the school year ending June 30, 1975, were $249,135.70 and $73,055.43, respectively, and for the year ending June 30, 1976, these balances were $304,155.41 for current expense and $113,290.49 for capital outlay.

After reviewing the entire budget submission, the hearing examiner cannot conclude that Council's reductions of the Board's budget were arbitrary, capricious, and without consideration of the needs of the school system, as the Board suggests. A more detailed analysis of these reductions will be discussed, *post.* A chart of the amounts in contention follows:

You are viewing an archived copy from the New Jersey State Library.

CHART I

Account Number	Item	Board's Budget	Council's Proposal	Amount of Reduction
J110.13	Other Exps. Adm.	$ 42,054	$ –0–	$ 42,054
J130.01	Bd. Members Exp.	4,850	3,950	900
J130.02	Bd. Secy. Exp.	14,800	13,900	900
J130.05	Legal Exps.	12,000	7,000	5,000
J130.06	Supts. Off	7,550	4,350	3,200
J130.09	Business Adm.	1,400	600	800
J130.10	Bldgs. & Grnds.	1,350	950	400
J130.12	Pers. Off.	2,750	1,450	1,300
J130.13	Prntg. Exp.	25,500	24,800	700
J130.14	Misc. Exp., Adm.	23,900	19,950	3,950
J211	Sal., Prins.	469,971	228,831	241,140
J212	Sal., Supvrs.	186,349	121,267	65,082
J213.01	Sal., Tchrs.	5,307,771	4,236,782	1,070,989
J213.02	Sal., Sub. Tchrs.	115,000	92,000	23,000
J213.03	Sal., Bedside Instr.	33,500	28,000	5,500
J214.01	Sal., Libr.	109,079	98,019	11,060
J214.02	Guidance Pers.	229,519	176,086	53,433*
J214.04	Sal., Soc. Wkrs.	51,764	–0–	51,764
J215.01	Clerks, Prins. Off.	186,782	144,376	42,406
J215.03	Secy., Other Instr.	60,078	45,078	15,000
J216.01	Other Instr.	317,569	198,037	119,532
J240	Teaching Supls.	130,400	110,000	20,400
J250.01	Misc. Supls., Instr.	30,000	25,000	5,000
J250.02	Travel Exp., Instr.	7,500	6,000	1,500
J310.01	Attend. Pers.	19,524	9,762	9,762
J320.02	Travel, Attend. Pers.	1,750	875	875
J410.05	Health Pers., Other	18,361	–0–	18,361
J610.01	Cust. Servs.	344,390	300,690	43,700
J630	Heat	161,000	147,000	14,000**
J720.03	Contr. Servs.	19,000	15,000	4,000
J730.01	Instr. Equip., Repl.	12,000	10,000	2,000
J730.03	Instr. Equip., New	37,500	–0–	37,500
J810.01	State Pens. Fund	411,049	123,229	287,820
J810.02	Soc. Sec.	107,126	103,692	3,434
J820.02	Empl. Ins.	39,500	35,000	4,500
J820.03	Hospit. Ins.	376,500	235,898	140,602
J870	Tuition	472,860	393,604.50	79,255.50***
	TOTALS	$9,391,996	$6,961,176.50	$2,430,819.50

* Error, Council's Schedule "A" - listed as $53,451
** Error, Council's Schedule "A" - listed as $19,600
*** Error, Council's Schedule "A" - listed as $79,225.50

A review of the written testimony reveals the following: *J110.13, J130.05, J211, J212, J213.01, J213.02, J213.03, J214.01, J214.02, J214.04, J215, J215.03, J216.01, J310.01, J320.02, J410.05, J610.01*

You are viewing an archived copy from the New Jersey State Library.

The moneys in each of the above listed line items are found to be necessary for the salaries of persons employed and currently on the Board's payroll. The Board has adequately justified its need for these moneys. On the other hand, Council has recommended reducing staff but without stating specifically how these reductions could be effected without impairing the district's staffing needs.

The hearing examiner finds in his review of the written testimony sufficient evidence to recommend that most of the moneys in these line items be restored in order to properly fund a thorough and efficient system of schools in the district. The total amount recommended for restoration is the difference between the Board's budgeted figure and the actual amount shown as its proposed expenditures in P-1, Attachment 1 and Exhibit 1. See also *N.J.A.C.* 6:8-4.3. Consult Chart II, *post,* for specific restorations.

J130.01, J130.02, J130.05, J130.06, J130.09, J130.10, J130.12, J130.13, J130.14

These line items represent various "other expenses" proposed for the operation of the many services and obligations of the Board's central administration.

With the exception of line items J130.01, J130.05, J130.06 and J130.12, Council's reductions are nominal. Therefore, the Board must adjust its expenditures within Council's recommended expenditures. The Board has justified its need for the moneys in the remaining line items, some of which are the same as, or lower than, the expenditures provided in the previous year's budget. See Chart II.

J240, J250.01, J250.02

Due to declining enrollment and possible further reduction of pupils in New Brunswick, Council's reductions in line items J240 and J250.01 must remain unchanged. See *In the Matter of the Application of the Borough of Milltown to Terminate its Sending-Receiving Relationship with the Board of Education of the City of New Brunswick, Middlesex County, II* (Hearing Examiner Report) (1976 *S.L.D.* 854) The travel expenditures in line item J250.02 must be restored as required by the recommendation to maintain the attendance personnel in line item J310.01, *ante.*

Summary:	Amount Restored	$1,500
	Amount not Restored	$25,400

J630, J810.02, J820.02, J820.03

These line items are for fixed charges. The first is for heating the districts' buildings; the others are fixed charge obligations to be paid by the Board. Council's recommended reductions in these items is predicated on its suggested further reduction of staff. Having recommended that no further staff reductions be effected, it follows that these fixed cost proposals must remain unchanged. Council's reduction for line item J630 must be adjusted. The actual expenditure

You are viewing an archived copy from the New Jersey State Library.

for heating in 1975-76 was $149,590. (Exhibit 6-Item A) Therefore, the hearing examiner recommends a proposed budget of $155,000 for the current school year.

J720.03

This line item is for contracted services for the repair of equipment. The Board's proposal represents a nominal increase over the amount actually expended in 1974-75 and the amount budgeted in 1975-76. The hearing examiner finds this amount necessary and recommends that it be restored.

Summary:	Amount Restored	$4,000

J730.01, J730.03

These line items are proposals for replacement of instructional equipment and for new instructional and noninstructional equipment, respectively. The hearing examiner finds that the nominal reduction in J730.01 will not impair the efficient operation of the schools. The total elimination of the budgeted amount for new equipment cannot be justified. The amount expended for new equipment in 1974-75 was $44,625 and the amount budgeted for 1975-76 was $37,500. With regard to the diminishing pupil population and further possible pupil reductions, the hearing examiner recommends that the Board's proposal for this school year be reduced by half.

Summary:	Amount Restored	$18,750
	Amount not Restored	$20,750

J810.01

The State aid moneys to which the Board is entitled must be restored pursuant to *c.*113, *L.*1976. Council's reduction in this line item actually causes a double deduction; therefore, it must be set aside and the moneys restored to the Board's budget.

Summary:	Amount Restored	$287,820

J870

This line item is for tuition payments to other schools, a large part of which was anticipated as tuition for New Brunswick pupils volunteering to be bused to North Brunswick. This proposed program has not been as successful as was anticipated; therefore, the amount required by the Board has been properly reduced by Council. See *In the Matter of the Application of the Board of Education of the Borough of Milltown, supra.*

Summary:	Amount not Restored	$79,255.50

A recapitulation of the amounts recommended to be restored follows:

You are viewing an archived copy from the New Jersey State Library.

CHART II

Account Number	Item	Council's Reduction	Amount Restored	Amount Not Restored
J110.13	Other Exps. Adm.	$ 42,054	$ 42,054	$ –0–
J130.01	Bd. Members Exp.	900	900	–0–
J130.02	Bd. Secy. Exp.	900	–0–	900
J130.05	Legal Exps.	5,000	5,000	–0–
J130.06	Supts. Off.	3,200	3,200	–0–
J130.09	Business Adm.	800	–0–	800
J130.10	Bldgs. & Grnds.	400	–0–	400
J130.12	Pers. Off.	1,300	1,300	–0–
J130.13	Prntg. Exp.	700	–0–	700
J130.14	Misc. Exp., Adm.	3,950	–0–	3,950
J211	Sal., Prins.	241,140	241,140	–0–
J212	Sal., Supvr.	65,082	45,149	19,933
J213.01	Sal., Tchrs.	1,070,989	1,068,376	2,613
J213.02	Sal., Sub. Tchrs.	23,000	8,000	15,000
J213.03	Sal., Bedside Instr.	5,500	5,500	–0–
J214.01	Sal., Libr.	11,060	10,570	490
J214.02	Guidance Pers.	53,433*	47,640	5,793*
J214.04	Sal., Soc. Wkrs.	51,764	51,764	–0–
J215.01	Clerks, Prins. Off.	42,406	42,406	–0–
J215.03	Secy., Other Instr.	15,000	15,000	–0–
J216.01	Other Instr.	119,532	119,532	–0–
J240	Teaching Supls.	20,400	–0–	20,400
J250.01	Misc. Supls., Instr.	5,000	–0–	5,000
J250.02	Travel Exp., Instr.	1,500	1,500	–0–
J310.01	Attend. Pers.	9,762	9,762	–0–
J320.02	Travel, Attend. Pers.	875	875	–0–
J410.05	Health Pers., Other	18,361	18,361	–0–
J610.01	Cust. Servs.	43,700	43,700	–0–
J630	Heat	14,000**	8,000	6,000
J720.03	Contr. Servs.	4,000	4,000	–0–
J730.01	Instr. Equip. Repl.	2,000	–0–	2,000
J730.03	Instr. Equip., New	37,500	18,750	18,750
J810.01	State Pens. Fund	287,820	287,820	–0–
J810.02	Soc. Sec.	3,434	3,434	–0–
J820.02	Empl. Ins.	4,500	4,500	–0–
J820.03	Hospit. Ins.	140,602	140,602	–0–
J870	Tuition	79,255.50***	–0–	79,255.50
	TOTALS	$2,430,819.50	$2,248,835	$181,984.50

* Error, Council's Schedule "A" - listed as $53,451
** Error, Council's Schedule "A" - listed as $19,600
*** Error, Council's Schedule "A" - listed as $79,225.50

The adjusted amount of the line item reductions totals $2,430,819.50, an amount slightly lower than Council's actual reduction since three errors show in

You are viewing an archived copy from the New Jersey State Library.

the tables. Council added anticipated revenues to these line item reductions as follows:

State Aid	$778,812
State Building Aid	7,253
Food Service Fund	200,000
Current Expense Free Approp. Bal., June 30, 1975	200,000
Current Expense Free Approp. Bal., June 30, 1976	200,000
TOTAL	$1,386,065

The total actual reduction in the budget is shown as follows:

Line Item Reductions	$2,430,819.50
Reductions, Anticipated Revenues	$1,386,065.00
TOTAL	$3,816,884.50

The narration, *ante,* discloses that the Board has justified its need for line item restorations in the amount of $2,248,835, and the hearing examiner recommends that the money for these programs be restored.

At this juncture, a discussion of the Board's anticipated revenues is necessary in order to analyze the further reductions recommended by Council. Council demands that the unbudgeted State aid to which the Board is entitled be added to its budget, and the hearing examiner so recommends. The unbudgeted State aid amount is $779,581, less $30,509, which is reserved for compensatory education, pending approval of a program submitted by the Board. The net amount of unbudgeted State aid is therefore $749,072. This amount of State aid is necessary to restore line items in programs which were reduced drastically by Council. See: "School Budget Adjustments Pursuant to Senate 1503", Part I, II and III.

Additionally, the hearing examiner recommends that the $7,253 in capital outlay funds be restored to the Board's budget since there is no State aid for capital outlay moneys as Council avers.

Regarding the Food Service Fund reduction of $200,000 in anticipated revenues, the Board admits that its audit discloses a free balance on June 30, 1975 in the amount of $197,435; however, no estimated or actual balance is shown for June 30, 1976. The hearing examiner finds no authority in law for any special unappropriated balances. Therefore, he recommends that this reduction be allowed to stand.

Council's recommendations for a $400,000 reduction in the current expense free appropriations balances for June 30, 1975 ($200,000) plus $200,000 for June 30, 1976, cannot be considered as a cumulative free balance. The Commissioner's records in DAF disclose that the Board's actual current expense free appropriations balance on June 30, 1976, was $304,155.41. The hearing examiner recommends that the Board be directed to apply $104,000 of

You are viewing an archived copy from the New Jersey State Library.

this balance to its budget. A reasonable amount of $200,155.41 will remain for contingencies.

A summary of the recommended restorations follows:

CHART III

	Proposed Reduction	Amount Restored	Amount Not Restored
Unbudgeted Current Expense State Aid	$ 778,812	$749,072	$ 29,740
Appropriation from Current Expense Free Balances (June 30, 1975; June 30, 1976)	400,000	*(104,000)	296,000
Appropriation from Food Service Fund	200,000	*(197,435)	2,565
State Building Aid	7,253	7,253	–0–
TOTALS	$1,386,065	$765,325 *(301,435)	$328,305

*Restoration from balances

The hearing examiner recommends that the restoration of moneys to the Board's budget from line item reductions be $2,248,835. (Chart II, *ante*) This amount, together with the $7,253 State Building Aid restoration, will have to be raised by an additional local tax levy. The remaining moneys restored are anticipated revenue moneys which the Board has or will receive in unbudgeted State aid funds. That restoration is as follows:

Line Item Restorations	$2,248,835
State Building Aid Revenue	7,253
	$2,256,088
Less TPAF provided for by *c.* 113, *L.* 1976	280,526
SUBTOTAL	$1,975,562
Unbudgeted Current Expense State Aid including TPAF	$1,029,598
GRAND TOTAL	$3,005,160

The resultant total budget for the 1976-77 school year will be as follows:

Board's Revised Budget (Exhibit 6-Item A)	$7,725,672.50
Recommended Additional Tax Certification	1,975,562.00
Unbudgeted State Aid	1,029,598.00
Unappropriated Balances	301,435.00
	$11,032,267.50

You are viewing an archived copy from the New Jersey State Library.

This recommended budget is $515,877.50 below the Board's proposed budget and it is minimal in sustaining a program designed to meet the mandate of providing a thorough and efficient education in the school district of New Brunswick pursuant to *c.*212, *L.*1975.

The hearing examiner finds that this recommended budget is in accord with the words of the Commissioner in *Board of Education of the City of Plainfield v. City Council of the City of Plainfield et al.,* 1974 *S.L.D.* 913, wherein he stated that:

> "***the constitutional requirement which imposes on local school districts the obligation to conduct 'thorough and efficient' programs of education***must be interpreted to mean that *as a minimum such programs are entitled to a continuing sustenance of support, one marked by constancy and not by vacillation of effort.****" (*Emphasis supplied.*)
> (at pp. 920-921)

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the hearing examiner's report and the exceptions filed thereto by the Board pursuant to *N.J.A.C.* 6:24-1.17(b).

The Board seeks an additional restoration of $59,150 in four line items; J213.02 Salaries-Substitute Teachers; J240 Teaching Supplies; J250.01 Miscellaneous Supplies-Instruction; J730.03 Purchase of New Instructional and Non-Instructional Equipment.

The Commissioner notices that Council reduced the J200 Instruction account (Exhibit 6 – Item A) by $1,725,824. The hearing examiner has recommended that $1,666,339 of this reduction be restored. (Chart II, *ante*) The J200 account with the recommended restorations provides a budget for Instruction over $400,000 higher than last year's. This total recommended restoration is accompanied by adequate justification in his report; therefore, the Commissioner finds that no further restoration is necessary. In line item J730, the Commissioner finds that there has been a substantial reduction. Nevertheless, in *East Brunswick Board of Education v. Township Council of East Brunswick,* 48 *N.J.* 94 (1966), the Court commented as follows:

> "***if [the Commissioner] finds that the governing body's budget is not so inadequate, even though significantly below what the Board of Education had fixed or what he would fix if he were acting as the original budget-making body under *R.S.* 18:7-83, then he will sustain it, absent any independent showing of procedural or substantive arbitrariness.***"
> (at p. 107)

The Commissioner cannot conclude that the reduction is so significant that the educational process will be impaired. Accordingly, no further restoration will be made in this line item.

You are viewing an archived copy from the New Jersey State Library.

The Commissioner finds, also, that $2,565, the difference between Council's recommended reduction in the Food Service Fund of $200,000, and the actual balance of $197,435, must be restored. An additional amount of $5,648 less $30, is also restored to offset errors in line items J214.02 and J630. The $30 error in J870 tuition is in the Board's favor and therefore that amount is deducted. The Commissioner will restore $5,618.00 in these line items.

Finally, the Board requests restoration of $296,000 it avers is the difference between the $104,000 the hearing examiner recommended to be appropriated from the current expense free appropriations balance and the $400,000 reduction recommended by Council.

The hearing examiner found correctly that current expense free appropriations balances are not cumulative and that the Board's actual balance on June 30, 1976, was $304,155.41. Of this amount he recommended that $104,000 be appropriated to the 1976-77 budget. The Board has the remaining $200,155.41 as a contingency. Viewing the budget as a whole, the Commissioner cannot find justification for restoring more moneys from current expense free appropriations balances. *East Brunswick, supra*

A recapitulation follows:

CHART IV

Account Number	Item	Amount Not Restored By Hearing Examiner	Additional Restoration By Commissioner Relative To Board Exceptions
J213.02	Sals., Sub. Tchrs.	$ 15,000	$–0–
J240	Teaching Supplies	20,400	–0–
J250.01	Misc. Supls., Instr.	5,000	–0–
J730.03	Instr. Equip., New	18,750	–0–
J214.02	Guidance Pers.	–0–	18
J630	Heat	–0–	5,600
	Anticipated Revenue Restorations		
	Food Service Fund Current Expense	$ 2,565	$2,565
	Free Appropriations Balance	$296,000	–0–
	Total Additional Restorations		$9,183

The restoration of the $280,526 double deduction of TPAF funds will be accomplished by permitting the tax allocation for this purpose to stand. Without this restoration the TPAF amount of unbudgeted State aid would be returned to the County Board of Taxation to reduce the amount raised by local taxation for current expenses.

You are viewing an archived copy from the New Jersey State Library.

The Commissioner will increase the amount recommended restored by the hearing examiner by an additional $339,511, which will have to be raised by local taxation, as follows:

Hearing Examiner's Recommendation for Amount to be Raised by Additional Tax Certification		$1,975,562
Commissioner's Additional Restoration to Budget		9,183
TPAF Replacement		280,526
Compensatory Education Aid		30,509
Corrections in Anticipated State Aid and Line Item Reductions		19,293
	Total	$2,315,073

In summary, the Commissioner has made available $1,029,598 in unbudgeted State aid and restored $2,315,073 in local taxes. Additionally, $301,435 is restored from unappropriated balances for a total restoration of $3,646,106.

The Commissioner adopts the report of the hearing examiner in its entirety with the additions and modifications as shown herein.

The Commissioner directs the Middlesex County Board of Taxation to add to its certification $2,315,073 to be raised by local taxation for the 1976-77 school year.

COMMISSIONER OF EDUCATION

March 16, 1977

You are viewing an archived copy from the New Jersey State Library.

In the Matter of the Application of the Board of Education of the East Windsor Regional School District for the Termination of the Sending-Receiving Relationship with the School District of the Borough of Roosevelt, Monmouth County, and the Township of Cranbury, Middlesex County.

COMMISSIONER OF EDUCATION

DECISION ON MOTION TO DISMISS

For the Petitioner East Windsor Regional, Turp, Coates, Essl & Driggers (Henry G.P. Coates, Esq., of Counsel)

For the Respondent Borough of Roosevelt, Joyce M. Usiskin, Attorney at Law

For the Respondent Township of Cranbury, Golden, Shore & Paley (Philip H. Shore, Esq., of Counsel)

The East Windsor Regional Board of Education filed an application with the Commissioner of Education in 1973 for a severance of the sending-receiving relationships between it and the Boards of Education of the Borough of Roosevelt and the Township of Cranbury. Consideration of the application was delayed by numerous adjournments at request of the parties but ultimately proceeded to a hearing conducted by a hearing examiner appointed by the Commissioner. The hearing was concluded in January 1976 and the Commissioner's decision ensued on April 29, 1976. *In the Matter of the Application of the Board of Education of the East Windsor Regional School District for the Termination of the Sending-Receiving Relationship with the School Districts of the Borough of Roosevelt, Monmouth County, and the Township of Cranbury, Middlesex County,* 1976 *S.L.D.* 479

The Commissioner determined therein that the Cranbury Board should be free to pursue alternative sending-receiving relationships but otherwise made no definitive conclusions with respect to the application pending study of pupil population statistics in the 1976-77 academic year. He retained jurisdiction to the date of January 1, 1977 to expedite such study.

The East Windsor Board has now submitted data which indicates an enrollment of 1265 pupils in its high school, which is less than was originally projected. Such enrollment clearly poses no necessity for immediate action by the Commissioner since the high school has a rated functional capacity of 1397 pupils.

Accordingly, the Application of the East Windsor Board is dismissed at this juncture without prejudice.

COMMISSIONER OF EDUCATION

March 16, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Township of Ewing,

Petitioner,

v.

Township Committee of the Township of Ewing, Mercer County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Abbotts and Abbotts (John Abbotts, Esq., of Counsel)

For the Respondent, Dietrich, Allen and St. John (Charles P. Allen, Jr., Esq., of Counsel)

Petitioner, the Board of Education of the Township of Ewing, hereinafter "Board," appeals from an action of the Township Committee of the Township of Ewing, hereinafter "Committee," taken pursuant to *N.J.S.A.* 18A:22-37, certifying to the Mercer County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. A hearing was conducted on December 20, 1976 in the office of the Mercer County Superintendent of Schools, Trenton, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

At the annual school election held March 9, 1976, the Board submitted to the electorate proposals to raise $8,390,822 by local taxation for current expenses and $25,000 for capital outlay costs of the school district. These items were rejected by the voters and, subsequent to the rejection, the Board submitted its budget to the Committee for its determination of the amounts necessary for the operation of a thorough and efficient school system in the Township of Ewing for the 1976-77 school year, pursuant to the mandatory obligation imposed on the Committee by *N.J.S.A.* 18A:22-37.

After consultation with the Board, the Committee made its determinations and certified to the Mercer County Board of Taxation an amount of $8,265,822 for current expenses and $12,500 for capital outlay. The pertinent amounts in dispute are shown as follows:

	Current Expense	Capital Outlay
Board's Proposal	$8,390,822	$25,000
Committee's Proposal	8,265,822	12,500
Amount Reduced	$ 125,000	$12,500

The Board contends that the Committee's action was arbitrary, unreasonable, and capricious and stressed its need for restoration of the

You are viewing an archived copy from the New Jersey State Library.

reductions recommended by the Committee at the time of the hearing. The Committee maintains that it acted properly, after due deliberation, and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system.

At the hearing the Board advanced a Motion requesting an Order from the Commissioner vacating the action of the Committee and restoring the previously made reductions. The Motion stated, *inter alia,* that the Committee had not set forth a detailed statement supporting its budget reductions as is precisely required by law. *East Brunswick Board of Education v. East Brunswick Township Council,* 48 *N.J.* 94 (1966)

In the ordinary course of budget appeals, State Department of Education directives and budget dispute guidelines are routinely issued to the litigants so that a uniform appeal procedure is established. In the matter herein controverted and for reasons unknown, this routine was not followed and the State Department of Education "Budget Disputes" guidelines were not issued. Further, a pre-hearing conference scheduled for October 5, 1976, where these procedures could have been addressed, was unavoidably adjourned.

Subsequently, *c.* 113, *L.* 1976 (S1503) was enacted into law on November 9, 1976, establishing available unbudgeted State aid moneys to school districts, and a pre-hearing conference was thereafter held on December 7, 1976 for the purpose of establishing further procedure. At this pre-hearing conference, a proposed settlement was not effected and the hearing examiner determined that the Committee must supply the Board with its reasons for reducing the budget prior to the hearing which was scheduled for December 20, 1976, thirteen days hence. On Friday afternoon, December 17, 1976, at 4:25 P.M. according to the Board, the Committee delivered its statement to the Board setting forth its reasons for its budget reductions. The Board's Motion followed:

The Committee's "reasons" merely list the affected areas of the budget as follows:

(a)	Instruction:	Textbooks	$ 12,500
(b)	Instruction:	Misc. Exps. Instruction	12,500
(c)	Maint. of Plant:	Contr. Repairs	30,000
		Replacement	5,000
		Purchase	10,000
		Repair Materials	55,000
(d)	Capital Outlay		12,500
		TOTAL	$137,500

The hearing examiner determined at the hearing that the Committee had been arbitrary in making its budget reductions and had not given the Board sufficient time to respond in writing to its reductions. Specifically, the hearing examiner stated that at the very least the Board was entitled to one full business day in which to prepare its response. The Committee objected. (See Committee's letter, December 23, 1976.)

You are viewing an archived copy from the New Jersey State Library.

Notwithstanding the failure to notify the litigants about administrative procedure following a school budget defeat and a subsequent appeal to the Commissioner, these principles have been established by a number of prior decisions of the Commissioner and the courts. *East Brunswick, supra; Board of Education of the City of Elizabeth v. City Council of Elizabeth,* 55 *N.J.* 489 (1970); *Board of Education of Trenton v. City Council of Trenton,* 1967 *S.L.D.* 172; *Board of Education of Haledon v. Mayor and Council of Haledon, Passaic County,* 1970 *S.L.D.* 70, aff'd State Board of Education 75

Perhaps the most inclusive discussion of such principles is contained in the unanimous opinion of the New Jersey Supreme Court in *East Brunswick, supra,* which said:

> "***All in all, it is evident that, when preparing the budget which it ultimately determines to be necessary and appropriate in view of the nature of the local community, its educational needs and financial abilities, the local board must have clearly in mind the educational mandate in our Constitution and the State's statutory and administrative requirements. It, of course, retains a considerable measure of discretion, particularly when dealing with matters which the State's supervisory agencies have recommended rather than directed; but in no event may it disregard the general standard in the Constitution or the specific standards which have been announced legislatively or administratively. In the course of its endeavors, the local board affords suitable hearing to the local citizenry (N.J.S.A. 18:7-77.1) and soundly brings together its intimate knowledge of local conditions and needs and the wide educational expertise of its members and professional staff.
>
> "Though the law enables voter rejection, it does not stop there but turns the matter over to the local governing body. *That body is not set adrift without guidance, for the statute specifically provides that it shall consult with the local board of education and shall thereafter fix an amount which it determines to be necessary to fulfill the standard of providing a thorough and efficient system of schools. Here, as in the original preparation of the budget, elements of discretion play a proper part.* The governing body may, of course, seek to effect savings which will not impair the educational process. *But its determinations must be independent ones properly related to educational considerations rather than voter reactions.* In every step it must act conscientiously, reasonably and with full regard for the State's educational standards and its own obligation to fix a sum sufficient to provide a system of local schools which may fairly be considered thorough and efficient in view of the makeup of the community. *Where its action entails a significant aggregate reduction in the budget and a resulting appealable dispute with the local board of education, it should be accompanied by a detailed statement setting forth the governing body's underlying determinations and supporting reasons. This is particularly important since, on the board of education's appeal under R.S. 18:3-14, the Commissioner will undoubtedly want to know quickly what individual items in the budget*

You are viewing an archived copy from the New Jersey State Library.

> *the governing body found could properly be eliminated or curbed and on what basis it so found. Cf. Davis, supra* § 16.05.***" (*Emphasis supplied.*)
> (at pp. 105-106)

and further;

> "***As in Booker, the Commissioner in deciding the budget dispute here before him, will be called upon to determine not only the strict issue of arbitrariness but also whether the State's educational policies are being properly fulfilled. Thus, if he finds that the budget fixed by the governing body is insufficient to enable compliance with mandatory legislative and administrative educational requirements or is insufficient to meet minimum educational standards for the mandated 'thorough and efficient' East Brunswick school system, he will direct appropriate corrective action by the governing body or fix the budget on his own within the limits originally proposed by the board of education. *On the other hand, if he finds that the governing body's budget is not so inadequate, even though significantly below what the Board of Education had fixed or what he would fix if he were acting as the original budget-making body under R.S. 18:7-83, then he will sustain it, absent any independent showing of procedural or substantive arbitrariness.****" (*Emphasis supplied.*)
> (at p. 107)

In *Haledon, supra,* the Commissioner, in restoring budget reductions, pointed out that Council's determinations must be independent ones properly related to educational considerations rather than voter reactions. Otherwise, its determinations would be considered arbitrary and the reductions therefore restored. In affirming the Commissioner's decision, the State Board of Education on December 2, 1970, held:

> "***The decision is affirmed in each and every other respect, based on the fact that the Respondent-Appellant, Mayor and Council of the Borough of Haledon, Passaic County, have, despite their opportunity to do so, failed 'to submit either to Petitioner, or later for the guidance and consideration of the Commissioner in the appeal herein, a 'detailed statement setting forth the governing body's underlying determinations and supporting reasons' (*East Brunswick Board of Education v. East Brunswick Council,* 48 *N.J.* 94 (1966), (at Page 106)),' which would justify their action."
> (1970 *S.L.D.*, at p. 76)

The Committee admitted that it responded to voter reaction and stated further that it was compelled to take such action. (Tr. 8, 10, 11, 12)

It has been demonstrated, therefore, that the Committee has not met the guidelines set forth in *East Brunswick, supra.* In the hearing examiner's judgment, the Committee's further request for a delay to enable the Board to respond to its budget reductions is unreasonable.

The hearing examiner recommends that the Board's Motion to vacate the

You are viewing an archived copy from the New Jersey State Library.

budget reductions be granted and that the Board's budget reductions be restored.

If this recommendation is adopted, the restoration of moneys will be made from unbudgeted State aid funds available to the Board. The enactment of *c.*113, *L.*1976 provides that the Board is eligible for unbudgeted current expense and capital outlay moneys in excess of those moneys it seeks to have restored to its budget. Specifically, the Commissioner's records in the Division of Administration and Finance (DAF) reveal the following:

Unbudgeted Current Expense State Aid	$823,813	Unbudgeted Capital Outlay State Aid	$14,910
Less: Restoration	124,500		12,500
Property Tax Relief	$699,313		$2,410

The hearing examiner's recommendation provides, therefore, that $701,723 ($699,313 + $2,410) will be available for property tax relief in 1977 from unused unbudgeted State aid moneys subsequent to the restoration of $124,500 in current expense and $12,500 in capital outlay moneys in the 1976-77 budget. If authorized, there will be no effect on the 1976 local tax levy for school purposes in the community of Ewing.

This concludes the recommendation of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner and the exceptions filed thereto by the Committee pursuant to *N.J.A.C.* 6:24-1.17(b). The Committee states that the Petition of Appeal was filed out of time and it should be dismissed.

The Commissioner finds that the Committee's reliance on *N.J.S.A.* 18A:6-28 is misplaced. That statute governs the timeliness of appeals of decisions made by the Commissioner. See *N.J.S.A.* 18A:6-27.

The Committee asserts, also, that the State Department of Education did not follow its own procedural guidelines for entertaining budget disputes. The Commissioner finds no prejudice to the Committee because these routine guidelines were not issued to the litigants. It must be recalled that schools were closed by the New Jersey Supreme Court, on July 1, 1976. This crisis and the Legislature's inability to provide a new base for funding schools caused a delay in resolving all school budget disputes until the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976. The record shows that the hearing examiner afforded the Committee an extended opportunity to supply supporting reasons for its budget reductions at the conference on December 7, 1976. (Committee's Exceptions, at p. 3)

The Commissioner finds that the Committee's reduction was arbitrary long before that time. Nowhere is there to be found a "detailed statement setting

You are viewing an archived copy from the New Jersey State Library.

forth the governing body's underlying determinations and supporting reasons" as required in *East Brunswick, supra.* The record discloses that a detailed statement and supporting reasons were not supplied even on the day of the hearing. The Commissioner finds the Committee's request for more time to comply with this requirement further evidence of its arbitrary determination. (See Exception No. 3, at p. 9.)

The Commissioner finds no prejudice to the Committee by the hearing examiner's reference to restoration of moneys from unbudgeted State aid funds. (See Exception No. 4, at p. 10.) The enabling legislation, *c.*113, *L.*1976, provides that its dual purposes are to restore program moneys to school districts, when justified, and to provide property tax relief. The hearing examiner merely reported those restorations and the source of those funds as required to complete the Commissioner's records.

The Commissioner determines from his review of the record, that the Committee's decision to reduce the Board's budget was arbitrary and unsupportable. The Commissioner therefore adopts the report and recommendation of the hearing examiner and directs that $124,500 for current expenses and $12,500 for capital outlay expenses be restored to the Board's budget from available unbudgeted State aid moneys.

COMMISSIONER OF EDUCATION

March 16, 1977
Pending State Board of Education

You are viewing an archived copy from the New Jersey State Library.

Luther McLean,

Petitioner,

v.

Board of Education of the Borough of Glen Ridge et al., Essex County,

Respondents.

COMMISSIONER OF EDUCATION

DECISION ON MOTION FOR SUMMARY JUDGMENT

For the Petitioner, Essex County Legal Services (William H. Lorentz, Esq., of Counsel)

For the Respondents, Barry A. Aisenstock, Esq.

Petitioner, a janitor employed on an annual basis with a contract for a fixed term during the 1971-72 year by the Board of Education of the Borough of Glen Ridge, hereinafter "Board," alleged in a Petition of Appeal filed with the Commissioner of Education in 1972 that his contract of employment was terminated illegally by the Board. Subsequently, a hearing was held with respect to the allegations and a decision in favor of petitioner was handed down by the Commissioner on March 29, 1973. *Luther McLean v. Board of Education of the Borough of Glen Ridge et al., Essex County,* 1973 *S.L.D.* 217, aff'd State Board of Education 1974 *S.L.D.* 1411 Such decision contained, *inter alia,* the following direction with respect to an appropriate restitution:

> "***the Commissioner hereby orders the Board of Education of Glen Ridge to pay to Luther McLean the sum of money he would have received in uninterrupted service from the date of his improper dismissal***. Such sum of money shall be mitigated by the amount of salary earned by petitioner in other employment from the date of his dismissal until the expiration of his 1971-72 employment contract.***" (at p. 228)

Thereafter the Board did in fact pay petitioner the regular contract salary which was due him to contract expiration but a peripheral dispute arose from petitioner's contention that the "***sum of money he would have received***" should have been construed to embrace reasonable, estimated compensation for overtime duties which had, in the past, been "customarily" assigned to him. Accordingly, a new Petition for Declaratory Judgment was filed by petitioner and opposed by the Board. This Petition is submitted directly to the Commissioner on the pleadings, Briefs and the record of an oral argument conducted on June 17, 1976 at the State Department of Education, Trenton. The facts are not in dispute. The issue as delineated by petitioner in his Reply Brief is:

> "***whether the Commissioner's award of 'the sum of money he would have received in uninterrupted service from the date of his improper

You are viewing an archived copy from the New Jersey State Library.

> dismissal until the end of the 1971-72 school year' includes the overtime petitioner would have earned had he been allowed to stay on the job."
> (at p. 3)

The facts pertinent to such issue are that petitioner was employed for the 1971-72 school year at a contracted salary of $6,800 (J-1), and was suspended from such employment for a five month period by the Board. The contract effective for the period July 1, 1971 through June 30, 1972, contained no notice or termination clause other than that of June 30, 1972, and no reference either to compensation for overtime or of an obligation to perform it. Petitioner claims in an affidavit that such overtime was "customary." The Board maintains that all overtime assignments were voluntary and were never mandatory although there is agreement that petitioner had in fact performed such overtime on many occasions. While this position of the Board would appear to pose a question of disputed fact, petitioner avers that it does not since the Board admits, in an affidavit of the Board Secretary, that overtime work was "rotated" among janitorial employees. Petitioner avers that:

> "***the existence of a regular system of overtime rotation gives definiteness to the modified agreement since***it justifies the expectation that it will be observed.***" (Petitioner's Reply Brief, at p. 6)

Petitioner further avers that irrespective of contract rights the Commissioner has authority to "make whole" an individual injured by an illegal discharge, and that equity demands the authority be exercised. In his inclusion of overtime "rotation" as an integral, although unwritten, part of a contract right, petitioner cites *Phillips Electronics & Pharm. Ind. Corp. v. Leavens*, 421 *F.2d* 39 (*3rd Cir.* 1970), and *Mantell v. International Plastic Harmonica Corp.*, 141 *N.J. Eq.* 379 (*E.&A.* 1947).

The Board avers that the Commissioner must decide the matter strictly on the terms of the written contract of petitioner (J-1) and that such contract makes no reference to overtime. The Board further avers that parol or oral evidence should not be used in this instance to alter, add to or contradict the terms of the written contract.

The Commissioner has considered all such facts and arguments and observes that the instant matter is concerned with the definition of the word "compensation" as contained in the applicable statute *N.J.S.A.* 18A:6-30. Petitioner construes it broadly to cover not only contractual obligations clearly reduced to written form but also obligations expected to be met as a result of custom. The Commissioner cannot agree with such construction of the word as it is used in the statute. The statute *N.J.S.A.* 18A:6-30 provides:

> "Any person holding office, position or employment in the public school system of the state, who shall be illegally dismissed or suspended therefrom, shall be entitled to *compensation* for the period covered by the illegal dismissal or suspension, if such dismissal or suspension shall be finally determined to have been without good cause, upon making written

You are viewing an archived copy from the New Jersey State Library.

application therefor with the board or body by whom he was employed, within 30 days after such determination." (*Emphasis supplied.*)

The Commissioner's prior decisions in *Nello Dallolio v. Board of Education of the City of Vineland, Cumberland County,* 1965 *S.L.D.* 18, and *John S. Romanowski v. Board of Education of the City of Jersey City, Hudson County,* 1966 *S.L.D.* 219 have interpreted the term compensation to include contracted salary but to exclude an entitlement to add thereto payment for "extra work." Thus, in *Dallolio* the Commissioner found with respect to the employment and compensation rights of a tenured teacher that the entitlement to extra compensation for coaching duties could not be added to contractual salary as a residual entitlement.

In *Dallolio,* the Commissioner cited a prior decision of the State Board of Education in *Reed and Hills v. Trenton Board of Education,* 1938 *S.L.D.* 437 (1917), State Board of Education 439, which was also concerned with compensation for extra assignments, as follows:

> "***In that case, a principal and a head teacher each of whom was assigned to a single school, were given responsibility for two schools which were temporarily combined. Each was paid additional salary for the *extra duties.* This combination of schools and duties continued for more than four years and was then discontinued. The principal and the head teacher were then relieved of their extra assignment and the additional salary also ceased. They appealed the reduction in salary, claiming that as tenured personnel their salaries could not be reduced. In dismissing their appeal the State Board of Education said at page 441:
>
> > '***The Tenure of Service Act was not passed to fit such a case as this. The prohibition against reduction of salary applies to a permanent scheduled salary and not to a temporary increase given for extra work done.
> >
> > '***The Appellees were already under tenure by three years or more of service under regular scheduled salaries. Their status there is not questioned. But they now seek to invoke an extra tenure of service because of three years or more of extra work for which they received extra compensation. We do not believe that the law contemplated any such double protection. *If the statute were so construed* any and all *temporary payments* to teachers for temporary work could not be made without incurring the liability of a *permanent indebtedness* and school boards would be tempted to put all extra services upon teachers without any extra compensation whatever.***'
>
> "The Commissioner holds that a board of education has the power to assign and reassign teachers to curricular duties in addition to their regularly scheduled classroom instruction assignment and to pay such additional remuneration as is reasonable and appropriate therefor; that

You are viewing an archived copy from the New Jersey State Library.

absent a requirement for a certificate other than that of teacher, no tenure accrues to such assignments and they are renewed or discontinued at the discretion of the Board; and *that when the extra work is no longer performed the extra compensation for that purpose can no longer be claimed.****" (*Emphasis supplied.*) (1965 *S.L.D.*, at p. 22)

The Commissioner holds the same rationale is applicable herein since if all "temporary payments" for "temporary work" cannot be made without residual "permanent indebtedness," a necessary flexibility is removed.

Such holding is reinforced by the Commissioner's decision in *Celina G. David v. Board of Education of the Borough of Cliffside Park, Bergen County,* 1967 *S.L.D.* 192 wherein petitioner also claimed the word "compensation" should be construed to imply "***that she is to be made whole to the extent that an award of money can do so.***" (at p. 193) The Commissioner expressly rejected such claim, analogous to the instant matter, and held that "***payment of interest, of fees and other expenses, *or of damages other than lost earnings,* is not within the contemplation and meaning of the statute.***" (at p. 195) (*Emphasis supplied.*) A demand to include a conjectural, estimated sum of money for "extra work" when there is no express contract entitlement is thus clearly one for "damages" which the decision in *David, supra,* found to be not required.

Accordingly, for the reasons hereinbefore set forth, the Petition is dismissed.

COMMISSIONER OF EDUCATION

March 21, 1977

You are viewing an archived copy from the New Jersey State Library.

Barton Lilenfield,

Petitioner,

v.

Board of Education of the Borough of Watchung, Somerset County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Rothbard, Harris & Oxfeld (Sidney Birnbaum, Esq., of Counsel)

For the Respondent, Buttermore and Mooney (Robert J.T. Mooney, Esq., of Counsel)

Petitioner is a school psychologist who has achieved a tenure status in the employ of the Board of Education of the Borough of Watchung, Somerset County, hereinafter "Board." Petitioner alleges that the action of the Board reducing his days of employment for the 1975-76 academic year to less than his days of employment in prior years, with a concurrent reduction in his total compensation, is improper and illegal and violates the provisions of his tenure protection. Petitioner also alleges that the controverted action has deprived him of his property rights under the Fourteenth Amendment of the United States Constitution and he demands that the Board's action be set aside. The Board denies the allegations and avers that its action establishing petitioner's employment time and his compensation for the academic year 1975-76 is in all respects proper and legal.

The matter is referred directly to the Commissioner of Education by way of Cross-Motions for Summary Judgment on the record, including the pleadings, exhibits, affidavits, and Briefs of the parties in support of their respective positions.

The facts of the matter are these. Petitioner was first employed by the Board as a school psychologist for the 1972-73 school year. The minutes (C-1) of a Board meeting held July 6, 1972, show that the Board offered petitioner employment "***on a per diem basis of $80.00 for 78 days for the 1972-73 school year." Thereafter, the Board and petitioner entered an employment contract (C-1A) for the 1972-73 academic year which provided that petitioner was "***[t]o be paid on a daily basis at the rate of $80.00 a day not to exceed 78 days or $6,240.00***."

The minutes (C-2) of a Board meeting conducted on March 15, 1973, show that the Board acted "***to offer an employment contract for the 1973-74 school year to [petitioner] *** at a salary to be agreed upon ***." Thereafter, the minutes (C-2A) of a Board meeting conducted on June 21, 1973, show that the Board acted "***to offer a contract to [petitioner] as a School

You are viewing an archived copy from the New Jersey State Library.

Psychologist on a per diem basis of $86.00 for 78 days for the 1973-74 school year***." An undated contract (C-2B) executed between petitioner and the Board for the 1973-74 academic year provided that petitioner was "***to be paid on a daily basis at the rate of $86.00 a day not to exceed 78 days or $6,708.00***."

During the 1973-74 academic year, the Board determined at its meeting held March 21, 1974 "***to offer employment contracts to [petitioner and to another school psychologist it employs] at salaries to be agreed upon for the 1974-75 school year." (C-3) The Board, at its meeting conducted on June 6, 1974, determined "***to offer a contract to [petitioner] as School Psychologist on a per diem basis of $95.00 for 78 days *** for the 1974-75 school year." (C-3A) Petitioner and the Board executed an employment contract on June 7, 1974 for the 1974-75 academic year which provided that petitioner's compensation was "to be paid on a daily basis at the rate of $95.00 a day not to exceed 78 days or $7,410.00***." (C-3B) Petitioner and the Board agreed that had petitioner satisfied the requirements necessary for a doctoral degree in school psychology, his daily contractual rate would have been increased to $100 per day.

During the 1974-75 academic year, the Board met on March 20, 1975, and determined "***to offer employment contracts to [petitioner and the other school psychologist it employs] at salaries to be agreed upon for the 1975-76 school year." (C-4) Unlike prior years, there was no action by the Board to offer petitioner a written contract specifying a number of employment days at a specific per diem rate. Petitioner alleges, however, he was informed by the Superintendent at a meeting on or about May 20, 1975, that his 1975-76 employment days would continue to be 78 as in prior years. (Petition of Appeal, paragraph 6) The Board admits that a meeting occurred on or about May 20, 1975 between petitioner and the Superintendent but asserts that the discussion centered on petitioner's per diem rate for 1975-76 and denies any discussion with respect to the number of employment days. (Board's Answer, paragraph 5) The Superintendent, who is no longer in the employ of the Board, executed two affidavits (C-7; C-7A) which were filed in the matter. One affidavit (C-7A) was filed by petitioner, while the other affidavit (C-7) was filed by the Board. Both affidavits are silent with respect to the May 20 meeting with petitioner.

The record shows that, by letter (C-5) dated May 29, 1975, petitioner notified the Board that "I am happy to accept employment as school psychologist in Watchung Boro Public Schools, for the school [academic] year September 1, 1975 to June 30, 1976 at a salary to be negotiated." Petitioner asserts that this letter was sent pursuant to the provisions of *N.J.S.A.* 18A:27-10, 11 and 12. These referenced statutes are reproduced here in full:

N.J.S.A. 18A:27-10

"On or before April 30 in each year, every board of education in this State shall give to each nontenure teaching staff member continuously employed by it since the preceding September 30 either

You are viewing an archived copy from the New Jersey State Library.

"a. A written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary as may be required by law or policies of the board of education, or

"b. A written notice that such employment will not be offered."

N.J.S.A. 18A:27-11

"Should any board of education fail to give to any nontenure teaching staff member either an offer of contract for employment for the next succeeding year or a notice that such employment will not be offered, all within the time and in the manner provided by this act, then said board of education shall be deemed to have offered to that teaching staff member continued employment for the next succeeding school year upon the same terms and conditions but with such increases in salary as may be required by law or policies of the board of education."

N.J.S.A. 18A:27-12

"If the teaching staff member desires to accept such employment he shall notify the board of education of such acceptance, in writing, on or before June 1, in which event such employment shall continue as provided for herein. In the absence of such notice of acceptance the provisions of this article shall no longer be applicable."

The Superintendent notified petitioner by letter (J-1) dated July 9, 1975 that:

"We were unable to reach you by telephone; however, we feel you should be aware that Mr. Kinch [the Valley View School principal] and I are recommending to the Board of Education that the psychological time for the Valley View School [to which petitioner was assigned] be cut back to forty (40) days for the 1975-76 school year.

"This recommendation will be presented in executive session at the same time that we recommend the salary increases as discussed in our meeting of several weeks ago.

"We understand that this has a very direct effect upon your employment and will make ourselves available in order to clarify the issue and to discuss alternatives."

Thereafter, the Board met on August 14, 1975 "***to authorize the Superintendent to offer a contract to [petitioner] for the 1975-76 school year as school psychologist at $100.00 per day with the number of days not to exceed 40 days." (C-4A) A correcting motion was also adopted to table the above authorization until its August 21, 1975 meeting. The Board met on August 21, 1975 and memorialized its correcting action. It then authorized that it would "***offer a contract to [petitioner] as a School Psychologist for the 1975-76 school year at $95.00 per diem not to exceed 40 days (to be increased

You are viewing an archived copy from the New Jersey State Library.

to $100.00 per diem upon satisfying all requirements for the Ed.D. in School Psychology)." (C-4C) Petitioner satisfied the requirements for his doctoral degree in school psychology on September 18, 1975. (Petitioner's Brief, at p. 6)

The parties stipulate that petitioner received a per diem rate of $100 per day. (Conference Agreements, at p. 1) Petitioner, however, was not informed that his employment days were reduced to 40 days until September, when he began his duties for the 1975-76 academic year. The school principal advised petitioner by memorandum (J-2) dated September 2, 1975, that

> "[Your] psychological services this year [1975-76] at Valley View will be based on 40 days. As per our discussion your services will be needed on Wednesday of each week that school is open.***"

Thus, petitioner's employment days, rates of compensation, and total compensation for his years of service to the Board in chart form are as follows:

Academic Year	Employment Days	Per Diem Rate	Total Compensation
1972-73	78	$ 80	$6,240
1973-74	78	$ 86	$6,708
1974-75	78	$ 95	$7,410
1975-76	40	$100	$4,000

In each year of employment with the Board, petitioner's total compensation was subject to withholding for FICA, Social Security and Teachers' Pension and Annuity Fund. (Petitioner's Brief, at p. 2; Superintendent's Affidavit, C-7A) The Superintendent also attests in his affidavit (C-7A) that he had discussed with petitioner the terms of his employment for the academic years 1972-73 through 1974-75. The Superintendent attests that petitioner was to work 78 days in each of the referenced years; that petitioner and the school principal to whom he was assigned would select two mutually agreeable days of each week that he would report; that each year petitioner was credited with four days of cumulative sick leave based on his 78 employment days per year; that petitioner was paid only for those days worked or those days absent for which he could claim sick leave, or for those days missed not covered by sick leave but made up by petitioner; and that in each of the three years petitioner was to work no more or less than 78 days. (C-7A, at pp. 1-2)

The Board argues that petitioner was never guaranteed 78 days of work and, in this regard, relies on the Superintendent's affidavit. (C-7) The Superintendent attests that if petitioner had been absent from work during any of his assigned 78 days, and such absence was not chargeable to sick leave, he would have been given the opportunity, if his services were required, to make up the lost time. Had his services not been required, though, he would not be paid for a day simply to make up an absence. The Superintendent also attests that in those instances where he was absent, his services were required and he was allowed to make up his absences and was paid accordingly. Thus, the Board explains that while petitioner was never employed by it for a fixed number of

You are viewing an archived copy from the New Jersey State Library.

days or a fixed rate of compensation, it happened that in each prior year he worked for 78 days.

Petitioner argues in his Brief that by virtue of his being employed for 78 days during the 1973-74 academic year, the year prior to the year controverted herein, that number of days constitutes a condition of his employment. Petitioner reasons that the Board's failure to notify him by April 30, 1975 of its intention with respect to his continued employment must be construed as an offer of employment upon the "***same terms and conditions, but with such increases in salary as may be required by law***." *N.J.S.A.* 18A:27-11 Petitioner asserts that by virtue of his accepting continued employment through his letter to the Board dated May 29, 1975 (C-5) he accepted its offer to be employed for at least 78 days for 1975-76 with the salary to be negotiated. Thus, petitioner concludes that he should have been employed for 78 days during 1975-76 at a per diem rate of $100, the rate established by the Board at its meeting on August 21, 1975, for a total compensation of $7,800. Petitioner thus seeks to recover $3,800. In support of this position, petitioner cites *Arthur L. Page v. Board of Education of the City of Trenton and Pasquale A. Maffei, Mercer County,* 1973 *S.L.D.* 704, rem. State Board of Education May 1, 1974, decision on remand August 26, 1975, aff'd State Board January 7, 1976.

Petitioner asserts that his rights to tenure protection pursuant to *N.J.S.A.* 18A:28-5 have been violated by the reduction in his total compensation between 1974-75 and 1975-76. Petitioner acknowledges that boards of education have the authority to abolish or reduce staff positions pursuant to *N.J.S.A.* 18A:28-9 *et seq.* Petitioner also cites the Board's stipulation that it did not act to abolish the position of school psychologist at 78 days per year that he held since 1972-73. (Conference Agreements, at p. 2) Thus, petitioner concludes that because the Board failed to abolish that position, it had no right to assign him to a lesser position of 40 days per year for a total compensation of $4,000.

Petitioner argues that, since his tenure rights have been violated, his requested compensation should be granted, and the Board should be directed not to require him to work additional days for the monetary relief ordered. Petitioner requests that the Commissioner grant an appropriate remedy so that such an attempt is thwarted and cites *Thomas Aitken v. Board of Education of the Township of Manalapan, Monmouth County,* 1974 *S.L.D.* 207; *Ronald Elliott Burgin v. Board of Education of the Borough of Avalon, Cape May County,* 1974 *S.L.D.* 396; *Elizabeth Rockenstein v. Board of Education of the Borough of Jamesburg, Middlesex County,* 1975 *S.L.D.* 191, aff'd State Board of Education 199, aff'd Docket Nos. A-3916-74, A-4011-74 New Jersey Superior Court, Appellate Division, July 1, 1976.

Finally, petitioner seeks costs and counsel fees resulting from the instant matter.

The Board argues that in each year it employed petitioner between 1972-73 and 1974-75 it entered an employment contract (C-1A; C-2B; C-3B) whereby petitioner agreed to perform his services at a fixed rate for a period not

You are viewing an archived copy from the New Jersey State Library.

to exceed 78 days. The Board asserts that in no instance did it ever guarantee petitioner he would work 78 days. Rather, the Board states that the clear meaning of the employment contracts is that he would provide no more than 78 days of service. The Board contends that in each of the contracts, *ante*, the phrase "not to exceed" means simply that petitioner would provide his services up to 78 days if his services were required.

The Board asserts that because petitioner happened to work 78 days in each of the contract years prior to 1975-76, such happenstance cannot supersede the legal obligations of the parties to the specific contracts. In support of the position that petitioner's services happened to be needed for 78 days, the Board relies on the affidavit (C-7) of the Superintendent wherein he attests that petitioner was paid only for days worked and, if absent, was given the opportunity to make up such absences, if his services were needed.

The Board likens the employment contracts it entered into with petitioner between 1972-73 and 1974-75 to contracts whereby a supplier will furnish materials as required and at a specified unit price. In the instant matter, the Board contends that petitioner was subject to call for his services up to 78 days. If he was called and he performed his services he was paid. Conversely, if he was not called, he was not paid.

The Board asserts that petitioner has always been employed by the day and, consequently, petitioner has no claim to a specific number of days or to a specific yearly compensation.

The Board asserts that it is established law that where the terms of a contract are clear and unambiguous, a judicial body is bound to enforce its terms as written and cites *Kampf v. Franklin Life Insurance Company*, 33 *N.J.* 36 (1960); *Marini v. Ireland*, 56 *N.J.* 130 (1970); *Sosanie v. Pernetti Holding Corporation*, 115 *N.J. Super.* 409 (*Chan. Div.* (1971); *Klacik v. Kovacs*, 111 *N.J. Super.* 307 (*App. Div.* 1970). Finally, the Board urges that where the terms of an employment contract are clear, no external evidence may be allowed to contradict such clear terms and cites *Newark Publishers' Association v. Newark Typographical Union*, 22 *N.J.* 419 (1956) and *Hungerford & Terry, Inc. v. Geschwindt*, 24 *N.J. Super.* 385 (*Chan. Div.* 1953), aff'd 27 *N.J. Super.* 515 (*App. Div.* 1953).

The Board argues that petitioner's tenure rights are limited to the extent that his per diem rate may not be reduced below $95 per day, but his tenure status does not guarantee him a minimum yearly compensation as he asserts.

The Board avers that this position is supported by the principle that the rights and protection of a tenure status are those specifically provided by law as articulated by the New Jersey Supreme Court in *Zimmerman v. Board of Education of the City of Newark*, 38 *N.J.* 65 (1962) and *Laba v. Board of Education of the City of Newark*, 23 *N.J.* 364 (1957).

The Board argues with respect to the application of *N.J.S.A.* 18A:27-10, 11, and 12 that, notwithstanding its failure to provide written notice to

You are viewing an archived copy from the New Jersey State Library.

petitioner with respect to employment for the 1975-76 academic year, petitioner himself failed to properly accept the constructive offer of employment pursuant to *N.J.S.A.* 18A:27-12. Consequently, no contract of employment arose pursuant to *N.J.S.A.* 18A:27-11. The Board asserts that petitioner's letter (C-5) of May 29, 1975 by which he purportedly accepts the offer of employment for 1975-76 is conditioned upon the salary being negotiated. The Board argues that an acceptance of an offer, to create a contract, must be unconditional, unqualified, and unequivocal and cites *Looman Realty Corp. v. Broad Street National Bank of Trenton,* 74 *N.J. Super.* 71 (*App. Div.* 1962) and *Larsen & Fish, Inc. v. Schultz,* 5 *N.J. Super.* 403 (*App. Div.* 1949). The Board also relies on recent rulings of the Commissioner wherein ambiguous and conditional notices of non-reemployment were issued by boards of education and set aside. See: *Michelle Siderio v. Board of Education of the Township of Riverside, Burlington County,* 1975 *S.L.D.* 569, aff'd State Board of Education 1976 *S.L.D.* 1170 and *Patricia Fallon v. Board of Education of the Township of Mount Laurel, Burlington County,* 1975 *S.L.D.* 156, aff'd in part/rev'd in part and remanded State Board of Education 162, decision on remand 1976 *S.L.D.* 75, aff'd State Board 76, rev'd Docket No. A-3683-74 New Jersey Superior Court, Appellate Division, February 25, 1977.

Finally, the Board asserts that should a finding be entered against it herein and it is directed to compensate petitioner the difference between $4,000 and $7,800 for the 1975-76 academic year, it must be allowed to have petitioner report for duty on a sufficient number of days to justify such a payment. The Board explains that should its controverted action be found to be improper, there has been no bad faith or *mala fides* urged against it. It is in the public interest and for the protection of the public purse that petitioner be expected to work the additional 38 days should his prayer be granted.

The Commissioner has reviewed the respective arguments of the parties in support of their positions. In the Commissioner's judgment, an adjudication of the matter does not rest, as the Board asserts, in the phrase "not to exceed 78 days" in each of the employment contracts for 1972-73 through 1974-75. Rather, the Commissioner believes that the whole of the factual circumstances must be considered to arrive at a proper determination. The Commissioner notices with respect to the argument of the Board that a contract, clear and unambiguous on its face, may not be considered in the light of external evidence, that the New Jersey Supreme Court held in *Casriel v. King,* 2 *N.J.* 45 (1949):

> "***The polestar of construction is the intention of the parties to the contract as disclosed by the language used, taken as an entirety; and, in the quest for the intention, the situation of the parties, the attendant circumstances, and the objects they were thereby striving to attain are to be regarded. Even when the contract on its face is free from ambiguity, evidence of the situation of the parties and the surrounding circumstances and conditions is admissible in aid of interpretation. The inquiry is the meaning of the words when assayed by the standard adopted by the law. On the theory that all language will bear some different meanings,

You are viewing an archived copy from the New Jersey State Library.

> evidence of the circumstances is always admissible in the construction of integrated agreements, but not for the purpose of giving effect to an intent at variance with any meaning that can be attached to the words. This is a primary rule of interpretation which has special application where the meaning of the instrument is not clearly apparent.*** In short, we are to consider what was written in the light of the circumstances under which it was written, and give to the language a rational meaning consistent with the expressed general purpose.***" (at pp. 50-51)

In each year the Board first acted to offer petitioner employment for 78 days at a per diem rate in an unfettered fashion. (See Board minutes C-1, C-2A, C-3A.) The phrase "not to exceed" was incorporated in the subsequent contracts executed by the parties within the total context of "not to exceed 78 days or $6,240" or the sum for each subsequent year. The attestations of the Superintendent that he and petitioner discussed the number of employment days expected by the Board for each year as 78 days is convincing. The Commissioner finds that the Board entered into employment contracts with petitioner by which he was offered and accepted employment for 78 days at an established per diem rate in 1972-73, 1973-74 and 1974-75.

The Commissioner does not agree with the Board that petitioner's acceptance (C-5) of his "deemed offer of employment" for 1975-76 was conditional to the extent that that acceptance must be rendered void. In each of the three prior years of his employment by the Board, his per diem rate was increased over the prior year's rate. There is no reason to believe that petitioner would expect his per diem rate for 1975-76 not be subject to negotiation for an increase in total salary.

Consequently, when petitioner advised the Board that he accepted employment for 1975-76, he accepted employment for 78 days. The per diem rate was thereafter established by the Board on August 21, 1975 at $95 per day. On September 18, 1975, when petitioner satisfied the requirements for his doctorate, his per diem rate became $100 per day. The Commissioner so holds. The Commissioner points out that this holding is grounded upon the application of *N.J.S.A.* 18A:27-10, 11 and 12.

The Commissioner finds that a tenure status did not accrue to petitioner until he worked the first day of September 1975 pursuant to *N.J.S.A.* 18A:28-5(b). The action controverted herein emerged prior to that date, consequently no violation of petitioner's tenure protection could have occurred.

In light of the holding set forth above, that petitioner had accepted employment for 1975-76 for 78 days at a per diem rate of $95 to September 18 and $100 per day thereafter, his protection does now extend to his yearly compensation of approximately $7,800. The Board may exercise its authority with respect to the abolition or reduction of teaching positions as set forth in *N.J.S.A.* 18A:28-9 *et seq.* for reasons of economy or other just cause. Should the Board elect to exercise this authority, it is cautioned to do so according to strict statutory prescription.

You are viewing an archived copy from the New Jersey State Library.

The Board is directed to compensate petitioner the difference between what he received during 1975-76 compared to what he should have received according to the ruling hereinbefore set forth. The Commissioner directs the Board not to require petitioner to work additional time. This is so for such a requirement would in effect be a reduction of his current yearly compensation which, absent charges, would violate his tenure protection pursuant to *N.J.S.A.* 18A:28-5.

The Commissioner finds no authority to grant petitioner's prayer for costs and counsel fees. *Jack Noorigian v. Board of Education of Jersey City, Hudson County,* 1972 *S.L.D.* 266, aff'd in part/rev'd in part State Board of Education 1973 *S.L.D.* 777; *William J. Convery v. Perth Amboy Board of Education and Anthony V. Ceres, Superintendent of Schools, Middlesex County,* 1974 *S.L.D.* 372

The Commissioner hereby directs the Board of Education of the Borough of Watchung to pay to Barton Lilenfield at the next regularly scheduled pay period, the difference between what he received during the 1975-76 school year compared to what he should have received had he been employed for 78 days at a per diem rate of $95 between September 1 and September 18, 1975 and $100 per day thereafter.

COMMISSIONER OF EDUCATION

March 21, 1977

Board of Education of the Borough of Roselle,

Petitioner,

v.

Mayor and Council of the Borough of Roselle, Union County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Jacob Green, Esq.

For the Respondent, Irving F. Sturm, Esq.

Petitioner, the Board of Education of the Borough of Roselle, hereinafter "Board," appeals from an action of the Mayor and Council of the Borough of Roselle, hereinafter "Council," certifying to the Union County Board of

You are viewing an archived copy from the New Jersey State Library.

Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount certified as necessary by the Board. The facts of the matter were adduced at a hearing before a representative of the Commissioner of Education at the State Department of Education, Trenton, on January 6, January 17 and February 1, 1977 at the office of the Union County Superintendent of Schools. The report of the hearing examiner follows:

At the annual school election held March 9, 1976, the Board submitted to the electorate a proposal to raise $4,711,297 by local taxation for current expense costs of the school district. This item was rejected by the voters and, subsequent to the rejection, the Board submitted its budget to Council for its determination of the amounts necessary for the operation of a thorough and efficient school system in the Borough of Roselle in the 1976-77 school year, pursuant to the mandatory obligation imposed on Council by *N.J.S.A.* 18A:22-37.

After consultation with the Board, Council made its determinations and certified to the Union County Board of Taxation an amount of $4,485,329 for current expenses. The pertinent amount in dispute is shown as follows:

	Current Expense
Board's Proposal	$4,711,297
Council's Certification	4,485,329
Amount Reduced	$ 225,968

The Board documents its need for the reductions recommended by Council with written testimony and a further oral exposition at the time of the hearing. Council maintains that it acted properly and after due deliberation and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system. Council also documents its position with written and oral testimony. As part of its determination, Council suggested specific line items of the budget in which it believed economies could be effected as follows:

CHART I

Account Number	**Item**	**Board's Budget**	**Council's Proposal**	**Reduction**
CURRENT EXPENSE:				
	Salaries-All Accounts	$3,921,046	$3,879,215	$ 41,831
J213B	Bed. & Supp. Tchrs.	53,200	30,200	23,000
J120D	Contr. Servs.	10,000	5,000	5,000
J130A,N	Admin. Exps.	34,812	20,000	14,812
J230A,B,C	Lib. & A-V	42,785	28,000	14,785
J240	Teach. Supls.	112,356	100,000	12,356
J250	Other Instr. Exps.	48,209	30,000	18,209
J520B	Contr. Trans., Oth.	9,975	5,000	4,975
J520A	Contr. Trans.	123,000	93,000	30,000

You are viewing an archived copy from the New Jersey State Library.

J870	Tuition	201,600	165,600	36,000
J700	Maint.	307,871	282,871	25,000
	TOTALS	$4,864,854	$4,638,886	$225,968

The hearing examiner observes that the amounts shown, *ante,* as budgeted by the Board and appropriated by Council reflect the actual totals in Council's amended and corrected resolution dated April 9, 1976. In its original resolution of March 24, 1976, Council reduced the Board's budget in the amount of $360,315.50 which included a reduction of $225,968 for current expenses and a reduction of $134,347.50 in bond and interest items. Council's subsequent resolution of April 9, 1976, corrected and restored $134,347.50 to the Board's budget.

The hearing examiner has reviewed the record in its entirety and has weighed the testimony and documentation presented by the litigants. He finds that Council's reductions were procedurally correct and within the guidelines established by the Supreme Court of New Jersey in *Board of Education of East Brunswick Township v. Township Council of East Brunswick,* 48 *N.J.* 94 (1966). The findings and recommendations of the hearing examiner in regard to the controverted line items are herein set forth, *seriatim,* as follows:

J110 Salaries, Administration
J211-215 Salaries, Instruction
J310 Salaries, Attendance
J410 Salaries, Health
J610 Salaries, Operations
J710 Salaries, Maintenance
J910-1710 Salaries, Food Service
J1010 Salaries, Student Activities
J6 Salaries, Summer School
J1112 Salaries, Community School *Reduction $41,831*

These combined line items involve the salaries of all personnel except for line items J213B and C which include an amount of $108,200 for bedside instruction and substitute teachers. The Board budgeted $4,029,246 for all salaries for 1976-77 including the above. In making its determination, Council deducted the amount of $108,200 budgeted for bedside and substitute teachers from the Board's salary budget of $4,029,246 to arrive at its base amount of $3,921,046 as shown in Chart I, *ante.* Council's reduction of $41,831 included the salary of an additional custodian in the amount of $9,236.

The Superintendent and Business Administrator testified that the Board added 5.5 percent to its 1975-76 budget for salaries to provide for negotiated increases for 1976-77. They testified further that an additional $116,000 for salaries was spread among the various line items in the budget as a contingency in the event the salary negotiations exceeded the 5.5 percent budgeted. (Tr. II-46-48) The Board and its employee groups subsequently negotiated the settlement of a 6.6 percent increase above the 1975-76 salary levels. (Tr. II-49)

Subsequent to the submission of its budget to the electorate, the Board

You are viewing an archived copy from the New Jersey State Library.

reduced the number of teaching staff members. The testimony of the Superintendent and the Business Administrator conflicted with respect to the number of positions reduced by the Board. It was the Superintendent's testimony that twenty positions were reduced (Tr. II-48-49), while the Business Administrator testified that the Board reduced twenty-one positions. (Tr. III-6) Notwithstanding the conflicting testimony, the Superintendent stated that the reduction in force was not considered by the Board when it prepared the 1976-77 budget. Thus the Board realized a saving of $96,969 over its proposed budget in its J213 line item. (Tr. II-48-50; P-1)

The Business Administrator testified that of the twenty-one positions reduced, eighteen positions had been budgeted. Subsequently nine teaching positions were reinstated by the Board. (Tr. II-17-19; Tr. III-6-7) He testified that in addition to these nine positions, the Board established two new positions which were not budgeted, and that the eleven positions totaled an expenditure of $112,725. (Tr. II-59; P-1) The Board requested that five positions needed to be restored as follows; one each in the areas of a psychological extern, learning disabilities-teacher consultant, English, business education and home economics. (Tr. III-7)

Council asserted that it applied an increase of seven percent for salary increases when it made its determination to reduce the salary line items in the amount of $41,831. It did not provide any moneys for the employment of an additional custodian in the amount of $9,236 since that position and salary was omitted from the worksheets it used to make its determination.

Council contends that with the Board's final negotiated 6.6 percent salary increase for its personnel, the reinstatement of nine reduced positions and the two new unbudgeted positions, the Board could restore the positions of psychological extern and learning disabilities-teacher consultant for the remainder of the 1976-77 school year and retain an excess of $52,350. Council avers that the balance of $52,350 is well within its reduction of $41,831.

Council has presented convincing and credible testimony with regard to its reduction. The hearing examiner finds that Council did not include nor consider the Board's additional custodian when it made its determination to reduce the salaries line item by $41,831. The hearing examiner therefore recommends that the $9,236 salary of the custodian be restored and that $32,595 of Council's reduction be sustained.

Summary:	Amount of Reduction	$41,831
	Amount Restored	$9,236
	Amount not Restored	32,595

J213B Bedside and Supplemental Teachers *Reduction $23,000*

Council's reduction was based upon the Board's past experience and actual expenditure in this line item. Council averred that the Board budgeted $53,200 for 1976-77 while it expended $31,639.50 in 1974-75 and $31,276.55 in 1975-76. Council's reduction of $23,000 would provide the Board with a budget

You are viewing an archived copy from the New Jersey State Library.

of $30,200 for bedside and supplemental teachers. (Tr. II-72-73)

The Board stated that it has experienced increased costs in this line item due to the increased number of pupils classified by its Child Study Team as eligible for supplemental instruction. (P-2) The Board conceded, however, that it could function with a reduction of $11,200 of Council's $23,000 reduction in this line item. (Tr. III-18)

The hearing examiner recommends that $11,200 of Council's $23,000 be sustained.

Summary:	Amount of Reduction	$23,000
	Amount Restored	11,800
	Amount not Restored	11,200

J120D Other Contracted Services *Reduction $5,000*

Council stated that the Board budgeted $4,500 for 1975-76 and spent a total of $1,600. Council asserts that its recommended reduction of $5,000 from the Board's proposed $10,000 will provide the Board an amount $3,400 above its actual expenditure for 1975-76.

The Board averred that it budgeted $10,000 in this line item to carry out a master plan study mandated by the State Department of Education. It had interviewed professional consulting firms for the purpose of issuing a contract to perform this task and one quotation exceeded the budgeted amount of $10,000. (Tr. III-19; P-3)

The hearing examiner recognizes the Board's need to engage in a master plan study but alternatives are available to the Board through the use of its own professional staff and the services of the Office of the Union County Superintendent of Schools and the State Department of Education. He recommends, therefore, that Council's reduction be sustained.

Summary:	Amount of Reduction	$5,000
	Amount Restored	–0–
	Amount not Restored	5,000

J130A,N Other Administration Expenses *Reduction $14,812*

The Board demonstrated that its actual expenditure for this line item was $34,332 for the 1975-76 school year, although it budgeted the amount of $15,050. The Board stated that items which had previously been charged to its J250 line item were transferred to J130 which resulted, in part, in the overexpenditure of $19,282 for 1975-76. (P-4)

Council made its determination to reduce this line item on the basis of the Board's actual expenditure of $13,796 for the 1974-75 school year and the budgeted amount of $15,050 for 1975-76. (Tr. II-81, 96)

The hearing examiner finds that the Board has properly accounted for its

You are viewing an archived copy from the New Jersey State Library.

line item transfers and therefore recommends that the amount of $14,812 be restored to this line item.

Summary:	Amount of Reduction	$14,812
	Amount Restored	14,812
	Amount not Restored	–0–

J230,A,B&C Library and Audiovisual Materials *Reduction $14,785*

Council offered no testimony with regard to its recommended reduction for this line item and relies upon its Answer to the Petition of Appeal and its Statement wherein it set forth its underlying determination and supporting reasons for its reduction of $14,785. Council asserts that the Board's budget increase of $17,793 represented an increase of 120 percent over its actual expenditure for 1974-75 and an 80 percent increase over its budget for 1975-76. (Council's Statement, Item No. 5)

The Board admitted that it had not budgeted sufficient moneys in the past for library books and audiovisual materials. It cited the *New Jersey School Boards Association Cost of Education Index,* wherein its per pupil cost for library and AV materials for 1975-76 was shown as $6.84 as compared with the state average of $12.20 per pupil. The Superintendent testified that it was the Board's intention to improve its position with respect to other school districts and appropriate additional moneys to this line item. (Tr. III-30)

The hearing examiner finds that the Board has been deficient with regard to its expenditure for library books and audiovisual materials. The record shows that, despite the recommended economy, Council has approved an expenditure in this account which is more than $6,800 higher than the amount spent last year. The hearing examiner recommends that Council's reduction be sustained.

Summary:	Amount of Reduction	$14,785
	Amount Restored	–0–
	Amount not Restored	14,785

J240 Teaching Supplies *Reduction $12,356*

Council asserted that its reduction would provide the Board with an 18 percent increase over its expenditure for the 1975-76 school year. The Board's expenditure of $102,053 for 1974-75 was reduced to $80,941.36 in 1975-76 in an effort to economize. This economy, it averred, resulted in severe shortages which were detrimental to the instructional program and teacher morale. (P-6)

The hearing examiner observes that Council's proposal would allow an increased expenditure of $19,059 more than the Board's actual expenditure for 1975-76 and Council's reduction of $12,356 would be $2,000 less than the Board's actual expenditure for 1974-75. The hearing examiner recommends that the Board's budget for this line item be restored to its level of expenditure for 1974-75, and, therefore, that $2,356 be restored and $10,000 of Council's reduction be sustained.

You are viewing an archived copy from the New Jersey State Library.

Summary:	Amount of Reduction	$12,356
	Amount Restored	2,356
	Amount not Restored	10,000

J250 Other Instructional Expenses *Reduction $18,209*

Council stated that its reduction of $18,209 provided for a 33 percent increase over the Board's 1975-76 budget in this line item.

The Board contended that it budgeted $22,480 but actually expended $35,882.53 in its 1975-76 budget. The record shows that the Board expended $58,513.58 for this line item for 1974-75. The line item was subsequently restructured and items were transferred to their appropriate categories. (P-7; P-20)

The hearing examiner recommends that the Board's J250 line item be adjusted to equal the sum it expended for the 1975-76 school year. Accordingly, he recommends that $5,883 be restored and $12,326 of Council's reduction be sustained.

Summary:	Amount Reduced	$18,209
	Amount Restored	5,883
	Amount not Restored	12,326

J20B Other Contracted Transportation *Reduction $4,975*

The hearing examiner notices that the Board inappropriately designated its J520B line item for field trips where the appropriate financial coding is J520C as prescribed by *The Chart of Accounts* authorized by the State Board of Education. (Tr. III-51)

Council observed that field trips were eliminated from the Board's budget for the 1975-76 school year. It stated that it therefore relied upon the actual expenditure for 1974-75 to make its determination to reduce this line item. It asserted that its reduction of $4,975 for field trips provided the Board with a sum equal to its latest expenditure. (Tr. II-84)

It is difficult for the hearing examiner to comprehend the Board's argument and testimony wherein it asserted that its 1974-75 expenditures of $5,007.50 "***was far below the true need.***" (P-8) It subsequently eliminated field trips from its 1975-76 budget and now asserts that it must double its 1974-75 expenditure. The hearing examiner finds that the Board's past neglect must not be completely remedied in this one budget year. He finds that Council's determination is a reasonable one, and he recommends that it be allowed to stand.

Summary:	Amount of Reduction	$4,975
	Amount Restored	–0–
	Amount not Restored	$4,975

You are viewing an archived copy from the New Jersey State Library.

J520A Contracted Transportation *Reduction $30,000*

The Board offered no challenge of this line item reduction. The Superintendent testified that the Board could function appropriately with a reduction of $29,122. (Tr. III-52-53; P-9)

Accordingly, the hearing examiner recommends that Council's reduction be sustained.

Summary:	Amount of Reduction	$30,000
	Amount Restored	—0—
	Amount not Restored	30,000

J870 Tuition *Reduction $36,000*

Council asserted that its reduction was based upon the Board's actual expenditure of $93,175.77 for 1974-75 and the budgeted amount of $83,400 for 1975-76. It contended that its reduction of $36,000 provided the Board with an appropriation of $165,600 for this line item.

There is no question that tuition costs must be borne by the Board. The actual expenditure for 1975-76 was $118,742.46 against the Board's budget of $83,400 for that school year. Extensive testimony was proffered by the Board as to its need for substantial increased support of out-of-district placements of handicapped pupils and tuition for vocational pupils. (Tr. III 5 -63; P-10) The Board documents its need for $197,950. The hearing examiner recommends that $23,350 be restored to line item J870 and that a reduction of $12,650 be sustained.

Summary:	Amount of Reduction	$36,000
	Amount Restored	23,350
	Amount not Restored	12,650

J700 Maintenance of Plant *Reduction $25,000*

Council averred that its determination to reduce this line item in the amount of $25,000 would provide the Board an increase of $45,290 above the actual expenditure for 1974-75 and provide an amount $49,000 higher than the Board budgeted for 1975-76. Council contended that many of the items listed in the Board's J700 line item should have been budgeted under capital outlay. (Tr. II-90-91)

Further, Council asserted that it would support a bond referendum that the Board might propose for the purpose of major capital improvements for the school district. (Tr. II-89) A councilman testified, however, that he could not recall when the electorate had approved the Board's annual school budget and that two school bond referenda had been defeated during the course of his six year tenure as a Borough Councilman. (Tr. II-102, 104)

The Board expended only $158,133.69 of the budgeted amount of $224,539 for the 1975-76 school year. The Superintendent testified that it was

You are viewing an archived copy from the New Jersey State Library.

the Board's practice to reallocate funds from its J700 series to other line items within the budget when emergencies arise or to cover expenditures in under-budgeted categories. (Tr. III-64) He stated further that the Board could "***live with a reduction in any amount in this account." (Tr. III-65)

The hearing examiner has carefully reviewed the Board's documents with respect to its J700 line item and finds that some of the items listed should indeed be recorded under the 1200 series, Capital Outlay. Such items as built-in library shelves, installation of a new television antenna, new computer terminal, construction of a photographic darkroom and others which amounted to approximately $10,000 are appropriately capital outlay expenditures. The hearing examiner finds no merit in Council's conclusion that these and similar items should be the subject of a bond referendum. The hearing examiner further finds that Council's reduction of $25,000 will provide the Board an amount of $124,737 higher than its expenditure for 1975-76. He recommends, therefore, that Council's reduction be sustained.

Summary:	Amount of Reduction	$25,000
	Amount Restored	–0–
	Amount not Restored	25,000

In summary, it is recommended that the controverted line items discussed, *ante*, be determined as follows:

CHART II

Account Number	Item	Amount of Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
	Salaries-All Accounts	$ 41,831	$ 9,236	$ 32,595
J213B	Bed. & Supp. Tchrs.	23,000	11,800	11,200
J120D	Contr. Servs.	5,000	–0–	5,000
J130A,N	Admin. Exps.	14,812	14,812	–0–
J230A,B,C	Libr. & AV	14,785	–0–	14,785
J240	Teach. Supls.	12,356	2,356	10,000
J250	Other Instr. Exps.	18,209	5,883	12,326
J520B	Contr. Transp. (Other)	4,975	–0–	4,975
J520A	Contr. Transp.	30,000	–0–	30,000
J870	Tuition	36,000	23,350	12,650
J700	Maintenance	25,000	–0–	25,000
	TOTALS	$225,968	$67,437	$158,531

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner and observes that the parties of interest orally waived receipt of the hearing examiner report as provided by *N.J.A.C.* 6:24-1.17(b).

You are viewing an archived copy from the New Jersey State Library.

After consideration of the hearing examiner's report, the Commissioner adopts it, without exception, and concurs fully with his recommendations. The Commissioner observes that the legislative enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976 provided adjustments to the Board's 1976-77 school budget.

Accordingly, the Commissioner hereby authorizes the expenditure of the amount of $67,437 of unbudgeted current expense State aid by the school district of the Borough of Roselle for the 1976-77 school year. This addition shall increase the adjusted current expense school budget to the total of $4,706,323. No additional tax levy is necessary.

COMMISSIONER OF EDUCATION

March 21, 1977

Board of Education of the Princeton Regional School District,

Petitioner,

v.

Mayor and Council of the Borough of Princeton and Township Committee of the Township of Princeton, Mercer County,

Respondents.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Smith, Cook, Lambert & Miller (Thomas P. Cook, Esq., of Counsel)

For the Respondents, Mason, Griffin & Pierson (Gordon D. Griffin, Esq., of Counsel)

Petitioner, the Board of Education of the Princeton Regional School District, hereinafter "Board," appeals from an action of the Mayor and Council of the Borough of Princeton and the Township Committee of the Township of Princeton, hereinafter "governing bodies," taken pursuant to *N.J.S.A.* 18A:22-37 certifying to the Mercer County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The matter is submitted directly to the Commissioner of Education for Summary Judgment on the pleadings and Briefs of counsel.

You are viewing an archived copy from the New Jersey State Library.

At the annual school election held March 2, 1976, the Board submitted to the electorate a proposal to raise $7,591,300 by local taxation for current expense costs of the school district. This proposal was rejected by the voters and, subsequent to the rejection, the Board submitted its budget to the governing bodies for their determination of the amount necessary for the operation of a thorough and efficient school system in the Princeton Regional District for the 1976-77 school year, pursuant to the mandatory obligation imposed on the governing bodies by *N.J.S.A.* 18A:22-37.

After consultation with the Board, the governing bodies made their determinations and certified to the Mercer County Board of Taxation an amount of $7,275,300 for current expense costs determined as necessary in the 1976-77 school year. The pertinent amount in dispute is shown as follows:

	Current Expense
Board's Proposal	$7,591,300
Governing Bodies' Proposal	7,275,300
Amount Reduced	$ 316,000

The Board contends that the governing bodies' action was arbitrary, unreasonable, and capricious and documents its need for restoration of the reductions recommended by the governing bodies with written testimony. The governing bodies maintain that they acted properly and after due deliberation and that the items reduced by their action are only those which are not necessary for a thorough and efficient educational system. The governing bodies also support their position with written testimony. As part of their determination, the governing bodies suggested specific line items of the budget in which they believed economies could be effected as follows:

Account Number	**Item**	**Amount Reduced**
CURRENT EXPENSE:		
J110	Sal., Adm.	$ 24,400
J110L	Sal., Secy.	9,100
J110L	Off. Manager	14,200
J110B	Sal., Adm. Increases	25,000
J211	Sal., Prins.	40,000
J213	Sal., Tchrs.	78,500
J100-1000	Sal., Tchrs. Increases	76,700
J600	Plant Operation	30,300
J700	Maint.	11,600
J1020	Athl. Supls.	6,200
	TOTAL	$316,000

It is noted that the Board has an appropriation of $344,866 in unbudgeted State aid funds including categorical aid for compensatory and bilingual programs and that such categorical aid totals $28,866. It is further noted that

You are viewing an archived copy from the New Jersey State Library.

the Board's request to expend an additional amount of unbudgeted State aid funds was rejected by the governing bodies.

The Board maintains that such reductions should be restored in their entirety in the context of present unanticipated cost factors which have resulted in an erosion of funds available on June 30, 1976 in unappropriated balances. It further maintains that it has reduced the number of teaching staff members but that it is entitled by law to establish the salary and fringe benefits of remaining staff members by the clear prescription of *N.J.S.A.* 18A:29-4.1. The Board avers that several other of the reductions deemed appropriate by the governing bodies are "***within the discretion and exclusive responsibility of the Board***" and not subject to deletion absent a clear showing of an abuse of discretion. (Board's Brief, at p. 7) It lists such items in this latter category as the proposed expenditures for a secretary, assistant principals, office manager and administrative salaries. It cites several decisions of the Commissioner and the courts in support of its position. *Board of Education of Plainfield v. City Council of Plainfield, Union County,* 1976 *S.L.D.* 136; *Cliffside Park Borough Board of Education v. Mayor and Council,* 100 *N.J. Super.* 490 (*App. Div.* 1968); *Board of Education of Butler v. Borough Council of Butler, Morris County,* 1967 *S.L.D.* 142, aff'd State Board of Education 149

The governing bodies aver the Board has vacillated with respect to the need for restoration of amounts deemed appropriate for reduction by the governing bodies and that its "***'Written Testimony' should be disregarded or given little or no evidentiary significance.***" (Governing Bodies' Brief, at p. 5) The governing bodies maintain the Board has now, in effect, set forth allegations with respect to certain specific line items which are not here in contest and which bear no direct relationship to reduced line items deemed appropriate by the governing bodies. They aver that such allegations are irrelevant to the instant controversy.

The governing bodies specifically assert that past administrative personnel reductions, which are cited by the Board in defense of present staffing requirements, are an insufficient demonstration that the school system "***will now be unable to operate with the budget as certified by respondent.***" (Governing Bodies' Brief, at p. 9) The governing bodies further aver that sixty percent of the budget is dedicated for salaries of teaching staff members and that such dedication is not free from reduction by the statutory prescription (*N.J.S.A.* 18A:29-4.1) even though there was a memorandum of agreement executed by the Board and its staff with respect to such salaries prior to the reduction of the governing bodies. The governing bodies assert that this memorandum "***was not of such character and form as to constitute a binding agreement***." (Governing Bodies' Brief, at p. 11) The governing bodies cite *Board of Education of the City of Wildwood v. the Board of Commissioners of the City of Wildwood, Cape May County,* 1971 *S.L.D.* 471 in support of this assertion. They further aver that proposed expenditures for laundry, footwear for pupils and plant maintenance are excessive and appropriately subject to reduction, but that even if held to be necessary such expenditures, and others also in contention, may be funded from available unappropriated balances.

You are viewing an archived copy from the New Jersey State Library.

There appears no necessity to deal *seriatim* with each of the areas in which the governing bodies recommended reduced expenditures. As the Commissioner said in *Board of Education of the Township of Madison v. Mayor and Council of the Township of Madison, Middlesex County,* 1968 *S.L.D.* 139:

> "***The problem is one of total revenues available to meet the demands of a school system***. The Commissioner will indicate, however, the areas where he believes all or part of Council's reductions should be reinstated. It must be emphasized, however, that the Board is not bound to effect its economies in the indicated items but may adjust its expenditures in the exercise of its discretion as needs develop and circumstances alter.***"
>
> (at 142)

The Commissioner finds that reinstatement of the following curtailments recommended by the governing bodies are necessary to insure an adequate school program in the school district.

Account Number	Item	Amount Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
J110	Sal., Adm.	$ 24,400	$ –0–	$24,400
J110L	Sal., Secy.	9,100	9,100	–0–
J110L	Off. Manager	14,200	14,200	–0–
J110B	Sal., Adm. Increases	25,000	25,000	–0–
J211	Sal., Prins.	40,000	40,000	–0–
J213	Sal., Tchrs.	78,500	78,500	–0–
J100-1000	Sal. Tchrs. Increases	76,700	76,700	–0–
J600	Plant Operation	30,300	25,000	5,300
J700	Maint.	11,600	10,000	1,600
J1020	Athl. Supls.	6,200	4,000	2,200
	TOTALS	$316,000	$282,500	$33,500

Such restorations of the reduction deemed appropriate by the governing bodies are in large part attributable to the mandate of *N.J.S.A.* 18A:29-4.1 that negotiated salary policies and fringe benefits are required to be implemented. The statute provides:

> "A board of education of any district may adopt a salary policy, including salary schedules for all full-time teaching staff members which shall not be less than those required by law. Such policy and schedules shall be binding upon the adopting board and upon all future boards in the same district for a period of two years from the effective date of such policy but shall not prohibit the payment of salaries higher than those required by such policy or schedules nor the subsequent adoption of policies or schedules providing for higher salaries, increments or adjustments. Every school budget adopted, certified or approved by the board, the voters of the district, the board of school estimate, the governing body of the municipality or municipalities, or the commissioner, as the case may be,

You are viewing an archived copy from the New Jersey State Library.

shall contain such amounts as may be necessary to fully implement such policy and schedules for that budget year."

A "salary policy" as embodied in a "Memorandum of Agreement" cannot be held to be less efficacious than a contract delineated by formal phraseology when, as here, the terms are clearly understood by all.

The courts of New Jersey have consistently held that the statutory mandate includes fringe benefits. *Cliffside Park, supra; Newark Teachers Association v. Board of Education of City of Newark, Essex County,* 108 *N.J. Super.* 34 (*Law Div.* 1969), aff'd 57 *N.J.* 100 (1970)

In summary, the Commissioner determines that the certification of the appropriations deemed necessary by the governing bodies for the provision of a thorough and efficient educational program in the 1976-77 school year are insufficient by an amount of $282,500 and that additional appropriations are required to be provided.

It is further determined that unbudgeted State aid funds totaling $253,500, and $29,000 of the total available in unappropriated balances, may fund such requirement. The State aid funds were made available to the Board through the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976. The Board's total unappropriated balance of approximately $129,000 is adequate, even though depleted by unanticipated expenses, to fund a part of the total requirement as set forth, *ante.*

Accordingly, the Commissioner authorizes expenditure by the Board of a total of $253,500 available as unbudgeted State aid and of $29,000 of unappropriated balances for the necessary current expenses of the school district in the 1976-77 academic year. Such authorization requires no increase in the tax levy.

COMMISSIONER OF EDUCATION

March 21, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Borough of Hawthorne,

Petitioner,

v.

Mayor and Commissioners of the Borough of Hawthorne, Passaic County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

Petitioner, the Board of Education of the Borough of Hawthorne, hereinafter "Board," appeals from an action of the Mayor and Commissioners of the Borough of Hawthorne, hereinafter "governing body," taken pursuant to *N.J.S.A.* 18A:22-37 certifying to the Passaic County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters.

This matter is submitted to the Commissioner of Education for Summary Judgment. The facts are set forth as follows:

At the annual school election held March 9, 1976, the Board submitted to the electorate a proposal to raise $5,086,039 for current expense and $58,360 for capital outlay costs of the school district from the local tax levy.

These items were rejected by the voters and, subsequent to such defeat, the Board submitted its budget to the governing body for its determination of the amounts necessary for the operation of a thorough and efficient school system in the Borough of Hawthorne for the 1976-77 school year.

After consultation with the Board, the governing body made its determination and certified to the Passaic County Board of Taxation the amounts of $4,886,039 for current expenses, a reduction of $200,000, and $16,860 for capital outlay, a reduction of $41,500.

The Board's appeal herein specifically requests the restoration of $99,836 of the $200,000 current expense reduction imposed by the governing body in its 1976-77 school budget. The Board does not contest the reduction made by the governing body in the capital outlay portion of its budget.

The Commissioner observes that only $160,000 of the total $200,000 current expense reduction has been delineated in specific suggested line item economies. The governing body's position with respect to the unspecified reduction in the amount of $40,000 is that the Board should be able to realize such funds from unanticipated revenues or from unappropriated balances in lieu of having this amount incorporated in the local tax levy for the 1976-77 school year.

You are viewing an archived copy from the New Jersey State Library.

The specific line item economies in the amount of $160,000 suggested by the governing body in the Board's 1976-77 current expense appropriation are detailed in chart form, as well as those reductions which the Board has indicated it is willing to concede:

Account Number	Item	Board's Proposal	Gov. Bdy's Proposal	Reduction	Amount Conceded By Board
J130A	Post.	$ 4,400	$ 3,950	$ 450	$–0–
J130M	Prtg. & Publ.	2,700	2,100	600	–0–
J213.1	Sal., Tchrs.	2,580,230	2,504,930	75,300	*23,530
J213.4	Sal., Summer Sch.	19,050	9,050	10,000	10,000
J215A	Sal., Secys., Clks. Prin.'s Off.	82,830	80,330	2,500	2,500
J216	Sal., Oth. Instr.	33,770	28,770	5,000	–0–
J220	Textbooks	55,826	54,858.50	967.50	–0–
J230A	Lib. Bks.	14,968	12,968	2,000	–0–
J240.1	Teach. Supls.	63,970	61,470	2,500	–0–
J240.3	Summer Sch. Supls.	2,500	1,250	1,250	1,250
J250	Other Exp., Instr.	47,171	44,671	2,500	500
J520	Contr. Servs., Trans.	38,750	35,250	3,500	3,500
J610A	Sal., Custs.	256,775	247,237	9,538	9,538
J640B	Electr., H. S.	104,000	90,000	14,000	–0–
J710B	Sal., Repair of Bldgs.	106,095	98,095	8,000	–0–
J720B	Contr. Servs., Repair of Bldgs.	56,761	53,895	2,866	2,866
J730B	Repl., Noninstr. Equip.	7,594	7,394	200	200
J730C	Purch., New Instr./ Noninstr. Equip.	38,146	36,146	2,000	2,000
J740A	Exp. Upkeep of Grounds	10,090	4,250	5,840	5,840
J740B	Exp. Repair of Bldgs.	18,825	17,825	1,000	–0–
J1010	Sal., Stud. Bdy. Activs.	42,250	38,550	3,700	1,200
J1020	Oth. Exps., Stud. Bdy. Activs.	61,560	55,260	6,300	6,300
	TOTALS			**$160,011.50	$69,224

*Amount of concession reduced by Board in Amended Petition of Appeal 1/31/77
**Rounded to $160,000 by governing body

The Commissioner has reviewed the positions of the parties with respect to the specific line item economies suggested by the governing body and the concessions agreed to by the Board. The Commissioner has also considered the application of a portion of the unappropriated free balance and the use of unanticipated revenues applied to the 1976-77 current expense budget by the Board in arriving at the amounts conceded in the above line items. In this regard the Commissioner concurs with the reduction totaling $69,224 by the Board in its current expense budget, of the total $160,000 of line item reductions suggested by the governing body.

There appears no necessity to deal *seriatim* with each of the areas in which the governing body recommended reduced expenditures. As the Commissioner said in *Board of Education of the Township of Madison v. Mayor and Council of the Township of Madison, Middlesex County*, 1968 *S.L.D.* 139:

> "***The problem is one of total revenues available to meet the demands of a school system***. The Commissioner will indicate, however, the areas

You are viewing an archived copy from the New Jersey State Library.

where he believes all or part of Council's reductions should be reinstated. It must be emphasized, however, that the Board is not bound to effect its economies in the indicated items but may adjust its expenditures in the exercise of its discretion as needs develop and circumstances alter.***"
(at 142)

In the Commissioner's judgment any further reduction of these line item amounts would impair the Board's efforts to provide a thorough and efficient program of education in its public schools.

Accordingly, the Commissioner finds and determines that an amount of $90,776, which represents the difference between the suggested line item reductions totaling $160,000 and the amount of $69,224 conceded by the Board, be restored to the 1976-77 current expense school budget. In making such determination, the Commissioner directs that the $90,776 be restored from that portion of unbudgeted State aid available to the Board pursuant to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) by the Legislature on November 9, 1976. The restoration of these funds will therefore not disturb the amount of the local tax levy, or $4,886,039, previously certified by the governing body to the Passaic County Board of Taxation.

COMMISSIONER OF EDUCATION

March 21, 1977

In the Matter of the Annual School Election Held in the School District of the Township of West Milford, Passaic County.

COMMISSIONER OF EDUCATION

DECISION

Petitioners, residents of the Township of West Milford, Passaic County, allege in a Petition of Appeal filed with the Commissioner of Education on March 11, 1977 that respondents have been illegally presented as candidates for seats on the Board of Education of the Township of West Milford, hereinafter "Board," at the annual school election to be held March 29, 1977. Specifically, petitioners allege that respondents filed, or had filed on their behalf, "dual petitions" for seats on the Board for one year and three year terms and that such dual filing is illegal. They cite in support of such allegation a memorandum of the Attorney General dated January 20, 1976, (File No. 596) which held, *inter alia,* "***that *N.J.S.A.* 18A:14-10 precludes a candidate for election to a local school board from filing for two terms open on such board." (at p. 2)

Petitioners further allege that the dual nominating petitions were all filed on February 18, 1977, that on February 19, 1977, the Board did draw names

You are viewing an archived copy from the New Jersey State Library.

for ballot position pursuant to law and that thereafter on February 24, 1977 "***respondent-candidates withdrew from their dual candidacy, selecting at that time a singular candidacy which was now most advantageous, having already been advised as to their ballot positions that they and all other candidates enjoyed in each drawing.***" Petitioners request the Commissioner to strike the names of respondents from the ballot.

Respondent Atfield has filed a letter response to the Petition in which she admits that nominating petitions "***on behalf of myself and the other five candidates were filed for both the open 1 and 3 year terms.***" She avers that:

> "***This is, I feel, in accordance with Title 18A:14-9, which states 'any number of petitions may be filed on behalf of any candidate.'***"

Respondent Atfield further avers that their withdrawal was timely and in full compliance with *N.J.S.A.* 18A:14-12.1 which permits candidates to withdraw their names for election "***on or before four P.M. of the thirty-second day before the date of the election***." Respondent also contends that since one of the nominating petitions has been withdrawn in each instance, there is now no dual candidacy of the kind the Attorney General found to be prohibited by the statutory prescription.

The statutes of reference are recited in their entirety as follows:

N.J.S.A. 18A:14-9

"Each candidate to be voted upon at a school election shall be nominated directly by petition, signed by at least 10 persons, none of whom shall be the candidate himself, and filed with the secretary of the board of education of the district on or before four P.M. of the fortieth day preceding the date of the election, except that nominating petitions for special elections to be held pursuant to section 18A:9-10 shall be so filed on or before four P.M. of the fifteenth day before said special election. The signatures need not appear upon a single petition and any number of petitions may be filed on behalf of any candidate but no petition shall contain the endorsement of more than one candidate."

N.J.S.A. 18A:14-10

"Each nominating petition shall be addressed to the secretary of the board of education of the district and therein shall be set forth:

a. A statement that the signers of the petition are all qualified voters of the school district;

b. The name, residence and post office address of the person endorsed and the office for which he is endorsed;

c. That the signers of the petition endorse the candidate named in the petition for said office and request that his name be printed upon the official ballot to be used at the ensuing election; and

You are viewing an archived copy from the New Jersey State Library.

d. That the person so endorsed is legally qualified to be elected to the office.

"Accompanying the nominating petition and to be filed therewith, there shall be a certificate signed by the person endorsed in the petition, stating that:

a. He is qualified to be elected to the office for which he is nominated;

b. He consents to stand as a candidate for election; and

c. If elected, he agrees to accept and qualify into said office."

N.J.S.A. 18A:14-12.1

"Any candidate may withdraw his name as a candidate for election at the annual school election by filing a notice in writing, signed by him, of his withdrawal with the secretary of the board on or before four P.M. of the thirty-second day before the date of the election and thereupon the name of such candidate shall be withdrawn by the secretary. The name of such candidate shall not be printed on the ballot. The names of any candidates originally designated on the ballot below the name of the withdrawn candidate shall be advanced one place each, respectively, on the ballot."

Thus, it is clear that while more than one nominating petition may be filed for the election of a candidate to a single seat on the local board of education (*N.J.S.A.* 18A:14-9), a candidate is not permitted to file for a seat for which he does not intend "***to stand as a candidate for election***." *N.J.S.A.* 18A:14-10 Since no candidate may hold two separate seats simultaneously, he may not file for two such seats. The Commissioner so holds and issues a caveat to all local boards against acceptance of nominating petitions for or on behalf of one candidate for more than one seat on a local board of education.

There is not present in the instant matter, however, sufficient reason to set aside the candidacies here in question. The error has been rectified, albeit tardily. An order of the Commissioner, dated March 15, 1977, has directed that a new drawing for position on the ballot be held in order that prejudice might be avoided.

Accordingly, for the reasons hereinbefore stated and except as noted, the instant Petition of Appeal is dismissed.

COMMISSIONER OF EDUCATION

March 22, 1977

You are viewing an archived copy from the New Jersey State Library.

Harbor Hall School, William L. Hess, Executive Director,

Petitioner,

v.

Board of Education of the Township of Weehawken, Hudson County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, William L. Hess, *Pro Se*

For the Respondent, Le Roy D. Safro, Esq.

Petitioner William L. Hess, Executive Director of Harbor Hall School, a privately operated State approved residential institution, alleges that the Board of Education of Weehawken, hereinafter "Board," has illegally refused to pay $1,610 in tuition for "C.S.," a minor whose parents reside in Weehawken, and who was ordered by the Hudson County Juvenile and Domestic Relations Court into residential placement which placement was effected by the Division of Youth and Family Services of New Jersey at Harbor Hall from September 9, 1974 to December 12, 1974. (P-1, 2)

The Board admits that it refused to pay the stated tuition for C.S. but denies that it was under legal obligation to do so.

The matter is jointly submitted for Summary Judgment of the Commissioner on the pleadings, exhibits and Briefs. Relevant exhibits consisting of communications between the litigants, the Division of Youth and Family Services, hereinsfter "DYFS," and representatives of the State Department of Education were marked into evidence at a conference of counsel on July 14, 1976 by the Commissioner's representative. The relevant factual context is as follows:

Following at least two occurrences when C.S. ran away from home, he was ordered into temporary residential placement in Denville by the Weehawken Youth Bureau in March 1974. On May 23, 1974, DYFS requested the Board's child study team coordinator to evaluate and classify C.S who at the time was at Denville. (P-1; Respondent's Brief) On July 18, 1974, the Court ordered further residential placement of C.S. Thereafter, the Board's child study team was notified that, since no evaluation or classification of C.S. had yet been made by the child study team, DYFS would order such a study and the results would be submitted in order that the team could classify C.S. and acknowledge responsibility for his tuition. (P-1) C.S. was accepted into Harbor Hall's educational program on September 9 and a bill for tuition sent to the Board. (P-2, 3)

The Board's child study team on October 25, having considered prior

You are viewing an archived copy from the New Jersey State Library.

psychological tests administered on April 3 and September 27, 1974 and related studies of the social worker and others, reported to the Superintendent of Schools, *inter alia,* its determination that C.S. was in need of seven days per week residential placement with psychotherapy. The child study team, however, declined to classify C.S., since no psychiatric evaluation had yet been received. The child study team further stated that it was in disagreement with the placement of C.S. at Harbor Hall from which he was forced to return on weekends to a home which they believed was not conducive to his needs or condition. (R-1, 2)

On November 11, a psychiatric evaluation of C.S., ordered by DYFS, was completed, which was sent to the Board on January 20, 1975. Nevertheless, the Board refused to pay tuition for C.S. who had been withdrawn from Harbor Hall by DYFS effective December 13, 1974. (P-6-10) The sole issue herein controverted is whether the Board is legally responsible to pay for approximately three months' tuition for C.S. at Harbor Hall from September 9 to December 12, 1974.

Petitioner argues that the Board is liable for such payment under *N.J.S.A.* 18A:46-14 which provides, *inter alia,* that:

> "***Whenever any child shall be confined to a hospital, convalescent home, or other institution in New Jersey *** and is enrolled in an education program approved under this article, the board of education of the district in which the child is domiciled shall pay the tuition of said child in the special education program.***"

Petitioner, while admitting that C.S. was not classified by the Board's child study team prior to his enrollment in Harbor Hall's educational program, maintains that the Board is nevertheless responsible for his tuition. *N.J.S.A.* 18A:46-14 (Petition of Appeal, at p. 2) It is further argued that, upon the failure of the Board to classify C.S., as requested on May 23, DYFS properly took steps to do so which resulted in his classification as emotionally disturbed in November 1974. (*Id.*, at p. 3; P-1) Finally, petitioner avers that, although the Superintendent had advised him by telephone in November 1974 that upon receipt of a psychiatric examination report the controverted tuition would be paid, the Board unreasonably refused to do so when, in January 1975, it received that report. (P-6-8; Petitioner's Memorandum) Accordingly, petitioner prays the Commissioner to order the Board to compensate Harbor Hall in the amount of $1,610.

The Board, conversely, asserts that C.S. was placed at Harbor Hall in violation of the requirements of *N.J.S.A.* 18A:46-6-14 which require that the Board provide psychiatric examination and classification of handicapped pupils. It is also argued that his placement was similarly in violation of *N.J.A.C.* 6:28-2.2.

The Board contends that, when request was made on May 23 by DYFS for evaluation by the child study team, it was unable to comply because of his

You are viewing an archived copy from the New Jersey State Library.

temporary residential placement at Denville by the Court. (Respondent's Memorandum, at p. 1) It is further contended that, since no classification or suitable educational program was formulated by the Board's child study team prior to his placement by the Court at Harbor Hall and since five days per week residential placement was contraindicated in its evaluation of October 25, the aforesaid placement was violative of the law. Dismissal of the within Petition is sought on the rationale that, since it would be ineligible for reimbursement for his tuition, the Board may not, therefore, be required to pay for such tuition. (*Id.*, at p. 2)

The Commissioner has carefully examined the documents in evidence and has considered the legal arguments advanced by the litigants in the light of relevant statutory and case law. There is no question as to the legal domicile of C.S. which, during the pertinent period, was the residence of his parents in Weehawken. Such determination is firmly based on the opinion of the New Jersey Supreme Court in *Board of Education, Township of Little Egg Harbor v. Boards of Education of the Township of Galloway, City of Atlantic City et al.*, 145 *N.J. Super.* 1 (*App. Div.* 1975), rev'd 71 *N.J.* 537 (1976). Therein, the Supreme Court for reasons enunciated in Appellate Judge Morgan's dissenting opinion affirmed that a minor pupil in residential placement, regardless of any intervening temporary foster home placement, is legally domiciled either in the home of the parent to whom custody has been assigned or, if no custody assignment has been made, in the home of the father. It is further apparent that in 1970, the minor pupil in *Little Egg Harbor* was neither residentially placed nor educated at the direction of the Little Egg Harbor Board. Nor was she evaluated or classified by that Board's child study team but at the direction of the Bureau of Children's Services. The Supreme Court's determination was that neither an interim foster home placement nor the fact that Little Egg Harbor's child study team had not evaluated the pupil absolved the Little Egg Harbor Board of its obligation to pay her tuition for educational services while in residential placement at the direction of the Court. Similarly, in the parallel matter herein controverted, the Commissioner determines that the Board is liable for tuition payments for C.S. from September 9 through December 12.

The Board argues that it was unable to evaluate and classify C.S. while he was in Denville. The Commissioner is not convinced that such arrangements could not have been made over a three and one-half month period prior to September 9. Nor was evidence submitted by the Board that good faith attempts to do so were made. It may not be argued that, absent such action, C.S.'s entitlement as an eighth grade pupil to continued education should be indeterminably delayed or terminated altogether. Such conclusion would be wholly contrary to a harmonious interpretation of the statutes, rules of the State Board of Education and relevant case law. The Commissioner so holds. As was said by the Commissioner in *Ruth Sydnor v. Board of Education of the City of Englewood, Bergen County*, 1976 *S.L.D.* 113:

> "***One statute may not properly be read, as petitioner seeks to read it, to the exclusion of another of equal import.***" (at p. 116)

You are viewing an archived copy from the New Jersey State Library.

See also *Grogan v. DeSapio,* 11 *N.J.* 308 (1953) and *State v. Green,* 62 *N.J.* 547 (1973).

It was with obvious intent to forestall unconscionable delay in such instances that the State Board in 1975 promulgated the following regulation:

> "Where the Division of Youth and Family Services, New Jersey Department of Institutions and Agencies, has participated in the identification process, pursuant to *N.J.A.C.* 6:28-1.8(b), and has made a request of the local board for evaluation and classification of a child, should the local board fail to provide for such examination within 30 days of the request, the Division may assume the classification responsibility using its own child study team and performing this function according to the procedures herein established." (*N.J.A.C.* 6:28-2.2b)

When overt acts are committed by a minor compelling a court of law to sever the normal familial relationships and to order residential placement without the school district, reasonable and timely provision must be made for the continuance of that minor's education. Absent such compliance, the factors which have caused the emotional or social maladjustment may be expected to worsen from the resultant delay and inactivity.

In the instant matter, there is no evidence that the child study team's formal reports to the Superintendent were made available to DYFS or to Harbor Hall for their consideration of modification of a program for C.S. To argue at this juncture that the Board or its child study team would have reached other conclusions, while it has the obvious advantage of hindsight, was of no assistance in September 1974 to C.S. whose welfare and progress must be considered of paramount importance under the constitutional mandate of providing a thorough and efficient free public education to all eligible pupils.

The Commissioner agrees with the Board that an evaluation and classification by its professional personnel was in order and would have been highly desirable. Nevertheless, the Board did not find it feasible to complete such evaluations simultaneous with residential placement. Absent such evaluations, a program had to be arranged for and was properly provided for at the direction of DYFS. The tuition costs thereof are legally the Board's liability. *Little Egg Harbor, supra; N.J.S.A.* 18A:46-14 Accordingly, the Board is directed to forthwith compensate petitioner in the amount of $1,610 for tuition of C.S. from September 9, 1974 to December 12, 1974.

COMMISSIONER OF EDUCATION

March 22, 1977

You are viewing an archived copy from the New Jersey State Library.

Marianne H. Polaski,

Petitioner,

v.

Board of Education of
Burlington County Vocational Technical High School,
Burlington County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Goldberg, Simon & Selikoff (Joel S. Selikoff, Esq., of Counsel)

For the Respondent, John E. Queenan, Jr., Esq.

Petitioner, a teaching staff member who acquired a tenure status in the employ of the Board of Education of the Burlington County Vocational Technical High School, hereinafter "Board," alleges that the Board's action in abolishing her assigned position of teacher-librarian as of the 1975-76 academic year was an abuse of its discretion. Petitioner demands immediate reinstatement to her position of employment or, in the alternative, priority placement on a preferred eligibility list pursuant to the provisions of *N.J.S.A.* 18A:28-12. The Board denies the allegations and asserts that its controverted action was proper and legal. The Board further asserts that petitioner has been placed on a preferred eligibility list pursuant to the provisions of *N.J.S.A.* 18A:28-12.

Cross-Motions for Summary Judgment have been filed and the matter is referred directly to the Commissioner of Education on the record, including the pleadings, Briefs of the parties, affidavits and exhibits.

Petitioner was first employed by the Board as a teacher-librarian on February 28, 1972, and completed the 1971-72 academic year. Thereafter, petitioner was reemployed for the 1972-73, 1973-74, and 1974-75 academic years. Petitioner filed her letter of intent (P-1) on April 18, 1975 to return to the Board's employ for the 1975-76 academic year at an annual salary of $10,900.

The Superintendent of Schools, by letter (C-1) dated July 18, 1975, advised petitioner that because of the fiscal crisis which existed in the State, it was necessary for the Board to reduce its expenditures. The Superintendent then advised:

> "***I will recommend to the Board at the next meeting that the library aide program, one of the less popular programs, be eliminated. Therefore, we will not need a second librarian. I will also have to recommend the elimination of your position at that time.

You are viewing an archived copy from the New Jersey State Library.

"You will be notified of the Board's action after its meeting on August 12, 1975.***" (C-1)

The Board adopted the following resolution (C-2) at its meeting held on August 12, 1975:

"Due to the financial crises and the lack of student interest in the Library Aid Program, it was recommended *** that the contract of [petitioner] be terminated and that this program be eliminated.

"On a motion [made and seconded] the Board approved the elimination of the Library Aide Program, and the termination of the teaching contract of [petitioner] to be effective immediately, according to Board policy. She is to be notified of any future openings within this school system that relate to her position as a Librarian." (C-2)

Thereafter, the Superintendent notified petitioner by letter (C-3) dated September 10, 1975, that the Board approved his recommendation to abolish her position of teacher-librarian effective September 1, 1975. He also advised petitioner that she would receive her salary for the entire month of September 1975.

The Superintendent attests (C-6) that the 1975-76 school budget, adopted in February 1975, did include provision for the continuation of petitioner's position of teacher-librarian assigned to the library aide program. (C-6, at p. 2) Subsequent to the selection of courses by pupils during April 1975 at which time they specified the courses they desired for the following academic year, only four pupils had enrolled in the library aide program. (C-6, at p. 2) The Superintendent attests that he informed petitioner of this minimal enrollment and allowed her time to persuade additional pupils to enroll in her class for 1975-76.

The Superintendent attests that thereafter the Board directed him to study possible alternatives to reduce expenses to absorb unanticipated increased costs. The Superintendent attests that because of the apparent lack of interest in the library aid program he recommended the elimination of the program and the position of its instructor as a measure of economy. (C-6, at p. 3)

The Superintendent attests that petitioner has been placed on a preferred eligibility list pursuant to the provisions of *N.J.S.A.* 18A:28-12 and will be given preference for employment in a position for which she qualifies when the Board's new vocational school is completed in Medford. (C-6, at pp. 3-4)

The Commissioner observes that petitioner possesses a teacher-librarian teaching certificate (C-5) which was issued during June 1971. The requirements for a person to possess such a certificate are set forth at *N.J.A.C.* 6:11-12.6 which include, *inter alia,* a prerequisite possession of a standard New Jersey teacher's certificate. The Commissioner has determined from his own official records that petitioner possesses an elementary teacher's certificate. The

You are viewing an archived copy from the New Jersey State Library.

Commissioner notices in this regard that *N.J.A.C.* 6:11-6.2(b) provides, *inter alia*:

> "***Teachers with elementary endorsements are authorized to teach the common branch subjects such as reading, writing, arithmetic, and spelling *in the secondary school, grades seven through 12.****" (*Emphasis supplied.*) (See also *N.J.A.C.* 6:11-8.3.)

Petitioner grounds her Motion for Summary Judgment on the alleged belated action of the Board on August 12, 1975 to abolish her position, some three weeks prior to the commencement of the 1975-76 academic year. Petitioner argues that as a teacher with the legislative status of tenure, she surely is entitled to more notice than a nontenure teacher who, according to *N.J.S.A.* 18A:27-10 *et seq.*, must be notified by the Board of his/her employment status by April 30 for each subsequent year. Petitioner asserts that the Board acted in bad faith by waiting until August 12, 1975 to take its controverted action and demands immediate reinstatement. Petitioner cites *Arthur L. Page v. Board of Education of the City of Trenton et al., Mercer County,* 1973 *S.L.D.* 704, aff'd/rem. State Board of Education 1974 *S.L.D.* 1416, decision on remand 1975 *S.L.D.* 644, aff'd State Board 1976 *S.L.D.* 1158 and *John M. Rainey v. Board of Education of the City of Trenton, Mercer County,* 1974 *S.L.D.* 647 in support of her position.

The Commissioner finds nothing in the record before him to substantiate petitioner's claim that the Board acted in bad faith with respect to the abolishment of her position. *N.J.S.A.* 18A:28-9 provides boards of education with the authority to abolish teaching staff positions for reasons of economy. In the instant matter, the Board abolished the position of teacher-librarian because of the limited number of pupils who planned to enroll in the library aide program for 1975-76. Petitioner brought forward no proof that the Board abolished her position for reasons other than of economy.

In *Mildred Wexler v. Board of Education of the Borough of Hawthorne, Passaic County,* 1976 *S.L.D.* 309, aff'd State Board of Education 314, the Commissioner held that *N.J.S.A.* 18A:28-9

> "****places no limitation on the time when a board of education may effectuate a reduction in teaching staff for reasons of economy or other good cause.****" (*Emphasis in text.*) (at p. 313)

Consequently, having found that the Board did not abuse its discretion with respect to its reason for the abolishment of petitioner's employment, it is found that there is nothing improper in the controverted action taken on August 12, 1975. The Commissioner so holds.

The Commissioner has reviewed the document (C-4) which purports to be the Board resolution by which petitioner was placed on a preferred eligibility list for reemployment according to her seniority. This document (C-4) does not conform to the requirements of *N.J.S.A.* 18A:28-12 which provides, in pertinent part, as follows:

You are viewing an archived copy from the New Jersey State Library.

"If any teaching staff member shall be dismissed as a result of such reduction, such person shall be and remain upon a preferred eligible list in the order of seniority for reemployment whenever a vacancy occurs in a position for which such person shall be qualified and he shall be reemployed by the body causing dismissal, if and when such vacancy occurs***."

It is noticed that by virtue of petitioner being in possession of a teacher-librarian certificate (C-5), she also had to possess a regular teaching certificate at all times material herein. This being so, petitioner is eligible for assignment to any position in the employ of the Board teaching the common branch subjects of "***reading, writing, arithmetic, and spelling***." *N.J.A.C.* 6:11-6.2(b)

Accordingly, the Board is directed to forthwith submit to the Commissioner of Education for review, with a copy to petitioner, a precise statement of preferred eligibility with respect to petitioner's placement thereon for reemployment as a teacher-librarian, or a teacher of the common branch subjects, *ante*, should they be part of the school's curricula. Should it be determined that petitioner was released from the employ of the Board over someone who has less seniority than she and who is assigned as a teacher of a common branch subject, petitioner shall be granted leave to submit an appropriate order granting her requested relief.

COMMISSIONER OF EDUCATION

March 24, 1977

Board of Education of the Township of Sparta,

Petitioner,

v.

Township Council of the Township of Sparta, Sussex County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Trapasso, Dolan & Hollander (Albert P. Trapasso, Esq., of Counsel)

For the Respondent, Frank K. Patti, Esq.

Petitioner, the Board of Education of the Township of Sparta, hereinafter "Board," appeals from the action of the Township Council of the Township of

You are viewing an archived copy from the New Jersey State Library.

Sparta, hereinafter "Council," taken pursuant to *N.J.S.A.* 18A:22-37, certifying to the Sussex County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The facts of the matter were adduced at a hearing conducted on October 13, 1976 and January 5, 1977 at the State Department of Education, Trenton, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

At the annual school election held March 9, 1976, the Board submitted to the electorate proposals to raise $4,865,360 by local taxation for current expense costs of the school district. These items were rejected by the voters, and, subsequent to the rejection, the Board submitted its budget to Council for its determination of the amounts necessary for the operation of a thorough and efficient school system in Sparta Township during the 1976-77 school year pursuant to the mandatory obligation imposed on Council by *N.J.S.A.* 18A:22-37.

After consultation with the Board, Council made its determinations and certified to the Sussex County Board of Taxation the amount of $4,665,360 for current expenses. The pertinent amount in dispute is shown as follows:

	Current Expense
Board's Proposal	$4,865,360
Council's Certification	4,665,360
Amount of Reduction by Council	$ 200,000

Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, Council enacted and filed a resolution before the Commissioner as follows:

> "WHEREAS, Sparta Township, pursuant to N.J.S.A. 18A:22-37, has reduced the 1976-77 Sparta school district budget by the amount of $200,000, and
>
> "WHEREAS, the sum of $115,579 was included in the school district budget for Teachers Pension and Annuity Fund (TPAF); and
>
> "WHEREAS, the passage of Senate Bill S-1503 removes the TPAF amount from school district budgets,
>
> "NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Sparta that the amount of reduction of the Sparta school district budget is revised from $200,000 less $115,579 to $84,421 which acknowledges the provisions of Senate Bill S-1503." (PR-1; Tr. II-3-5)

The Board concurred with Council's resolution to restore the amount of $115,579 to its budget from unbudgeted State aid pursuant to *c.*113, *L.*1976. Thus, the amount in dispute is $84,421. The Board supports its need for

You are viewing an archived copy from the New Jersey State Library.

restoration of the recommended reductions with written documentation. Council maintains that it acted properly and after due deliberation, and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system. Council also supports its position with written documentation. As part of its determination, Council suggested specific areas of the budget in which it believed economies could be effected as follows:

CHART I

Program Element	Board's Proposal	Council's Proposal	Amount Reduced
CURRENT EXPENSE:			
Art Supplies	$ 13,915	$ 12,415	$ 1,500
Health Supplies	1,225	835	390
Industrial Arts Supls.	10,510	9,910	600
Library Supplies	4,255	3,455	800
Bldg. Admin. Supplies	12,900	11,400	1,500
Plan. Res. & Developmt.	4,000	3,000	1,000
Bldg. Oper. Supplies	35,800	32,300	3,500
Maintenance Supls.	13,255	11,255	2,000
Travel-All Programs	16,362	11,362	5,000
Library Books	19,400	17,400	2,000
Gifted & Talented	1,600	–0–	1,600
Equipment (New)	25,728	2,728	23,000
Equipment (Replacement)	30,195	20,195	10,000
Library Clerks	47,873	32,386	15,487
Repairs & Maintenance	46,690	35,390	11,300
Maintenance of Plant	122,993	118,449	(5,000)*
*Adjusted to			4,744
TOTALS	$406,701	$322,280	$84,421

The hearing examiner observes, and Council concedes, that its total reduction of $84,677 in the Chart I exceeds the amount of $84,421 stipulated in its resolution (PR-1) by the amount of $256.00. Council leaves the determination of this difference to the Commissioner. (Tr. II-18) The hearing examiner recommends that an adjustment of $256 be applied to the Maintenance of Plant line item from a $5,000 reduction as recommended by Council to read as a reduction of $4,744.

The Board utilized the *Program Budgeting for New Jersey Schools-Program Budget Guide* for the preparation of its 1976-77 school budget rather than the accustomed *Financial Accounting for New Jersey School Districts – The Chart of Accounts.* The hearing examiner observes that there are many problems attendant to the conversion of a program budget to a conventional line item budget. He is satisfied that the Board supplied ample, accurate and understandable budget data and information to Council, in order that Council could make appropriate recommendations for its stated economies. (Tr. II-6)

You are viewing an archived copy from the New Jersey State Library.

The findings and recommendations of the hearing examiner with respect to each of the items in dispute are set forth as follows:

Art Supplies *Reduction $1,500*

Council states that there were over 600 separate items listed in this category and that it was unreasonable to expect anyone but members of the professional staff to intelligently distinguish which items were necessary for a thorough and efficient program and which were not. Council's rationale supporting its reduction was that a status quo approach was reasonable and should be sustained.

The Board argues that an increased enrollment in the high school art program accompanied by its increased budget request will maintain the status quo. It contends that the budgeted amount would maintain its previous level of support and that no program improvements had been planned.

The hearing examiner finds that the Board has proven the necessity for the allocation with respect to art supplies and recommends that the suggested reduction be restored.

Summary:	Amount of Reduction	$1,500
	Amount Restored	1,500
	Amount not Restored	–0–

Health Supplies *Reduction $390*

Council advanced a similar argument with respect to its reduction of health supplies as it did with its reduction of art supplies. The Board contends that an increase of $300 was for first aid supplies which were to be used in the teaching of first aid practice to approximately 250 high school twelfth grade pupils as a facet of the health program. The Board states that in the past such supplies were "borrowed" from the nurse's supply. The practice of "borrowing" was inefficient and shortchanged both programs.

The hearing examiner finds logic in this latter observation. Accordingly, he recommends full restoration of the reduction.

Summary:	Amount of Reduction	$390
	Amount Restored	390
	Amount not Restored	–0–

Industrial Arts Supplies *Reduction $600*

Council contends that its reduction of $600 in a supply budget of over $10,000 could be sustained through improved classroom management, closer supervision, reduction of waste and an awareness of the need for conservation of funds. Council asserts that a nominal materials charge might be assessed to any project which becomes the property of the pupil as differentiated from the materials consumed in the learning of a required skill.

The Board avers that the budgeted amount would maintain its previous

You are viewing an archived copy from the New Jersey State Library.

level of support despite its assertion that the program had been assessed as substandard. The Board states that only the most basic supplies are purchased for its pupils and that materials used for advanced or more sophisticated projects in its wood and metal classes are paid for by the pupils.

The hearing examiner finds the reduction of $600, of a total budget of $10,510, is a minimal amount and that the argument advanced by Council with respect to improved classroom management, supervision and the reduction of waste is reasonable. The hearing examiner is constrained to point out to both parties that pupils may not be required to pay for any supplies they utilize as part of the instructional program in industrial arts. Accordingly, he recommends the reduction be sustained.

Summary:	Amount of Reduction	$600
	Amount Restored	–0–
	Amount not Restored	$600

Library Supplies *Reduction $800*

Council originally recommended a reduction of $1,500 in this line item and subsequently modified its reduction to $800 as the result of more detailed information offered to it by the Board. Council contends that notwithstanding its $800 reduction it allowed for an inflationary factor of a ten percent increase in this category.

The Board asserts that one elementary school accounted for a $1,300 increase due to a bookkeeping transfer of funds from its audiovisual supply line item to its library supply line item. The transfer of funds was effected to more accurately display the costs for these two categories. The Board states that the actual increase in the library supply line item was $230.

The hearing examiner has reviewed the documentation of need and concludes that economies can be effected. Accordingly, he recommends that a total of $230 of the reduction be sustained and that a sum of $570 be restored.

Summary:	Amount of Reduction	$800
	Amount Restored	570
	Amount not Restored	230

Building Administration Supplies *Reduction $1,500*

Council takes the position that a reduction of $1,500 in a line item of nearly $13,000 was reasonable and could be effected through a careful control of miscellaneous petty cash expenditures and more frugal use of office supplies.

The Board states that it was necessary to increase its monthly petty cash allowance from $50 to $100 in each of its four schools to offset increased postal costs and other petty cash charges. Further, the Board asserts that the processing of mandated federal and State programs, caused it to experience a twelve percent increase for office supplies. It cited the administration of the free or reduced lunch program, wherein a five page application was processed for each

You are viewing an archived copy from the New Jersey State Library.

of the 3,000 pupils in the district as one example, among others, for its increased costs. (Tr. II-19)

The hearing examiner finds that the added burden on the Board of processing mandated federal and State programs does substantially increase the cost to the Board. He recommends, therefore, that the $1,500 be restored.

Summary:	Amount of Reduction	$1,500
	Amount Restored	1,500
	Amount not Restored	–0–

Planning, Research and Development *Reduction $1,000*

Council originally recommended a reduction of $1,400 which included two separate items in this program element, i.e. (1) supplies and (2) professional and technical services. Council stated that its reduction would apply to the area of professional and technical services for test scoring in the district. It further argues that a 100 percent increase of anticipated expenditure for this program element does not comport with the report that the Board was conducting all of the necessary work with its own personnel in compliance with the Act. *N.J.S.A.* 18A:7A-1 *et seq.*

Extensive testimony was proffered by the Board with respect to this program element. (Tr. II-20-25) It is the Board's contention that it has indeed provided the planning responsibility for the Act as an internal function with the utilization of its professional staff. It asserts that the dispute with respect to the instant matter is focused upon its system-wide testing program and the technical assistance necessary for scoring and analyzing those standardized tests administered to its pupils in grades one through twelve. The Board argues that it does not possess computer equipment to score the pupil tests and therefore the scoring must be performed by an outside organization.

The hearing examiner finds that such an amount for planning, research and development is in keeping with the requirements of *N.J.S.A.* 18A:7A-1 *et seq.*, and, therefore, recommends a full restoration of $1,000.

Summary:	Amount of Reduction	$1,000
	Amount Restored	1,000
	Amount not Restored	–0–

Building Operations Supplies *Reduction $3,500*

Council avers that its recommended reduction of $3,500 in this item would still provide the Board with a ten percent increase for its 1976-77 budget appropriation. The Board argues that Council neglected to consider the additions to three of its four school buildings. (Tr. I-66, 72) The additional square footage required that the Board assume additional expenditures for supplies and it asserts that with the additional space the increase in this program element is more on the order of six percent rather than ten percent as alleged by Council. (Tr. II-49-50)

You are viewing an archived copy from the New Jersey State Library.

The Board's documentation of need herein is specific and credible and, therefore, the hearing examiner recommends that the amount of $3,500 be restored.

Summary:	Amount of Reduction	$3,500
	Amount Restored	3,500
	Amount not Restored	–0–

Maintenance Supplies *Reduction $2,000*

Council originally recommended a reduction of $4,500 but subsequently modified its recommended reduction to $2,000 based upon information supplied to it by the Board. Council specifically recommends that the Board's interior painting program could be deferred without impeding a thorough and efficient instructional program and without jeopardizing its building maintenance. It maintains that a reduction of $2,000 in this program provides the Board with a forty percent increase over the preceding year.

Notwithstanding the Board's testimony that it had, in fact, completed the interior painting program (Tr. II-52), the hearing examiner finds for Council. Accordingly, the hearing examiner recommends that Council's determination be allowed to stand.

Summary:	Amount of Reducti[illegible]	$2,000
	Amount Restored	–0–
	Amount not Restored	$2,000

Travel-All Programs *Reduction $5,000*

Council notes that the Board budgeted $16,362 for this line item. The Board accounted for an amount equal to the sum of only $11,562 to be used. Council argues that economies in this program could be effected without serious impact upon the instruction program.

The hearing examiner finds that the arguments of the Board were not credible with respect to its proposed increased expenditure for this item. He finds that the nine programs assigned for travel expenses as outlined in Item XI are sufficient to meet the district needs. (P-1) The hearing examiner, therefore, recommends a restoration of $200 to bring the Board's budget to $11,562 for committed expenditures, but that a $4,800 reduction from the Board's original proposal be sustained.

Summary:	Amount of Reduction	$5,000
	Amount Restored	200
	Amount not Restored	4,800

Library Books *Reduction $2,000*

Council asserts that its recommended reduction would provide the Board with $1,000 more than it budgeted for 1975-76 and would permit the Board to gradually increase its library resources.

You are viewing an archived copy from the New Jersey State Library.

The Board documented its need for restoration of $2,000 to the budget with an inventory of its present library collection in the four schools and evaluative criteria and standards of the New Jersey State Department of Education and the American Library Association with respect to an acceptable per pupil collection for its schools. The Board asserts that its library collection falls far short of any reasonable standard applied to its library. The Board contends that the budget provides for new acquisitions as well as replacements for worn, outdated and missing volumes.

Having weighed the evidence presented by the parties, the hearing examiner concludes that the Board has sufficiently documented its need in this sector for increased funds. It is further recognized that inflationary pressures must be considered in this vital provision for library books. Accordingly, it is recommended that $2,000 be restored to this line item.

Summary:	Amount of Reduction	$2,000
	Amount Restored	2,000
	Amount not Restored	—0—

Gifted and Talented *Reduction $1,600*

The Board asserts that the Act requires that each school district shall "provide educational opportunities for exceptionally gifted and talented pupils," (*N.J.A.C.* 6:8-3.5(a) (11)) and therefore it had planned to implement a program over a three year period to avoid a significant cost to the taxpayers. The Board contends that it has identified 125 pupils who would benefit from such a program and that $1,600 is the minimum amount of money necessary to commence the activity.

Council states that it has consistently held that the Board should refrain from introducing new programs in a year of a school budget defeat by the electorate. With regard to the Board's contention that the Act calls for school districts to provide educational opportunities for exceptionally gifted and talented pupils, Council asserts that many school districts in the State plan to comply with this provision without providing for separately funded programs.

Although this program would be desirable, the hearing examiner finds that the Board could not provide a description of its program nor the age and grades of the pupils it was designed to benefit. (Tr. II-32) The hearing examiner recommends that Council's reduction be sustained.

Summary:	Amount of Reduction	$1,600
	Amount Restored	—0—
	Amount not Restored	$1,600

Equipment (New) *Reduction $23,000*

Council stated its position that in a year of a budget defeat the basic approach to school finance should be that no new programs or equipment are provided. Council further stated, however, that it was willing to provide for some minimal forward movement in program and as such it recommended that

You are viewing an archived copy from the New Jersey State Library.

$2,728 remain in the budget for the Board's selective use.

The Board argues that Council's reduction in this account was arbitrary and without a basis. It further stated that it was Council's responsibility to provide specific recommendations with regard to individual pieces of equipment for reduction in this area of the budget.

The hearing examiner finds that the Board supplied Council with an eight page detailed document entitled "Sparta Township Public Schools, 1976-77 New Equipment – Account 461" for its review and determination for reductions. The hearing examiner further finds that Council failed its responsibility to set forth its detailed statement as provided by the Court in *Board of Education of the Township of East Brunswick v. Township Council of East Brunswick*, 48 *N.J.* 94 (1966), wherein it stated, *inter alia*:

> "***Where its [Council's] action entails a significant aggregate reduction in the budget and a resulting appealable dispute with the local board of education, *it should be accompanied by a detailed statement setting forth the governing body's underlying determinations and supporting reasons.* This is particularly important since, on the board of education's appeal under *R.S.* 18:3-14, *the Commissioner will undoubtedly want to know quickly what individual items in the budget the governing body found could properly be eliminated or curbed and on what basis it so found.* ***" (*Emphasis supplied.*) (at 106)

In the absence of Council's detailed statement, the hearing examiner has carefully reviewed the Board's documents and recommends that its proposed expenditure for equipment that is directly associated with the instructional program be approved and restored to the budget. (P-4) Thus, he recommends that the program numbers, program elements and total amounts be deferred as follows:

7071 Central Administration	$ 200
7072 Building Administration	1,875
7076 Food Service	1,900
7077 Operation of Plant	1,525
7078 Maintenance	3,170
Total	$8,670

The hearing examiner recommends that $14,330 be restored to this line item of the Board's budget and that a reduction of $8,670 be sustained.

Summary:	Amount of Reduction	$23,000
	Amount Restored	14,330
	Amount not Restored	8,670

Equipment (Replacement) *Reduction $10,000*

Council avers that it requested information from the Board with regard to the condition of equipment the Board proposed to replace. In the absence of the

You are viewing an archived copy from the New Jersey State Library.

requested information, Council asks that the Board act in a prudent manner and defer the replacement of those items until another year. Council further argues that practical experience would indicate that rarely does all the furniture in a given room become useless at the same time, or that one more year's service cannot be "squeezed" out of a gas range or band uniforms. Council reiterated its position that the Board should exercise restraint in a year when its budget was defeated.

The Board again argues, as it did previously, that Council's action was arbitrary and without basis and that Council failed its responsibility to provide specific recommendations regarding individual pieces of equipment.

In this instance, the hearing examiner cannot agree with the Board's argument but rather observes that Council did take notice of a variety of items with respect to its recommended reductions. (Tr. II-37) Accordingly, the hearing examiner holds for Council and recommends that its reduction be sustained.

Summary:	Amount of Reduction	$10,000
	Amount Restored	–0–
	Amount not Restored	$10,000

Library Clerks *Reduction $15,487*

Council was permitted by the hearing examiner to serve interrogatories upon the Board wherein it queried the Board to indicate the number of library clerks it could remove from its budget to effect a saving of $18,000. Council asserts that the Board chose not to respond to the question and therefore Council recommended that the library clerical staff be reduced by two positions.

The Board's representative testified that Council's question was not only inappropriate but also that the hearing examiner had stricken that specific question from Council's interrogatories.

The record is clear that at the conclusion of the first day of hearing on October 13, 1976, the hearing examiner entertained Council's Motion to serve interrogatories upon the Board. Council was directed to forward a copy of its interrogatories to the hearing examiner for his ruling with respect to the specific questions to be answered by the Board.

On November 1, 1976, the hearing examiner sent a letter to Council wherein he stated, *inter alia,* as follows:

> "***I have carefully reviewed your Interrogatories and direct the petitioner to answer the following: 1, 3, 5, 7, 9, 11, 13, 15, 18, 20, 22, 24, 26, 28, 30, 32 and 34. *It will not be necessary for petitioner to answer the questions other than those set forth above.****" (*Emphasis supplied.*)

With respect to Council's interrogatories and question No. 35 in dispute herein, the record shows that it was stricken from the list of questions to be answered by the Board. The Board demonstrated, moreover, that a reduction of

You are viewing an archived copy from the New Jersey State Library.

its existing clerical staff would be detrimental to the present and future library services for its pupils. The hearing examiner recommends that the amount of $15,487 be restored to the Board's budget.

Summary:	Amount of Reduction	$15,487
	Amount Restored	15,487
	Amount not Restored	–0–

Repairs and Maintenance *Reduction $11,300*

Council originally recommended a reduction of $14,000 in this program element but modified its recommendation to $11,300 subsequent to the receipt of additional information from the Board. The Board's explanation for the increase in Repairs and Maintenance was due to the transfer of appropriations into this line item from its Maintenance Supply line item. Council asserted that its recommended reduction of $11,300 was based in part upon the proposition that the Board should reevaluate its policy to provide service contracts for the repair of equipment.

The Board argues that its equipment maintenance agreements (service contracts) are more efficient and assure prompt attention to breakdowns with typewriters, calculators, transcription and reproduction equipment in its business education program in addition to its sophisticated audiovisual and microfilm equipment housed in its Instructional Media Center. The Board continued to state that its increased appropriation was also due to the expanded physical plant and its concomitant increased expenses to maintain those facilities. (Tr. II-79-80)

The hearing examiner finds the Board's documentation and testimony convincing with respect to the instant matter and therefore recommends that $11,300 be restored.

Summary:	Amount of Reduction	$11,300
	Amount Restored	11,300
	Amount not Restored	–0–

Maintenance of Plant *Reduction $5,000*

The amount proposed by the Board shows only a modest increase to cover extended maintenance to its new school buildings. The total appropriations are not inconsistent with the size of the physical plant. Restoration of $4,744 to this program is recommended.

Summary:	Amount of Reduction	($5,000)
	adjusted to	$4,744
	Amount Restored	4,744
	Amount not Restored	–0–

The following table summarizes the recommendations of the hearing examiner with respect to each of Council's suggested reductions:

You are viewing an archived copy from the New Jersey State Library.

CHART II

Program Element	Amount of Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:			
Art Supplies	$ 1,500	$ 1,500	$ –0–
Health Supplies	390	390	–0–
Industrial Arts Supls.	600	–0–	600
Library Supplies	800	570	230
Building Admin. Supls.	1,500	1,500	–0–
Plan. Research & Develop.	1,000	1,000	–0–
Building Oper. Supplies	3,500	3,500	–0–
Maintenance Supplies	2,000	–0–	2,000
Travel-All Programs	5,000	200	4,800
Library Books	2,000	2,000	–0–
Gifted & Talented Pupils	1,600	–0–	1,600
Equipment (New)	23,000	14,330	8,670
Equipment (Replacement)	10,000	–0–	10,000
Library Clerks	15,487	15,487	–0–
Repairs & Maintenance	11,300	11,300	–0–
Maintenance of Plant	(5,000)		
Adjusted to	4,744	4,744	–0–
TOTALS	$84,421	$56,521	$27,900

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the entire record of the instant matter and observes that the parties of interest waived receipt of the hearing examiner report pursuant to *N.J.A.C.* 6:24-1.17(b). He accepts the finding of fact and the recommendations of the hearing examiner and adopts that report as his own without exception.

The Commissioner observes that Council certified to the Sussex County Board of Taxation $200,000 less than the amount requested by the Board. Subsequent to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503), Council adopted a resolution which restored to the Board an amount of $115,579 which represented the Board's appropriation for its share of TPAF expenditure. The Commissioner accepts the stipulation of the parties of interest and directs that the amount of $115,579 be restored to the Board's 1976-77 current expense budget from unbudgeted State aid funds pursuant to *c.*113, *L.*1976.

The remaining amount in dispute before the Commissioner is $84,421. The Commissioner finds and determines that the amounts previously certified by Council are inadequate to maintain a thorough and efficient program of education in the schools of the Township of Sparta for the 1976-77 school year. Accordingly, the Commissioner directs that the sum of $56,521 be restored to the Board's 1976-77 budget from unbudgeted current expense State aid

You are viewing an archived copy from the New Jersey State Library.

pursuant to *c.*113, *L.*1976, in addition to the restoration of $115,579. The total amount to be restored to the Board's 1976-77 budget from unbudgeted State aid is $172,100. The Commissioner observes that there will be no additional certification of the local tax levy for current expenses for the school district for the 1976-77 school year.

COMMISSIONER OF EDUCATION

March 25, 1977

Rolane Seastrand,

Petitioner,

v.

Suzanne Oppermann,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Rolane Seastrand, *Pro Se*

For the Respondent, Fischer, Kagan & Klein (Philip I. Kagan, Esq., of Counsel)

On March 10, 1977, the Commissioner of Education received a Petition of Appeal from petitioner, a candidate for election to a seat on the Board of Education of the Township of West Milford, hereinafter "Board," which alleged, *inter alia,* that Respondent Suzanne Oppermann, also a candidate for election to a seat on the Board, was not qualified for such candidacy or to hold such office. Specifically, it was alleged that respondent had not been a citizen of the United States for a two year period prior to the election and that this period of citizenship was required by the statutory mandate of *N.J.S.A.* 18A:12-1. The Petition requested that Respondent Oppermann's name be stricken from the ballot. Respondent avers by affidavit that she achieved resident alien status in the United States on July 9, 1962, has lived in West Milford Township since January 21, 1969, and became a citizen of the United States on February 14, 1977. Respondent maintains that such facts qualify her for a seat on the Board in the context of the statutory prescription and has filed a Brief in support of her position. She requests an award of attorney's fees and costs.

The statute of reference provides:

You are viewing an archived copy from the New Jersey State Library.

N.J.S.A. 18A: 12-1

"Each member of any board of education shall be a citizen and resident of the district, or of such constituent district of a consolidated or regional district as may be required by law, and shall have been such for at least two years immediately preceding his appointment or election, and he shall be able to read and write."

The Commissioner has reviewed the pleadings herein and the Brief of counsel and determines that, absent a challenge to the basic facts of Respondent Oppermann's affidavit, there is no reason for intervention by the Commissioner. Respondent is now a citizen of the United States. She has been a citizen and resident of the Township of West Milford for the required two year period. Her candidacy, absent a challenge to such facts, is unflawed.

This determination is grounded on a long series of decisions of the Commissioner and the courts which have equated the designation of "citizen" with "resident" in the interpretation of the statute *N.J.S.A.* 18A:12-1 and the predecessor statute *R.S.* 18:7-11. *Frederick W. Heitman v. Board of Education of the Borough of Lakehurst, Ocean County,* 1967 *S.L.D.* 265; *John F. Lange v. Board of Education of the Township of Warren et al., Somerset County,* 1949-50 *S.L.D.* 33; *Leigh W. Kimball v. George Baxter,* 1938 *S.L.D.* 25 (1931); *Harold King v. Board of Education of the Township of Ocean, Monmouth County,* 1938 *S.L.D.* 27 (1931); *Raymond F. Armstrong v. Richard M. Altland,* 1938 *S.L.D.* 17 (1932); *Frank H. O'Brien v. Board of Education of the Town of West New York, Hudson County,* 1938 *S.L.D.* 31 (1912), aff'd State Board of Education 33 Such decisions have been based on a broad, not narrow, definition of the term "citizen" to mean inhabitant or denizen of any place.

Accordingly, the Commissioner finds no present reason to intervene with respect to the candidacy of Respondent Oppermann for a seat on the Board at the annual election to be held in West Milford Township on March 29, 1977, and directs that the candidacy be continued. There is no authority for an award of counsel fees and costs as requested by respondent and this request is denied.

COMMISSIONER OF EDUCATION

March 25, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Borough of Middlesex, Middlesex County,

Petitioner,

v.

Robert M. Sherr, III,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

For the Petitioner, Robert Carl Rader, Board Secretary

For the Respondent, Robert M. Sherr, III, *Pro Se*

It appearing that a Petition of Appeal was filed in this matter challenging the qualifications of Robert M. Sherr, III as a qualified candidate for a seat on the Board of Education of the Borough of Middlesex, Middlesex County, hereinafter "Board"; and

It appearing that an affidavit filed with this office by the Secretary of the Board shows that respondent does not qualify on the basis of residence (*N.J.S.A.* 18A:12-1) as a candidate for a seat on the Board; and

It appearing that the Commissioner of Education issued an Order to Show Cause directing respondent to appear on March 28, 1977 at 10 a.m. at the State Department of Education, 225 West State Street, Trenton, New Jersey; and

It appearing that respondent did not appear at the time and place directed in the aforementioned Show Cause Order; and

It further appearing that the Commissioner finds as a fact that respondent is not qualified to be a candidate for election to a seat on the Board of Education; therefore

The Commissioner ORDERS AND DIRECTS this 31st day of March 1977 that the Secretary of the Board refrain from administering the oath of office to respondent should he receive the highest number of votes for the three year term for which he is not qualified. Should respondent receive the highest number of votes, the Board Secretary is directed to notify the Commissioner of Education immediately.

COMMISSIONER OF EDUCATION

March 31, 1977

You are viewing an archived copy from the New Jersey State Library.

Patricia Crawford,

Petitioner,

v.

Board of Education of the Township of Voorhees, Louise Ward, Principal, and Claudio E. Arrington, Superintendent, Camden County,

Respondents.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Ruhlman & Butrym (Paul T. Koenig, Jr., Esq., of Counsel)

For the Respondents, Hyland, Davis & Reberkenny (William C. Davis, Esq., of Counsel)

Petitioner, a nontenure teaching staff member of physical education, was employed by the Voorhees Township Board of Education, hereinafter "Board," for the academic years 1972-73, 1973-74 and 1974-75. During her initial two years of employment petitioner agreed to perform co-curricular duties as girls' basketball coach for an additional stipend. During October of the 1974-75 academic year, petitioner gave written notice that she no longer desired to continue coaching.

Petitioner avers that her refusal to coach resulted in subsequent inaccurate evaluations, less favorable than she had received in previous years, and the nonrenewal of her contract on April 29, 1975. Petitioner requests the Commissioner of Education to set aside the Board's decision not to renew her employment as an arbitrary, capricious and unreasonable action.

The Board denies the allegations and moves to dismiss the complaint. Oral argument was heard at the State Department of Education, Trenton, on December 14, 1976 on the Motion for Dismissal based upon the pleadings, arguments and Briefs filed with the Commissioner.

The Board presents the affirmative defense that petitioner was guilty of laches inasmuch as the filing of the Petition was made approximately one year after petitioner received her notice of non-reemployment and the statement of reasons for such determination. (Respondent's Brief, at p. 6) The Board avers that on April 29, 1975, petitioner requested reasons for her non-reemployment and on May 9, 1975, the Superintendent of Schools responded to her request. The Commissioner observes that this Petition was received in his office at 10:30 a.m., March 31, 1976.

The Board contends that *Gloria Ulozas v. Board of Education of the Matawan Regional School District,* 1975 *S.L.D.* 598, aff'd State Board of

You are viewing an archived copy from the New Jersey State Library.

Education 604 and the cases cited therein control in the instant matter.

Counsel for petitioner argues that the delay was not her fault, but was occasioned by consideration by counsel of the possible filing of a joint petition involving another person, with subsequent investigation. (Tr. 16)

The Commissioner cannot agree. Petitioner cannot use inaction of counsel as a viable excuse for lack of her action in initiating her pleadings with the Commissioner in a propitious manner. The record is clear that subsequent to May 9, 1975, petitioner made initial contact with counsel in August 1975 and that her attorney filed the Petition on her behalf in April 1976. (Tr. 20) There is no proof that petitioner repeatedly expressed concern because her Petition had not been filed.

In *Dorothy L. Elowitch v. Bayonne Board of Education, Hudson County,* 1967 *S.L.D.* 78, aff'd State Board of Education 86, the Commissioner quoted the words of the Court regarding the equitable doctrine of laches as follows:

> "***Justice Heher said in the case of *Marjon v. Altman,* 120 *N.J.L.* 16, at page 18:
>
> > 'While laches, in its legal signification, ordinarily connotes delay that works detriment to another, the public interest requires that the protection accorded by statutes of this class be invoked with reasonable promptitude. Inexcusable delay operates as an estoppel against the assertion of the right. It justifies the conclusion of acquiescence in the challenged action. *** *Taylor v. Bayonne,* 57 *N.J.L.* 376; *Glori v. Board of Police Commissioners,* 72 *Id.* 131; *Drill v. Bowden,* 4 *N.J. Mis. R.* 326; *Oliver v. New Jersey State Highway Commissioner,* 9 *Id.* 186; *McMichael v. South Amboy,* 14 *Id.* 183.'***" (at 85)

Also, the State Board of Education said in *Elowitch*:

> "***Implicit in the doctrine of laches is the inaction of a party with respect to a known right for an unreasonable period of time coupled with detriment to the opposing party. *Pomeroy, Equity Jurisprudence, V.*II, *Sec.* 419, pp. 171-2; 27 *Am.Jur. 2nd Sec.* 162, p.701; *Atlantic City v. Civil Service Commission,* 3 *N.J. Super.* 57 (*App. Div.,* 1949); *Park Ridge v. Salimone,* 36 *N.J. Super.* 485 (*App. Div.,* 1955), aff'd 21 *N.J.* 28 (*Sup. Ct.,* 1956) Respondent, on June 10, 1965, 11 months after terminating petitioner, contracted to fill the vacancy created, prior to receiving any notice that petitioner contested the propriety of its action. Under all the circumstances, respondent's action constituted a sufficient detriment, in the face of petitioner's implied acquiescence, to invoke the bar of laches.***" (at 88-89)

The applicability of the equitable doctrine of laches must be determined within the context of the relevant facts in each individual matter. *Bookman v. R.J. Reynolds Tobacco Company,* 138 *N.J. Eq.* 312, 406 (*Ch.* 1946) Therein,

You are viewing an archived copy from the New Jersey State Library.

Bookman delayed filing her petition of appeal for a period of nearly ten months after her notification of non-reemployment. During only two of these months was Bookman active in protesting the matter before the board. Thereafter, for a period of eight months the board, absent further protests or litigation, had no reason to believe that petitioner would continue to assert an entitlement to employment. The board, during this period, as part of a curricular reorganization, abolished the teaching position to which Bookman had been previously assigned.

The Commissioner observes that, in the instant matter, the teaching position of petitioner would have been filled for approximately one year before her Petition of Appeal was filed. (Board's Brief, at p. 7)

The Commissioner finds that petitioner is guilty of laches and for the reasons hereinbefore set forth, the Petition of Appeal is dismissed.

COMMISSIONER OF EDUCATION

April 4, 1977

Joseph Silver,

Petitioner,

v.

Board of Education of the Township of Hillside, Union County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION ON MOTION

For the Petitioner, Diamond, Grossman, Pitman, Udine & Anzaldi (Ross R. Anzaldi, Esq., of Counsel)

For the Respondent, Goldhor, Meskin & Ziegler (Sanford A. Meskin, Esq., of Counsel)

Petitioner, a tenured teaching staff member in the employ of the Board of Education of the Township of Hillside, hereinafter "Board," served as an advisor to the senior class of Hillside High School during the 1973-74 academic year. In June 1974 this class decided without petitioner's knowledge, to present him and another advisor with cash gifts of $350 in appreciation for services rendered and such presentation was subsequently made at a class ceremony. Thereafter the Board learned of the gift and issued a letter of reprimand to petitioner from which petitioner now appeals. The matter is presented directly to the

You are viewing an archived copy from the New Jersey State Library.

Commissioner of Education for Summary Judgment on a Stipulation of Facts without a hearing although petitioner contends that such a hearing is required to establish a frame of reference. The Commissioner does not agree with such contention and concludes that the matter is ripe for determination as a matter of law.

The Stipulation of Facts necessary to a determination is set forth as follows:

> "Petitioner is a tenured teacher and administrator at the Hillside Public High School. During the school year of September, 1973 through June, 1974 the petitioner, along with another teacher, acted in an additional capacity as Senior Class Advisor. Petitioner assisted the students through the subject year in fund raising and charitable endeavors, class parties, the class prom and rendered advice to the senior class officers concerning gifts to the school system. Any and all checks written from the funds raised by said senior class had to be signed by the petitioner's supervisor to wit: the principal of the high school.
>
> "The petitioner and co-senior class advisor did not participate in any way concerning gifts to themselves and were not aware of the nature of the class gift to them until 'moving up' exercises during the month of June, 1974. Said gift, totalling three hundred fifty dollars to each teacher, was presented to said teacher.
>
> "At no time has there been any guide lines, codifications or any oral indications given to the teachers and the students alike concerning gifts to teachers and/or senior class advisors.
>
> "On January 23, 1975 an informal hearing was conducted by the board wherein certain testimony was presented by the petitioner, his co-senior class advisor as well as the class officers of the subject year. On March 19, 1975, the petitioner received a letter of reprimand containing a statement that said letter would become a part of the petitioner's permanent records. A grievance hearing was requested and conducted. The petitioner's grievance was denied. As no arbitration procedures are available under his contract with the respondent, the petitioner has instituted the subject suit."

Such facts pose the issues for determination as agreed by counsel at a conference conducted on September 17, 1975. While the matter was delayed thereafter by arguments concerned with the propriety of a submission for Summary Judgment the issues are still valid and are set forth as follows with respect to the questions of:

> "Whether or not the Board's action in placing a letter of reprimand in petitioner's personnel file for the acceptance of a senior class gift was improper in the absence of any written or oral instructions pertaining to the acceptance of such gift.

You are viewing an archived copy from the New Jersey State Library.

"Whether or not petitioner by virtue of his employment as school administrator and senior class advisor by the Board may accept a gift of $350 from the senior class.

"Whether the Commissioner of Education has the authority to order the restitution of such funds already expended as a class gift and if so, is the Board of Education entitled to the restitution of such funds in the instant matter."

Petitioner avers that there was no impropriety in his action of accepting a gift about which he had no prior knowledge and in the absence of a clearly stated Board policy that proscribed such acceptance. He further avers that the signature of his school principal lent authority to the view that the gift was a proper exercise of class discretion and should afford no reason for a personal censure by the Board.

The Board contends that petitioner did not act in good faith and violated his fiduciary duties and trust relationships to the class for whom he was paid by the Board to serve as an advisor. The Board further contends that it is entitled to an order from the Commissioner that would direct petitioner to account for all sums or gifts given him in the past and to return such sums or gifts and an order directing that petitioner may not, in the future, "***accept any gifts of any nature***" from pupils or school groups.

The Commissioner has reviewed all such arguments in the context of the stipulated facts and determines that the controversy in the instant matter is not, despite the Board's contention, concerned with gifts *per se* but with the nature of one gift of significance. It is doubted that this Board or any board would contest the gifts of flowers to the director of a school play by pupils of the cast or of a symphonic recording by pupils to the director of the school band. Such gifts of small monetary value are traditional in school affairs and probably, by the thoughtfulness engendered, of more benefit to the givers than to those who receive.

This is not meant to sanction, however, the receipt of significant monetary gifts by school employees who are otherwise compensated for their extracurricular work according to schedules developed cooperatively by local boards and their staffs. Any policy in the public schools which would sanction such gifts is one which would invite abuse and promote undesirable competition. Such a policy may not be sustained. The Commissioner so holds.

The problem in the instant matter is that there was no policy at all developed by the Board which established the parameters of consideration between gifts of significance which were proscribed and gifts which could be accepted with propriety. Petitioner correctly avers that in the absence of such a policy by the Board, his acceptance of a gift approved by the signature of a school principal was not improper, and that he did no wrong. The responsibility for error, if error there was, was clearly present in the absence of well delineated guidelines for action developed by the Board.

You are viewing an archived copy from the New Jersey State Library.

The Commissioner set forth the law with respect to the administration of pupil activity funds in *Thomas Cluff et al. v. Lower Cape May Regional High School Board of Education,* 1972 *S.L.D.* 560. He first cited the general rule-making power of local boards to govern and manage the local schools (*N.J.S.A.* 18A:11-1) and the authority conferred by *N.J.S.A.* 18A:17-8 on secretaries of boards of education to

> "a. Collect *** moneys due to the board not payable directly to the custodian of school moneys***."

The Commissioner then set forth the rationale in support of the view that a board policy is required as an equitable principle with respect to the use of pupil activity funds. The Commissioner said:

> "***The Legislature, in its wisdom, saw fit to provide boards of education with a system of 'checks and balances' regarding moneys for which it is responsible and accountable. See *N.J.S.A.* 18A:17-8, *supra. N.J.S.A.* 18A:23-1 requires that boards of education secure an annual audit of accounts and financial transactions by a public school accountant. The scope of such an audit is described by *N.J.S.A.* 18A:23-2:
>
> > 'Each annual audit shall include an audit of the books, accounts and moneys *** of the board and of any officer or employee thereof *and of moneys derived from athletic events or the activities of any organization of public school pupils conducted under the auspices of the board* ***.' (*Emphasis supplied.*)
>
> "In the Commissioner's view, a perusal of the statutes, in *pari materia, supra,* discloses the Legislature's intention that boards of education be held accountable for and have authority over those funds raised by pupils through various fund raising activities conducted under the '***auspices of the board.' See *N.J.S.A.* 18A:23-2, *ante.* Such a holding is reinforced when *N.J.S.A.* 18A:19-14 is considered concomitantly with *N.J.A.C.* 6:20-2.3.
>
> "*N.J.S.A.* 18A:19-14 provides:
>
> > 'All funds derived from athletic events *or other activities of pupil organizations* shall be administered, expended and accounted for pursuant to the rules of the state board.' (*Emphasis supplied.*)
>
> while *N.J.A.C.* 6:20-2.3 provides:
>
> > '***(b) The budget and cost distribution records [of local school boards] shall include but not be limited to the following***
> >
> > '8. Sundry accounts:
> >
> > i. Food Services;
> > ii. *Student-body activities;*
> > iii. Community services;

You are viewing an archived copy from the New Jersey State Library.

iv. Special projects***.'
(*Emphasis supplied.*)

"The Legislature, through *N.J.S.A.* 18A:19-14, *ante,* acknowledged that pupil organizations do conduct various fund raising activities and, further, provided that all funds so raised '***shall be administered, expended and accounted for pursuant to the rules of the state board.'

"It is the Commissioner's judgment, therefore, that funds raised by pupils through activities sponsored under the aegis of a board are the ultimate responsibility of that board, including their administration, expenditure and accounting. The Commissioner notices, however, that boards of education are given discretionary rule-making authority by *N.J.S.A.* 18A:11-1, *supra.* Equitable principles *require that boards of education develop and periodically review a written statement of policy regarding the use of funds* raised by pupils through various activities approved by the Board.***" (*Emphasis supplied.*) (at 563-564)

Such a policy requirement, if met with compliance herein by the Board, would clearly have obviated the controversy, *sub judice.* The pupils would have refrained from offering a gift of such significance to petitioner and, if it were offered, his course of conduct would have been clearly apparent. The absence of a policy must be held therefore to constitute the root cause of the instant controversy and to pose no reason for censure of petitioner.

Accordingly, the Commissioner directs that all records of the instant dispute and of the Board's censure of petitioner be removed from his file. The Commissioner further directs, however, that the sum of $350 in contention herein, which is now in an escrow account, be expended by the Board for "general pupil activities" as sanctioned by the Commissioner's decision in *Cluff, supra.* Such sum clearly exceeds the parameters of reasonableness which must serve as a criterion for the definition of a class gift to a compensated teaching staff member in the employ of a local board of education. The Commissioner so holds.

COMMISSIONER OF EDUCATION

April 4, 1977

You are viewing an archived copy from the New Jersey State Library.

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, April 4, 1977

For the Petitioner-Appellant, Diamond, Grossman, Pitman, Udine & Anzaldi (Ross R. Anzaldi, Esq., of Counsel)

For the Respondent-Appellee, Goldhor, Meskin & Ziegler (Sanford A. Meskin, Esq., of Counsel)

The State Board of Education affirmed the decision of the Commissioner of Education on the following counts:

1. Since the sum exceeded the parameters of a reasonable class gift, the money in contention is to be expended by the Board for general public activities according to a prior determination in *Cluff* (1972).

2. Letter of reprimand be removed from petitioner's permanent file.

Sonia Ruby dissented on the first count.
Bryant George, Paul Ricci and Helen Zehner dissented on the second count.
William Colon abstained on the second count.

October 12, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the City of Garfield,

Petitioner,

v.

Mayor and City Council of the City of Garfield, Bergen County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Michael J. Mella, Esq.

For the Respondent, Walsh, Sciuto & Dimin (Anthony J. Sciuto, Esq., of Counsel)

Petitioner, the Board of Education of the City of Garfield, hereinafter "Board," appeals from an action of the City Council of the City of Garfield, hereinafter "Council," certifying to the Bergen County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount certified as necessary by the Board. The facts of the matter were adduced at a hearing before a representative of the Commissioner of Education at the State Department of Education, Trenton, on January 4, 1977. Subsequent to the hearing, certain additional documents were submitted in evidence and case submission was essentially complete as of January 19, 1977. The report of the Commissioner's representative is as follows:

On February 27, 1976, the Board adopted a proposed budget for the 1976-77 school year which called for a local tax levy of $4,412,155.25. The budget was then delivered to the Board of School Estimate which, on March 11, 1976, approved the budget as submitted to it by the Board and forwarded same to Council. Subsequently, on March 30, 1976, Council fixed the amount to be raised at $4,042,155.25, a reduction of $370,000 from the amount which had been determined by the Board as appropriate and necessary. Thereafter, a certification of the lesser sum was submitted by the Council to the Bergen County Board of Taxation. The instant appeal by the Board then ensued.

The Board contends that Council's reduction of $370,000 was arbitrary and capricious and will make it impossible for the Board to operate a thorough and efficient school system in Garfield for the school year 1976-77 and, therefore, it requests the Commissioner to order a restoration of this total amount. In support of this contention, the Board's Petition of Appeal asserts that Council made its reductions without careful consideration of the information provided to it by the Board, and lists economies recommended by Council as follows:

"***a) Tuition for special education.

You are viewing an archived copy from the New Jersey State Library.

"b) Elimination of the provision for providing 25% of the teachers' pension plan.

"c) Elimination of the garage for the buses.

"d) Elimination of funds to offset a deficit for the school year 1974-75.

"e) Other miscellaneous items." (Petition of Appeal, at p. 4)

The Board's Petition of Appeal further asserts that it has requested Council to provide the school district with bonding moneys to alter and repair its school buildings. The Board declares that for the past three years Council has failed to grant or approve any of the bonding requests with the exception of $10,000 for a school bus and then only after community pressure forced Council to make that approval. (Petition of Appeal, at p. 4)

Council denies the allegations as set forth by the Board and has listed a total of nine budgetary line items from which it believes the total reduction of $370,000 can be effected without harm to the school system. The proposed reductions are itemized as follows:

Account Number	Item	Board's Proposal	Council's Proposal	Amount Reduced
CURRENT EXPENSE:				
J120	Contr. Servs.	$ 23,275	$ 10,675	$ 12,600
J213	Sal., Tchrs.	2,528,420	2,468,420	60,000
J230	Library & A-V Mats.	27,513	25,313	2,200
J610	Sal., Custs.	242,988	235,988	7,000
J630	Heat	148,200	108,200	40,000
J640D	Telephone	15,064.01	11,564.01	3,500
J740	Other Exps., Maint.	111,970	27,450	84,520
J810	TPAF (25% local share)	116,844	665	116,179
J1020	Stu. Body Activs.	88,773	44,773	44,000
	TOTALS	$3,303,047.01	$2,933,048.01	$369,999

*Council's Resolution to reduce the Board's budget by $370,000 does not comport with its actual reduction of $369,999.

These reductions will be considered by the Commissioner's representative, *post.* It is first necessary, however, to set forth certain broad principles which will establish the context of law for such consideration.

The record reveals that the Board adopted its budget for current expenses in the amount of $5,328,532 for the 1976-77 school year, which included the amount of $116,179 which was estimated to be its 25 percent share for TPAF expenditure. It is further noted that the Board's permissible maximum budget as certified by the Commissioner was an amount of $5,285,811, which included the Board's estimated 25 percent share for its TPAF expenditure. The record is

You are viewing an archived copy from the New Jersey State Library.

clear that the Board neither requested nor was approved for a cap waiver increase for its 1976-77 budget (Tr. 6-7) (C-1) as provided in *N.J.S.A.* 18A:7A-25, which states, *inter alia,* as follows:

> "***The commissioner may approve the request of a local board of education for a greater increase, having judged that (1) a reallocation of resources or any other action taken within the permissible level of spending would be insufficient to meet the goals, objectives and standards established pursuant to this act, or (2) an increased enrollment may reasonably be anticipated in the district."

The hearing examiner finds, therefore, that the Board was in violation of *N.J.S.A.* 18A:7A-25, wherein it exceeded its permissible maximum budget appropriation without the Commissioner's approval. The hearing examiner leaves to the Commissioner the final determination of the penalty, if any, to impose upon the Board with respect to this violation.

In addition, the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) by the New Jersey Legislature on November 9, 1976, provided for an adjustment to boards' proposed expenditures for TPAF which appeared in 1976-77 budgets. In the instant matter, the Board appropriated $116,179 for its share of TPAF expenditure and Council subsequently reduced the Board's budget in this amount, among other reductions, to effect savings in the aggregate of $370,000. The adjustment required in accordance with *c.*113, *L.*1976 accomplished the stated intention of Council with the reduction of the proposed TPAF expenditure. The result is a dual reduction of the amount intended for reduction by the governing body. Accordingly, the hearing examiner recommends that the Commissioner authorize the expenditure of the amount of $116,179 of unbudgeted current expense State aid by the school district of the City of Garfield for the 1976-77 school year pursuant to *c.*113, *L.*1976. It is further recommended that restoration of moneys to the Board's line item budget be deducted from the $116,179 TPAF restoration.

It is necessary, at this juncture, to review the Board's budget standing with respect to the instant appeal. The hearing examiner's findings are recapitulated as follows:

Board's original budget proposal for current expenses 1976-77	$5,328,532
Cap limit certified by Commissioner	5,285,811
Total amount over cap limit	$ 42,721
Council's reduction	$ 370,000
Less amount over cap limit	42,721
Total possible restoration	$ 327,279
Less restored TPAF	116,179
Possible restoration from additional local taxation to equal 1976-77 cap limit	$ 211,100

You are viewing an archived copy from the New Jersey State Library.

An analysis of major budget items in dispute is as follows:

J120 Contracted Services for Administration *Reduction $12,600*

Council argues that this line item more than doubled from $10,380 for the 1975-76 budget to $23,275 budgeted for 1976-77 which, therefore, justified its reduction of $12,600.

The Board admits that the budget for 1975-76 anticipated the expenditure of $5,380 for J120A-Public School Accounts Fee and $5,000 for J120D-Other Contracted Services, for a total budget of $10,380. The Board contends, however, that the actual expenditure for J120D was $18,975. These expenditures included funds for an accounting computer system, and increased expenses for the processing of grievances, negotiations and litigation. (Tr. 39) The Board asserts that these expenditures have continued to increase rather than decrease and, therefore, the budget request of $23,275 is justified.

The hearing examiner has examined the Board's Audit Report of June 30, 1976 on file at the State Department of Education, and finds that the Board expended $23,975 for its J120 line item for 1975-76. Council's assertion, that the line item allocation doubled from 1975-76 to 1976-77, is not sufficient to sustain its reduction. The Board has provided sufficient evidence of the necessity for the budgeted amount.

The hearing examiner, therefore, recommends that the amount of $12,600 be restored.

Summary:	Amount of Reduction	$12,600
	Amount Restored	12,600
	Amount Not Restored	–0–

J213 Salaries of Teachers *Reduction $60,000*

Council asserts that the Board increased the number of teachers from 189 to 195 for a total of six teaching positions from the 1975-76 budget to the 1976-77 budget despite the decrease in pupil enrollment. Council avers that under the present economic conditions reducing the need for an increase of teaching personnel would be in the best interests of the community.

The Board acknowledged that it was in error when it reported to Council that it had budgeted 189 teachers for the 1975-76 school year, when, in fact, the 189 teachers appeared in the 1974-75 budget. The Board asserts that six teachers were added to its staff during the school year 1974-75 and that the budget under consideration for 1976-77 accurately stated the number of teaching personnel as 195 teachers. The Board states that the six teachers employed during the 1974-75 school year were added for the following reasons: (1) four elementary teachers were employed to eliminate overcrowded classes, (2) a physical education teacher was employed as the result of affirmative action, and (3) a health teacher was added to the high school staff since there was no health teacher at the time. (Tr. 30-31) The Board contends, therefore, that the 1976-77 budget did not reflect an increase in the amount of teaching personnel but rather

You are viewing an archived copy from the New Jersey State Library.

an actual carry-over from previous years. With respect to Council's argument that pupil enrollment has declined, the Board asserts that a reduction of 98 pupils out of a pupil population of 3350 in approximately three years has had little if any impact on its budget.

The Board further states that the budget under consideration did not provide for salary increases for teachers or any other employee groups, despite the fact that it had recently completed negotiations with the teachers which provided for a four and one-half percent increase in salary plus increment for the 1976-77 school year.

The hearing examiner observes that in this instance, and in other instances, the Board failed to transmit accurate budget data to Council. The failure of the Board to accurately report the number of teachers in its employ precluded Council to act "conscientiously" and "reasonably" to arrive at its determinations to "effect savings which will not impair the educational process," which is the clearly stated principles established by the Commissioner and the courts. *Board of Education of the Township of East Brunswick et al. v. Township Council of East Brunswick et al.*, 48 *N.J.* 94 (1966); *Board of Education of the City of Elizabeth v. City Council of Elizabeth,* 55 *N.J.* 501 (1970); *Board of Education of Trenton v. City Council of Trenton, Mercer County,* 1967 *S.L.D.* 172; *Board of Education of the Borough of Haledon v. Mayor and Council of Borough of Haledon, Passaic County,* 1970 *S.L.D.* 70, aff'd State Board of Education 75 Council acted in good faith and determined that the Board could properly operate with the reported 189 teachers which it was led to believe existed for the 1976-77 school budget.

The hearing examiner finds that the Board's failure to accurately report to Council its existing teaching staff members was not so defective as to vitiate its need to continue those staff members in its employ. The six teachers have been in the Board's employ since the 1974-75 school year and their salaries had not been added to the 1976-77 budget. The hearing examiner therefore recommends that the amount of $60,000 be restored to line item J213.

Summary:	Amount of Reduction	$60,000
	Amount Restored	60,000
	Amount Not Restored	--0--

J230 School Libraries and A-V Materials *Reduction $2,200*

Council states that the Board increased the amount in this line item from $22,484.96 in the 1975-76 budget to $27,513 for the 1976-77 budget. Council asserts that it only reduced the line item in the amount of $2,200, thereby, in effect, it permitted the account to increase by $2,829 for the current budget.

The Board contends that its elementary school library facilities have been evaluated as substandard and, further, that it is in the process of improving its audiovisual program at its high school through the installation of a media learning resource center. (Tr. 31-38) The Board argues that the additional funds are necessary for the acquisition of new library books, visual aids, equipment

You are viewing an archived copy from the New Jersey State Library.

and the installation of modules for individual learning resource centers.

The hearing examiner, after a careful review of the Board's past budgets with respect to line item J230, finds that its requested increase is reasonable and necessary and, therefore, recommends that the Commissioner restore the amount of $2,200.

Summary:	Amount of Reduction	$2,200
	Amount Restored	2,200
	Amount Not Restored	–0–

J610 Salaries for Custodial Services *Reduction $7,000*

Council avers that it considered and subsequently made its determination to reduce this line item in the amount of $7,000 based upon erroneous information supplied to it by the Board. It appeared to Council that the Board intended to increase its personnel by adding one additional custodian to its 1976-77 budget. The Board admits that the preparer of the 1976-77 budget incorrectly used the 1974-75 figure for custodial employees which at that time was twenty-four. It asserts that the actual number of custodians employed for the past two years has been twenty-five and that there were no new positions included in the 1976-77 budget. The Board further argues that the increased salaries negotiated with the custodians for the 1976-77 school year were not included in the budget under consideration.

In the instant matter, the hearing examiner sets forth the same criticism of the Board with respect to the erroneous information it supplied to Council in regard to line item J213. Notwithstanding the criticism, the hearing examiner recommends that $7,000 be restored to the J610 line item.

Summary:	Amount of Reduction	$7,000
	Amount Restored	7,000
	Amount Not Restored	–0–

J630 Heat *Reduction $40,000*

Council calculated that the Board expended $87,213.62 in this line item with a budgeted amount of $106,988.40 for 1975-76. The Board requested a budget of $148,200 for 1976-77 or an increase of $41,211.60. Council further calculated that the use of 242,260 gallons of fuel oil at a price of $.38 per gallon, would cause the Board to expend $92,060 for the 1976-77 school year.

The Board acknowledged that its budget was $106,988.40. The actual expenditure was $77,587.67 for the 1975-76 school year. (Board's Audit Report, June 30, 1976, Exhibit A-4) The Board contends that the 1975-76 school year included a relatively mild winter and that the price of fuel oil only varied from $.345 per gallon to $.351 per gallon during the year. The fuel oil contract was increased to $.375 per gallon for 1976-77 asserts the Board, and was based upon the use of approximately 350,000 gallons. The Board contends that the amount necessary for heating expense would be $131,250. In its budget preparation for 1976-77, the Board avers that it allowed for an additional one

You are viewing an archived copy from the New Jersey State Library.

cent price increase which equaled $17,000, thereby when that sum was added to the original estimate of $131,250, the total estimated cost for fuel oil was budgeted for $148,000.

The hearing examiner observes that the Board's consumption of No. 2 fuel oil was 128,785 gallons for 1974-75 and 208,934 gallons for 1975-76. (Exhibit 5C) In addition, the supplier notified the Board on December 7, 1976, that the price of No. 2 fuel oil would increase from $.375 per gallon to $.397 per gallon. (Exhibit 5B) Allowing the Board to use its estimated consumption of 350,000 gallons, which would be 141,066 gallons above its consumption for 1975-76, and the increased price of $.397, the hearing examiner finds that the total estimated budget for No. 2 fuel oil would be $138,950. The hearing examiner recommends therefore that the amount of $30,750 be restored to the Board's J630 account.

Summary:	Amount of Reduction	$40,000
	Amount Restored	30,750
	Amount Not Restored	9,250

J640D Use of Telephone *Reduction $3,500*

The Board asserts that part of the 1976-77 J640D line item in the amount of $3,500 was budgeted in the J130 line item for 1975-76. It was determined that the $3,500 was not properly itemized in the J130 line item and the Board subsequently reduced its J130 line item in the amount of $3,500 and transferred that amount to the J640D line item for the 1976-77 budget.

The hearing examiner finds the Board's assertion to be true and, therefore, recommends that the Commissioner restore $3,500 to line item J640D.

Summary:	Amount of Reduction	$3,500
	Amount Restored	3,500
	Amount Not Restored	—0—

J740 Other Expenses-Maintenance *Reduction $84,520*

Council determined that its reduction of $84,520 related to items which were bondable and, therefore, should be presented as such. The Board asserts that it had presented bond proposals to Council in the past but Council refused to adopt the necessary authorization pursuant to *N.J.S.A.* 18A:24-10 *et seq.* The Board further contends that it was on the advice of Council that the Board selected those items of absolute necessity from the bonding request priority list and included those items in its current budget request.

The hearing examiner has carefully reviewed the testimony, documents and arguments with respect to the instant matter and agrees, in part, with Council that the following items are bondable:

1.	Bus garage	$37,445
2.	Installation of gasoline storage tank	7,500

You are viewing an archived copy from the New Jersey State Library.

3.	Installation of drop ceilings in schools Nos. 3, 5, 6 and 8	4,000
	TOTAL	$48,945

The hearing examiner recommends that $35,575 be restored to line item J740.

Summary:	Amount of Reduction	$84,520
	Amount Restored	35,575
	Amount Not Restored	48,945

J810 Teachers' Pension and Annuity Fund — *Reduction $116,179*

This line item was adjusted and restored pursuant to *c.*113, *L.*1976. The hearing examiner recommends that these moneys be applied to the restoration of the line items approved by the Commissioner.

Summary:	Amount of Reduction	$116,179
	Amount Restored	116,179
	Amount Not Restored	–0–

J1020 Student Body Activities — *Reduction $44,000*

The record reveals that the Board expended $42,533.25 for the 1975-76 school year. (Board's Audit Report, June 30, 1976, Exhibit A4, at p. 5) Notwithstanding the Board's argument that it wished to improve certain activities in this line item the hearing examiner finds for Council on the basis of the record before him and recommends that the expenditure herein be programmed at the same level as in the 1975-76 school year.

Summary:	Amount of Reduction	$44,000
	Amount Restored	–0–
	Amount Not Restored	44,000

The recommendations of the hearing examiner are set forth in the following chart:

Account Number	Item	Amount of Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
J120	Contr. Servs.	$ 12,600	$ 12,600	$ –0–
J213	Sal., Tchrs.	60,000	60,000	–0–
J230	Library and A-V Mats.	2,200	2,200	–0–
J610	Sal., Custs.	7,000	7,000	–0–
J630	Heat	40,000	30,750	9,250
J640D	Telephone	3,500	3,500	–0–
J740	Other Exps., Maint.	84,520	35,575	48,945
J810	TPAF	116,179	(116,179)*	–0–

You are viewing an archived copy from the New Jersey State Library.

J1020	Stud. Bdy. Activs.	44,000	–0–	44,000
	TOTAL	$369,999	$151,625*	$102,195
	Adjustment of one (1) dollar to	1	1	
	comport with Council's reduction	$370,000	$151,626	
	*TPAF Excluded		($116,179)*	

Testimony and documentation presented at the hearing revealed that the Board has been in a position of financial difficulty for an extended period of time and remains in such a position to the present day. The extent of this difficulty is clearly evident in the Board's audit reports filed with the State Department of Education with respect to the school year 1975-76, which revealed that on June 30, 1976, the Garfield school system had completed its operational year with a deficit of $137,791.37 in its current expense account contrary to law. *N.J.S.A.* 2A:135-5 In addition, the cash deficit as expressed in the Board's 1974-75 audit report, and other reports which comprise an expression of the financial position of the Board, appear to be contrary to *N.J.S.A.* 2A:135-5 which provides as follows:

> "Any person or member of a board or body charged with or having the control of any state office, department or institution, or any member of a board of chosen freeholders or of the governing body of a municipality, or any member of a board of education, who willfully and knowingly:
>
> a. Disburses, orders or votes for the disbursement of public moneys, in excess of the appropriation respectively to any such office, department, institution, board or body; or
>
> b. Incurs obligations in excess of the appropriation and limit of expenditure provided by law for the purposes respectively of any such office, department, institution, board or body–
>
> Is guilty of a misdemeanor.
>
> "Nothing contained in this section shall be construed to prevent any board of education from keeping open the public schools."

The hearing examiner recommends that the Commissioner order the Board to bring its accounts into balance before June 30, 1977.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report and recommendations of the hearing examiner and has been notified that counsel have waived the filing of the hearing examiner report pursuant to *N.J.A.C.* 6:24-1.17(b). The Commissioner finds it necessary, at this juncture, to comment in some detail on the findings therein.

You are viewing an archived copy from the New Jersey State Library.

A most serious problem is presented with respect to the Board's failure to comply with the statutory provisions embodied in *N.J.S.A.* 18A:7A-1 *et seq.*, and more specifically *N.J.S.A.* 18A:7A-25, which provides, *inter alia,* as follows:

> "***Annually, *** the commissioner shall certify to each local board of education the amount by which the school district may increase its budget for the next year without exceeding the permissible rate of increase.***"

The record is clear with regard to the Commissioner's certification to the Board of its permissible rate of increase for the 1976-77 budget. The Board, however, exceeded its permissible rate of increase contrary to statute. The Commissioner is constrained to point out that the laxity on the part of the school's administration is distressing, as is the lack of adequate planning by the Board. The Commissioner cautions the Board, and most particularly the Board's administrative staff, to give scrupulous attention and conformance to the statutes governing the "Public School Education Act of 1975." (*N.J.S.A.* 18A:7A-1 *et seq.*) The Legislature has clearly expressed its mandate and a strict and meticulous observance of the school laws is required of all persons having responsibility for the conduct of the schools.

There is no allegation that the Board acted in bad faith or in a fraudulent manner in its admitted errors it reported to Council with regard to the number of personnel included in the J213 and J610 line items. It is reasonable to expect, however, that the Board would transmit accurate and pertinent budget information to Council, in order that Council could make a conscientious determination to effect economies. The Board is required to produce such information as provided by *N.J.S.A.* 18A:22-8 which states, *inter alia,* as follows:

> "The budget shall be prepared in such detail *** and *** so itemized as to make the same readily understandable***."

The Commissioner would condemn any violation of the statutes governing school board budgets and appropriations, and, in the case herein, no evidence has been adduced that any such violations occurred. The Commissioner cautions the Board, however, to provide Council with such understandable budget detail when called upon in the future.

In regard to the Board's deficit spending, the Commissioner observes that it was in violation of *N.J.S.A.* 2A:135-5. The courts of this State have upheld the statute as in *State v. Charles G. Boncelet,* 107 *N.J. Super.* 444 (*App. Div.* 1969), wherein the Court held:

> "***As to the second and fourth counts for violation of *N.J.S.A.* 2A:135-5, the court charged (in the words of the statute) that, in order to convict, it was necessary that the jury find that defendant had *willfully and knowingly* voted for the overexpenditures. In this it was correct. It was within the competency of the Legislature to declare an act criminal irrespective of the motive of the doer. *State v. Labato,* 7 *N.J.* 137, 149-150 (1951). Here it prescribed willfulness and knowledge as the tests.

You are viewing an archived copy from the New Jersey State Library.

> Thus, the State was not required to adduce evidence to establish a corrupt motive on defendant's part as to those counts. *Cf. State v. Halsted,* 39 *N.J.L.* 402, 411 (*Sup. Ct.* 1877); *Halsted v. State,* 41 *N.J.L.* 552, 592 (*E.&A.* 1879). The proofs were adequate to support a finding, implicit in the jury's verdict of guilty, that the overexpenditures were willfully and knowingly voted.***" (*Emphasis in text.*) (at 452)

And,

> "***Defendant *** urges that criminal intent was the necessary element of the offenses charged and, in the absence of proof thereof, he 'was wrongfully adjudged guilty of a crime.' The trial judge properly instructed the jury that criminal intent was an essential element of the common law offense of misconduct in office, *N.J.S.A.* 2A:85-1, here based upon defendant's violation of *N.J.S.A.* 40A:4-57 and 58***. *State v. Begyn,* 34 *N.J.* 35, 49-50 (1961). However, to establish intent it was not necessary to adduce proofs from which it could be inferred that the defendant intended to profit or otherwise benefit from the overexpenditures. *It was sufficient if there was an intent to commit the act which the law forbade, State v. Gleitsmann,* 62 *N.J. Super.* 15, 20-21 (*App. Div.* 1960)***." (*Emphasis supplied.*) (at 451)

Accordingly, the Commissioner directs the Board of Education of the City of Garfield to bring its financial accounts into balance before June 30, 1977. Further, he orders that its deficit spending shall not be allowed to continue or occur again.

With respect to the instant budget appeal, the jurisdiction of the Commissioner is to determine the sum of moneys necessary for the maintenance and operation of a thorough and efficient system of public schools in the City of Garfield for the 1976-77 school year. Having examined the detailed report of the hearing examiner together with the record in the instant matter, the Commissioner concurs in the recommendations as supported by the findings of fact.

The Commissioner notices that Council reduced the Board's proposed school budget for 1976-77 by $370,000. Since the Board's budget of $5,328,532, with the 25% TPAF included, exceeded the permissible cap by $42,721, the amount which the Board may appeal for restoration is limited to $327,279. Included in Council's reduction was the Board's share of TPAF in the amount of $116,179, which the Commissioner observes was a dual reduction of the amount intended for reduction by Council. The restoration of the $116,179 double deduction of TPAF funds will be accomplished by permitting the tax allocations for this purpose to stand. Without this restoration the TPAF amount of unbudgeted State aid would be returned to the County Board of Taxation to reduce the amount raised by local taxation for current expenses.

The recommendations detailed by the hearing examiner substantiate the necessity for the Commissioner to restore line items in the amount of $151,626

You are viewing an archived copy from the New Jersey State Library.

to the Board in order to insure the operation of a thorough and efficient system of public schools in the Garfield School District for the 1976-77 school year.

In addition to the TPAF restoration, the Commissioner certifies to the Bergen County Board of Taxation an additional sum of $151,626 to be raised by local taxation for current expenses for the public schools of Garfield for the 1976-77 school year.

COMMISSIONER OF EDUCATION

April 4, 1977

Peter J. Fanella,

Petitioner,

v.

Board of Education of the School District of Washington Township; Superintendent of Schools, Benedict Cucinella; and Principal, Gerald Leighty, Morris County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Peter J. Fanella, *Pro Se*

For the Respondent, Friedman and Greb (Eugene M. Friedman, Esq., of Counsel)

Petitioner is a tenured teacher employed by the Board of Education of the Township of Washington, hereinafter "Board," who was denied a salary increment for the 1975-76 academic year. He asserts that the Board's determination to withhold his increment was based on improper information and the resulting recommendations of his superiors. A hearing in this matter was conducted on November 5, 1975 in the office of the Somerset County Superintendent of Schools, Somerville, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner follows:

The parties stipulate that petitioner is a tenured teacher and has been continuously employed by the Board since November 1970. The sole issue is whether or not the Board improperly withheld his increment because of faulty reasons given it by its administrators. (Conference Agreements of September 11, 1975)

You are viewing an archived copy from the New Jersey State Library.

Petitioner contends that the Board's reasons for withholding his increment were so vague and ambiguous that he was left without sufficient knowledge as to how to improve and overcome his alleged deficiencies. Those reasons contained in the Board's notice to petitioner dated April 16, 1975, are reproduced here in full as follows:

> "The Board of Education at its last regularly scheduled meeting, held on April 15, 1975, instructed me to inform you that you will not receive an increment for the 1975-1976 school year for the following reasons.
>
> "It is the combined and considered decision of the administration and Board of Education that you do not have an effective grade 5-8 Music Program. This ineffective program has continued, despite numerous consultations and meetings with you to improve the music education at Long Valley Middle School.
>
> "It should also be noted that you failed to provide your Principal with a Drama Course of Study as per instructions given to you in November 1974." (R-1)

Petitioner contends that his evaluations show that he is a good teacher (P-3) and he denies that he was asked for a drama course of study in November 1974. (Petition of Appeal)

The principal of the school in which petitioner taught testified that petitioner's music program was ineffective and that he asked petitioner to enumerate ways in which it could be improved so that his talents could be better utilized in the subsequent school year. (Tr. 32-34) He testified that petitioner had conducted a successful drama program and that he asked him to develop a course of study in drama to be completed in April so that there might be a new curricular offering in the subsequent school year. (Tr. 34, 38, 66) During the 1974-75 academic year, drama was an extracurricular activity for which pupils volunteered. It was conducted after school and petitioner was paid an honorarium for that service. (Tr. 34) The principal also testified that petitioner was unable to motivate pupils to elect his music course and that, as a result, only a total of twenty-five seventh and eighth graders out of 400 in the school elected to take music. The principal testified further that because such a small number of pupils elected music, petitioner was scheduled for music for only sixteen of thirty periods to which he was originally assigned. (Tr. 32-34) The record shows that petitioner was assigned other duties and that his pupil load was equal to, or greater than, the other teachers in the school. (P-1) The principal testified that he made a verbal request of petitioner in November 1974 to develop the drama course of study. He does not recall if he asked petitioner at the end of March 1975 whether or not his course of study was completed or being worked on. (Tr. 65-67)

The Superintendent testified that he had conferred with the principal concerning what he considered to be an ineffective music program. He testified also that the drama programs offered by petitioner were excellent and that he therefore wanted a change in the curriculum which would make drama an

You are viewing an archived copy from the New Jersey State Library.

elective offering instead of music because the music program was ineffective. (Tr. 76-78) The Superintendent testified that he recommended to the Board in late February or early March that petitioner's increment be withheld.

There is no question that the Board has the statutory authority to withhold increments pursuant to *N.J.S.A.* 18A:29-14 which reads as follows:

> "Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year by a majority vote of all the members of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the member concerned. The member may appeal from such action to the commissioner under rules prescribed by him. The commissioner shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. The commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals. It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment."

In the instant matter, the reasons given by the Board are (1) an ineffective grade five through eight music program, and (2) the failure of petitioner to provide his principal with a requested drama course of study. (P-1) The record does not support these contentions.

The experience of educators reveals that teachers have little control over the numbers of pupils who are attracted to elective programs. While it is true that in certain instances pupils hear about a program or the excellent reputation of a teacher and oversubscribe to that curricular offering, it is equally true that certain electives enjoy greater popularity and acceptance in some school districts than do others. For example, certain school districts, because of their location, have a greater demand for farming and agricultural programs. Other districts might indeed have outstanding music or art programs which attract large numbers of pupils. Indeed, such a selective process appears to have been taking place in the Washington Township School District since the testimony reveals that the drama program was excellent and that the administrative reaction to this phenomenon was to change the elective offering from music to drama. (Tr. 76-78)

Petitioner denied that the principal requested in November 1974 that he complete a drama course of study by April, which was scheduling time for pupils for the next academic year. The record reflects that this request was not made in writing nor was petitioner given any specified deadline; rather, it was testified by the principal that the drama course of study was to be completed in April. Further, the principal testified that he did not know whether or not he asked petitioner for the controverted course of study in late March. Even if the principal's version of this matter could be accepted without challenge, the Superintendent testified that he recommended to the Board in late February or

You are viewing an archived copy from the New Jersey State Library.

early March that petitioner's increment be withheld for the coming school year. (Tr. 78-80) If this testimony is accepted as fact, then the Board's determination could not have been made considering the criteria given by the principal, that is, that the drama course of study was not completed.

The record shows that petitioner's evaluations are all positive, and some are laudatory of petitioner's efforts and achievements as a teacher. It is also noticed that some of the evaluations contained suggestions for improvement. (P-3) After reviewing the testimony and the evidence submitted, the hearing examiner concludes that the Board did not have proper reason to withhold petitioner's salary.

Petitioner cites *J. Michael Fitzpatrick v. Board of Education of the Borough of Montvale, Bergen County,* 1969 *S.L.D.* 4, wherein the Commissioner said:

> "***Even though a board of education has the power to withhold a salary increment, such authority cannot be wielded in a manner which ignores all the basic elements of fair play. *** [T]he most elemental requirements of due process demand at least that the employee to be so deprived be put on notice that such a recommendation is to be made *** on the basis of the unsatisfactory evaluation and that he be given a reasonable opportunity to speak in his own behalf. *** [A]ny employee has a basic right to know if and when his superiors are less than satisfied with his performance and the basis for such judgment. Without such knowledge the employee has no opportunity either to rectify his deficiencies or to convince the superior that his judgment is erroneous.***" (at p. 7)

When petitioner was notified by his principal near the end of March 1975 that a recommendation would be made to the Board that his increment be withheld, he wrote the Board protesting its pending action, outlined positive aspects of his prior service in the district, and offered to meet with the Board. (P-1) Petitioner also attempted to grieve the principal's determination and the Board's action; however, he was correctly informed that the withholding of his increment was not a grievable issue. (P-2)

The controlling law in the instant matter is found in *Westwood Education Association v. Board of Education of the Westwood Regional School District,* Docket No. C-3373-72, Superior Court of New Jersey, Chancery Division, August 22, 1973, affirmed Docket No. A-261-73, Appellate Division, June 21, 1974, and *Association of N.J. State College Faculties, Inc. v. Dungan,* 64 *N.J.* 338 (1974). *Westwood* is set forth in its entirety as follows:

> "Essentially for the reasons stated by the trial judge in his oral opinion, we affirm his determination that a local board of education, pursuant to *N.J.S.A.* 18A:29-14, has sole discretion to withhold a member's salary increment for inefficiency or other good cause and that this right is not negotiable under the provisions of *N.J.S.A.* 34:13A-5.3. See *Assoc. of N.J. State Col. Fac. v. Dungan,* 64 *N.J.* 338 (1974).

You are viewing an archived copy from the New Jersey State Library.

"Appellant, relying upon previous decisions of the Commissioner of Education, contends that *N.J.S.A.* 18A:29-14 has no application to salary schedules in excess of statutory minima, unless the local board first adopts a salary policy pertaining to such increments. We find no basis, statutory or otherwise, for the Commissioner's limiting construction and hold this contention to be without merit. *cf. Kopera v. Board of Education of West Orange,* 60 *N.J. Super.* 288 (*App. Div.* 1960).

"Finally we call attention to the views expressed in *Dunellen Bd. of Education v. Dunellen Education Association,* 64 *N.J.* 17, 31-32 (1973) and reiterated in *Dungan, supra,* 64 *N.J.* at 356 that *some 'timely voluntary discussions' of the subject matter herein involved between the parties is desirable*." (*Emphasis added.*)

Neither the fair play about which the Commissioner commented in *Fitzpatrick, supra,* of receiving notice of the recommendation and being given an opportunity to speak in his own behalf, nor the timely voluntary discussions set forth by the New Jersey Supreme Court in *Dunellen* and quoted in *Westwood, supra,* have been afforded petitioner. Nor does the record support the reasons advanced by the Board. *N.J.S.A.* 18A:29-14

For these reasons, the hearing examiner recommends that the determination of the Board be set aside and that petitioner be awarded the increment that was withheld from him for the 1975-76 academic year.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record of the instant matter, including the report of the hearing examiner and respondent's exceptions filed thereto pursuant to *N.J.A.C.* 6:24-1.17(b).

The Commissioner cannot agree with respondent's contention that petitioner's study hall assignments lessened his teaching load. The Commissioner will make no attempt here to equate or compare the many varied teaching responsibilities established in the public schools; however, it would be an error to state that supervision of pupil study does not constitute a teaching assignment. Effective study habits can be taught and assistance in study can be offered by teachers so assigned. Further, petitioner had no control over his assignment.

The Commissioner notices that petitioner's drama program was an extracurricular assignment for which he received extra compensation. Nevertheless, the testimony of the Superintendent clearly discloses that he wanted to make drama, instead of music, an elective course. (Tr. 76-78)

Petitioner denied that a request for a completed drama course of study was demanded of him by April as the principal testified. No request was ever made of petitioner in writing. No finding was made by the hearing examiner in

You are viewing an archived copy from the New Jersey State Library.

regard to this conflicting testimony. What is clear is the principal's testimony that he did not know if he asked for the controverted course of study in March, and the Superintendent's testimony that he recommended that petitioner's increment be withheld in late February or early March. (Tr. 78-80)

That recommendation clearly lacks merit if the basis for withholding the increment was petitioner's inability to have a course of study completed in April.

The Commissioner, therefore, adopts the findings and recommendation of the hearing examiner and directs the Board to award petitioner the increment that was withheld from him for the 1975-76 academic year.

COMMISSIONER OF EDUCATION

April 11, 1977

Larry and Arline Dennis, on behalf of Scott Dennis,

Petitioners,

v.

Board of Education of the Township of Holmdel, Monmouth County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioners, Scott and Fox (William J. McNichol, Esq., of Counsel)

For the Respondent, Russell, Fasano, Nicosia & Goodall (William L. Russell, Jr., Esq., of Counsel)

Scott Dennis, hereinafter "petitioner," a pupil in Holmdel High School operated by the Board of Education of the Township of Holmdel, hereinafter "Board," was suspended from the football team and denied his athletic letter award. Petitioner contends that this action by the Board and its agents was effectuated without his being afforded prior notice of rules or regulations governing the conduct of members of the football team and the penalties for violating those rules, and thus is arbitrary, capricious, and unreasonable. He claims further that his penalty is excessively harsh, inappropriate, and inflexible and may cause him irreparable harm by lessening his opportunities for college athletic scholarships. Petitioner prays for an order from the Commissioner of Education directing the Board to award him a football letter and to expunge from his record any reference to the reasons he was denied the award.

You are viewing an archived copy from the New Jersey State Library.

The Board denies petitioner's allegations and states that petitioner was treated the same as all other members of the football team and that petitioner has failed to state a claim on grounds upon which relief may be granted by the Commissioner.

Hearings in this matter were conducted on May 4, and June 2, 1976 in the office of the Monmouth County Superintendent of Schools, Freehold, before a hearing examiner appointed by the Commissioner. The report of the hearing examiner follows:

At the time of the incident in the fall of 1974, petitioner was seventeen years of age, a member of the junior class in Holmdel High School, and a member of the varsity football team. He testified that players earned varsity letters by competing in eighteen quarters of play, which is half the number of quarters in a season of nine games. Petitioner testified further that he broke his leg and sustained other leg injuries after completing eighteen quarters of play during the fifth game of the season and was thus unable to participate for the remainder of the season. His injuries left him relatively incapacitated for three or four months in that he wore a cast and was transported in a wheelchair for a time. He received home instruction tutoring because he was unable to attend school for about a month. Petitioner attended several of the remaining games and watched them from his wheelchair. He returned to school in the latter part of November. (Tr. I-9-12)

Petitioner was denied his athletic letter award specifically because he drank alcoholic beverages during the season in violation of the training rules. (Tr. I-141-143) The athletic director testified that petitioner voluntarily entered his office when he returned to school following his recovery from his football injury and admitted to him that he had been drinking during the season and that his drinking had taken place prior to the fifth game of the season. (Tr. I-141-144) Other players had previously admitted to the athletic director that they, too, had been drinking during the season. The result of those admissions was that nine players, in addition to petitioner, were suspended from the team for the remainder of the season and none of them received an athletic letter award. (Tr. I-145)

Petitioner admitted drinking in a public restaurant he frequented on four occasions but that he drank only after his injury. He testified that he did not know nor was he told that he would be denied his athletic letter award because of drinking, or that his letter award would be withheld for violating training rules. (Tr. I-38-39) Petitioner testified, also, that the coach had told him not to drink and that he would be punished if he drank during the season by being suspended from the team, but petitioner did not expect to be denied his letter. He testified further that if he had known that he would be denied his letter, he would not have consumed any alcohol. (Tr. I-38-39) Petitioner contends, finally, that he was denied due process in that he was never given a full hearing before the Board to present his side of the incident which resulted in the denial of his letter. (Conference Agreements)

The hearing examiner finds in the record that petitioner admittedly drank

You are viewing an archived copy from the New Jersey State Library.

alcoholic beverages during the football season in violation of the training rules and that his coach told him prior to the start of the season that he should not drink. (Tr. I-38-39, 141-148) Petitioner's contention that he drank only after being injured and incapacitated is not supported by the evidence, nor is there any corroboration for that contention. He never admitted to anyone prior to the hearing that his drinking had taken place only after his injury. (Tr. I-148) Nevertheless, in the judgment of the hearing examiner, even if petitioner's contention that he drank only after his injury is true, such an admission is reason enough to show that he violated the team's training rules. He was still a member of the football team at that time. Petitioner seeks a ruling directing the Board to award him his athletic letter which he claims he earned. In the hearing examiner's judgment it is preposterous to conclude that a high school pupil upon being injured so that he can no longer participate in football can thereafter violate the team's training rules and still consider himself eligible for an athletic letter award, notwithstanding the fact that he is suspended from the team. The hearing examiner notices, also, that at the time of his drinking episodes he was a seventeen year old minor who could not legally drink in public establishments. (Tr. I-19)

Participation in co-curricular activities in the public schools is a privilege. Pupils are required by law to attend school regularly, but they are not compelled to participate in any athletic teams outside the regular physical education classes. *N.J.S.A.* 18A:38-25; *N.J.S.A.* 18A:35-5, 7 Promulgation of rules and regulations for participating in co-curricular athletic endeavors are proper subjects for all local boards of education. *N.J.S.A.* 18A:11-1 In the instant matter, the Board had rules governing the conduct of the members of its football team which petitioner admittedly violated. Petitioner was not discriminated against; rather, he was treated exactly the same as nine other players who violated the training rules. His claim of being denied due process is not supported by the record. School officials met petitioner's father shortly after the incident for a full discussion of the drinking episode. (Tr. I-148) Petitioner's mother also met with school officials and testified that she had personally contacted each board member about her son's problem. (Tr. I-45-48, 56-62) In the hearing examiner's judgment, the instant matter does not present a due process question for consideration. Petitioner has no right to demand an athletic letter award. What he did have was a privilege to earn that award which he lost when he violated the team's training rules. The Superintendent testified that he received a full report of this incident from the coaches and the high school principal; that such matters were correctly handled at the administrative level; and that he concurred with the determinations of the persons involved. (Tr. II-91-95) The hearing examiner finds that the action taken by an administrative agency is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable. *Quinlan v. Board of Education of North Bergen Township,* 73 *N.J. Super.* 40 (*App. Div.* 1962); *Ruth Ann Singer v. Board of Education of the Borough of Collingswood,* 1971 *S.L.D.* 594; *Thomas v. Morris Township Board of Education,* 89 *N.J. Super.* 327, 332 (*App. Div.* 1965), aff'd 46 *N.J.* 581 (1966)

Petitioner has failed to show that the Board or its agents were arbitrary,

You are viewing an archived copy from the New Jersey State Library.

capricious or unreasonable. Nor has there been shown any evidence of irreparable harm that could later affect petitioner's chances to demonstrate his worth to interested colleges offering athletic scholarships. The record shows that petitioner did not participate in football during his senior year in high school and there was no assertion that he was unable to participate nor that he was denied an opportunity to participate. (Tr. I-8) For all of the above reasons, the hearing examiner recommends to the Commissioner that the Petition of Appeal be dismissed.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has read the report of the hearing examiner and reviewed the exceptions filed thereto by petitioner pursuant to *N.J.A.C.* 6:24-1.17(b).

Petitioner asserts in his exceptions that he was denied procedural due process; that the record discloses he drank alcoholic beverages only after his injury; that the hearing examiner substituted his notion of what the training rules should be, rather than what they actually were; that another player drank alcoholic beverages during the season and received his athletic letter; that the fact he was a minor at the time is irrelevant; and that he was denied an opportunity at the hearing to show that his loss of a letter deprived him of college scholarships; therefore, the hearing examiner committed reversible error by stating that petitioner presented no evidence to support his contention. Petitioner infers in his exceptions that the cast he wore on his arm at the hearing was not noticed by the hearing examiner when he stated that he saw no reason why petitioner did not participate in football during his senior year in high school.

The Commissioner is not aware of any law or administrative rule supporting petitioner's argument that he was denied procedural due process because he was never afforded a hearing before the Board. It must be remembered that participation in interscholastic athletics is a privilege which is subject to rules made by local boards of education. In the instant matter, petitioner attacks the rule which denied his letter award by stating that he was not told he would be denied the award if he drank alcoholic beverages after he was injured. Nor was he told he would be denied the award for violating training rules. (Tr. I-38-39) Assuming this argument to be true, it appears that petitioner would have the Commissioner conclude that he is deserving of the award, although he admittedly drank alcoholic beverages after his injury, because he was not told the consequences of drinking alcohol. An illogical conclusion can be reached by following this argument to an extreme position; *i.e.*, an injured athlete could be permitted to violate training rules to the point of bringing dishonor and shame to himself, discredit to his teammates and his school, and still demand an athletic award merely because the rules failed to warn him about forfeiting his award on these grounds. It could also be argued illogically, that it matters not how athletes conduct themselves after they have participated in enough quarters to earn their letter awards. Such a conclusion is absurd. Here we

You are viewing an archived copy from the New Jersey State Library.

have a simple issue. Petitioner was denied his letter because he drank alcoholic beverages prior to his injury. This evidence is set forth in the testimony of the athletic director. Petitioner admitted drinking after his injury. The athletic director testified otherwise and the hearing examiner relied on that testimony in his report. (Tr. I-141-144) The Commissioner, too, will rely on that testimony and the record developed at the hearing. Moreover, the record discloses that petitioner was not singled out for special treatment. Nine other players were denied their awards for drinking during the football season. (Tr. I-145)

There is no merit to petitioner's exception pointing to the testimony of a teammate who received an award after admitting he consumed one glass of wine at home during the football season. The transcript reveals that this incident took place at home with his family celebrating his parents' anniversary. (Tr. II-115-116) Petitioner's drinking episodes will not be equated with such a celebration.

Petitioner's due process argument is a strained concept. There is no absolute right to any award until the criteria for that award are met without question. Nor can it be seriously argued that a coach would countenance any provision in a rule which would infer by its silence that drinking alcohol is permitted if it occurs after a serious injury terminating the athlete's further participation.

Petitioner's arm was in a cast at the time of the hearings in May and June of 1976. He infers, but stops short of stating, that he was unable to participate in football during the fall of 1975, his senior year in high school. The hearing examiner found no reason why he did not participate in football at that time.

Petitioner's exceptions minimize the fact that he was a minor during the time this controversy developed. Although this fact is irrelevant, as petitioner states, the Commissioner holds that such a matter-of-fact attitude of no serious consequence, as countenanced on petitioner's behalf, is inappropriate.

As stated earlier the Board's determination to deny petitioner his award is entitled to a presumption of correctness. *Quinlan, supra; Thomas, supra* There has been no showing that the Board has been arbitrary, unreasonable or capricious. Petitioner cannot demand a letter award simply because he believes he earned it according to the manner in which he understood the training rules. Obviously, his coaches determined he did not earn the award as they similarly determined for nine of his teammates.

The Commissioner finds the Petition of Appeal herein without merit and it is hereby dismissed.

COMMISSIONER OF EDUCATION

April 11, 1977

You are viewing an archived copy from the New Jersey State Library.

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, April 11, 1977

For the Petitioners-Appellants, Larry and Arline Dennis, *Pro Se.*

For the Respondent-Appellee, Russell, Fasano, Nicosia & Goodall (William L. Russell, Jr., Esq., of Counsel)

The decision of the Commissioner of Education is affirmed for the reasons expressed therein.

July 6, 1977

Angela Cieri and Maria Rosa,

Petitioners,

v.

Board of Education of the City of Union City, Hudson County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioners, Waters, McPherson & Hudzin (Daniel E. Horgan, Esq., of Counsel)

For the Respondent, Scipio L. Africano, Esq.

Petitioners are parents of pupils who are enrolled in the Hudson Elementary School, which is under the control and supervision of the Board of Education of the City of Union City, Hudson County, hereinafter "Board." Petitioners allege that the Board allows its lunch program to be operated in the school contrary to the provisions of *N.J.S.A.* 18A:33-4 and contrary to the provisions of the National Child Nutrition Act. The Board denies the allegations and asserts that its controverted school lunch program is conducted in all respects properly and legally. Petitioners seek interim relief pending a plenary hearing, while the Board seeks dismissal of the matter for failure of petitioners to state a cause of action upon which relief could be granted.

You are viewing an archived copy from the New Jersey State Library.

Oral argument on the parties' respective Motions was heard September 30, 1976 at the State Department of Education, Trenton, by a representative of the Commissioner of Education. Thereafter, the parties filed supplemental statements in support of their respective positions. The matter is now before the Commissioner for adjudication on the record, including the transcript of the argument, the pleadings, affidavits, exhibits, and petitioners' Brief in support of their position. The facts of the matter are these:

N.J.S.A. 18A:33-4, which became effective July 1, 1974, provides in full as follows:

> "Each school district shall make school lunch available to all children enrolled in the district within 1 year from the effective date of this act. Such lunches shall meet minimum nutritional standards established by the Department of Education. Free and reduced price lunches shall be offered to all children qualifying under Statewide eligibility criteria."

The Board operates nine schools, two of which are designated as high schools. One of the two high schools has a cafeteria, while none of the other eight schools has such a facility. (Tr. 23-25) The Board asserts that notwithstanding its lack of cafeteria facilities it still makes lunch available to all its pupils in each of its schools, including free and reduced price lunches to those pupils who qualify. (Tr. 9, 23)

Petitioners do not contest the fact that their children are provided cold box lunches at the Hudson Elementary School, nor do petitioners complain of the nutritional value of the lunches served. Petitioners do allege that the Board allows the principal of its Hudson Elementary School to violate the provisions of *N.J.S.A.* 18A:33-4 through certain regulations he has adopted in regard to the pupils' luncheon recess.

The Board explains in this regard that the luncheon recess at its Hudson Elementary School begins at 11:30 a.m. when pupils are served cold box lunches in each of their respective classrooms. They are expected to consume their lunches by 11:45 a.m. under the supervision of their respective teachers. At 11:45 a.m. all pupils are required to leave the school building until the commencement of the afternoon school session at 12:45 p.m. The Board explains that pupils go home, or go outside and remain on the school playground, or go to a local candy store, or do what they desire. The Board asserts that it encourages pupils to go home during this period of time so that they are under proper supervision of their parents or guardians and so that they may use their home bathroom facilities. (Tr. 10)

The Commissioner notices that the pupils who remain on the school playground between 11:45 a.m. and 12:45 p.m. are supervised by a schoolyard matron and a janitor. (Tr. 11) The Commissioner also notices the Board takes the position that if the pupils go home, to the local candy store, or to visit, their safety is not its responsibility and cites *Katherine Manning et al. v. Board of Education of the Township of Cedar Grove, Essex County,* 1975 *S.L.D.* 692.

You are viewing an archived copy from the New Jersey State Library.

The Board asserts that because it does provide a cold box lunch to each pupil at the Hudson Elementary School and because the lunch is consumed within the school facilities under the supervision of teachers, it meets the requirements of *N.J.S.A.* 18A:33-4. Thus, the Board demands dismissal of the matter for failure of petitioners to state a cause of action upon which relief could be granted.

Petitioners argue, to the contrary, that the Board violates the provisions of the referenced statute by allowing the principal of the Hudson Elementary School to establish his own guidelines for the luncheon recess. Petitioners demand that the Board immediately instruct the principal of its Hudson Elementary School to cease closing the school to pupils between 11:45 a.m. and 12:45 p.m. pending a hearing on the merits of their allegations.

The Commissioner observes the Board admits by letter (C-1) dated November 9, 1976, that it has no written policy for the luncheon recess at any of its nine schools. Each school principal is allowed the discretion of adopting his or her own guidelines in regard to the luncheon recess. (Tr. 27) The principal of the Hudson Elementary School advised parents of pupils enrolled in his school by an undated memorandum (R-1) that the Hudson Elementary School luncheon recess guidelines are as follows:

> "***11:30–Lunch will be served in the classroom, with the teacher present, to all participating lunch members. Children not participating will be dismissed to go home for lunch.
>
> "11:45–Children participating in the lunch program will be dismissed from school to return to their homes. No children will be permitted to wait in the building for the afternoon session to begin.
>
> "12:40–Children will assemble in the schoolyard to wait on line for the entrance bell to ring.
>
> "I highly recommend that your children return home after they are dismissed from lunch for the following reasons:
>
> "1. Safety of the children–there will be no teacher supervision, only a yardlady and janitor in the yard between 11:45-12:35.
>
> "2. Health of children–children will not be permitted in the building before 12:35 even in cold and inclement weather.
>
> "3. To insure the children receive proper parental supervision after lunch.
>
> "4. To give the children the opportunity to properly wash and use home facilities.***" (R-1)

You are viewing an archived copy from the New Jersey State Library.

The principal reiterated essentially the same guidelines in a statement executed on September 21, 1976. (P-1)

The Commissioner observes that boards of education are creatures of the Legislature and, as such, have only those powers specifically granted, necessarily implied, or incidental to authority expressly conferred by the Legislature. *Edwards v. Mayor and Council of the Borough of Moonachie,* 3 *N.J.* 17 (1949) Such powers can neither be increased nor diminished except by the Legislature. *Burke v. Kenny,* 6 *N.J. Super.* 524 (*Law Div.* 1949) The Board in the instant matter has the authority at *N.J.S.A.* 18A:11-1 to adopt rules and regulations, in the form of policy, for the operation of its schools. Instead of adopting a policy for its schools' luncheon recess, the Board abrogated its authority at *N.J.S.A.* 18A:11-1 and allowed individual school principals to establish their own guidelines with respect to the luncheon recess. The Board's failure to adopt a clearly stated written policy with respect to the luncheon recess in all its schools must be corrected forthwith.

Next, the Commissioner observes with respect to the specific complaints herein that no authority exists for the Board to allow pupils to be supervised at any time by a person other than a teaching staff member or by a paraprofessional pursuant to the provisions of *N.J.A.C.* 6:11-4.9.

The Commissioner, commenting on school lunch programs in *Long Branch Education Association, Inc. v. Board of Education of the City of Long Branch, Monmouth County,* 1974 *S.L.D.* 1191, aff'd State Board of Education April 2, 1975, aff'd Docket No. A-2474-74 New Jersey Superior Court, Appellate Division, May 20, 1976 (1976 *S.L.D.* 1149) stated:

> "***In this State, parents are required to send their children to school. *N.J.S.A.* 18A:38-25 The courts of this State and the United States Supreme Court have upheld the principle that compulsory education in New Jersey is a matter of public concern and legislative regulation, and that it should be enforced so long as statutory requirements are reasonable, subject to constitutional limitations. See *Everson v. Board of Education of Ewing Township,* 133 *N.J.L.* 350 (*E. & A.* 1945), affirmed 330 *U.S.* 1, 67 *S.Ct.* 504, 91 *L.Ed.* 711 (1947), rehearing denied 330 *U.S.* 855, 67 *S.Ct.* 962, 91 *L.Ed.* 1297.
>
> "As the systems of public schools evolved in this and other States, increasing concern for the physical development, as well as academic achievement, of pupils led to the development of programs of planned play activities for younger pupils and organized formal physical training curricula, and intramural and interscholastic athletics for pupils in secondary grades. Later, at a time when physical education was firmly established as a necessary and salutary part of the program of studies, learning experiences, and activities of the schools, increased attention was focused upon the nutritional needs of children as a vital component of proper physical growth and development and sound health. Historically, public schools had taught principles of hygiene and effective nutrition, but

You are viewing an archived copy from the New Jersey State Library.

a recognition of the inadequate diets, accompanying physical defects and health problems of large numbers of children from lower socioeconomic backgrounds, prompted teachers, school administrators, local boards of education, supported by parents and authorities in the health sciences, to raise the call for a more direct role for the schools in the remediation of the problem. From this grew the concept of school milk and school lunch programs, financed in large part by federally collected moneys and administered by state departments of education through local boards of education. These programs have grown to a point where both breakfast programs, as well as hot lunch programs, are now widespread. Their effectiveness is attested to by the great numbers of pupil participants who receive nourishing balanced meals every full day that schools are in session.***" (at pp. 1198-1199)

The enactment of *N.J.S.A.* 18A:33-4 is decisive in its direction that school lunch shall be made available to all pupils. The Commissioner, mindful of the Court's admonition that a statute must not be interpreted to reach an absurd result, cannot agree with the Board that it is in compliance with *N.J.S.A.* 18A:33-4 by simply providing a cold box lunch to the pupils. In the Commissioner's view, the intent of the Legislature is not simply to have the Board pass out food. If this were so, the Legislature could have made any one of several agencies, other than the school, the distributor of food.

The Commissioner holds that boards have been given the responsibility to provide school lunches to its pupils as part of the total educational schema of its responsibility. A school lunch program is part of the education program.

It is noticed that the principal's guidelines controverted herein began sometime during the spring of 1975. It is not established in the record thus far what policy, if any, was in effect prior to that date. The guidelines are restrictive on their face so as to render them arbitrary. The Commissioner so holds.

The Commissioner, having considered the arguments of the parties herein, hereby directs the Board to establish a luncheon recess policy for its Hudson Elementary School. It is further directed to submit its policy to the Commissioner of Education upon its adoption. Such a policy shall consider the luncheon recess as an integral part of the school day and a component of the learning process. The Board is not foreclosed from requiring pupils to return home during the total recess so long as a reasonable period of time is allowed for the consumption of the lunch. If the Board does not require pupils to return home during the recess, then it shall assign properly certified teaching staff members to supervise those pupils who remain on the school playground.

In the interim, the Board is temporarily enjoined from allowing the Hudson Elementary School principal to exclude pupils from school grounds, under proper supervision, pending the submission of its policy. The Commissioner so holds.

COMMISSIONER OF EDUCATION

April 11, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Township of Howell,

Petitioner,

v.

Township Committee of the Township of Howell, Monmouth County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Bathgate and Wegener (Jan L. Wouters, Esq., of Counsel)

For the Respondent, Stout, O'Hagan and Dowd (William F. Dowd, Esq., of Counsel)

Petitioner, the Board of Education of the Township of Howell, hereinafter "Board," appeals from an action of the Township Committee of the Township of Howell, hereinafter "Committee," taken pursuant to *N.J.S.A.* 18A:22-37 certifying to the Monmouth County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The facts of the matter were adduced at a hearing conducted on December 20, 1976 and January 3, 1977 at the State Department of Education, Trenton, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

At the annual school election held March 9, 1976, the Board submitted to the electorate a proposal to raise $4,561,727 by local taxation for current expense costs of the school district. This item was rejected by the voters and, subsequent to the rejection, the Board submitted its budget to the Committee for its determination of the amount necessary for the operation of a thorough and efficient school system in Howell for the 1976-77 school year pursuant to the mandatory obligation imposed on the Committee by *N.J.S.A.* 18A:22-37.

After consultation with the Board, the Committee made its determination and certified to the Monmouth County Board of Taxation an amount of $4,461,727 for current expense. The pertinent amount in dispute is shown as follows:

	Current Expense
Board's Proposal	$4,561,727
Committee's Proposal	4,461,727
Amount Reduced	$ 100,000

The Board contends that the Committee's action was arbitrary, unreasonable, and capricious and documents its need for restoration of the

You are viewing an archived copy from the New Jersey State Library.

reduction recommended by the Committee with written testimony and a further oral exposition at the hearing. The Committee maintains that it acted properly and after due deliberation and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system. The Committee also supports its position with written and oral testimony. As part of its determination, the Committee suggested specific line items of the budget in which it believed economies could be effected as follows:

Account Number	Item	Board's Proposal	Committee's Proposal	Amount Reduced
CURRENT EXPENSE:				
J212	Sal., Supervisor	$ 89,365	$ 66,365	$ 23,000
J213	Sal., Teachers	3,627,532	3,593,532	34,000
J640	Electricity	130,000	120,000	10,000
J720A	Contracted Services	21,400	11,400	10,000
J1220C	Improvement of Sites	33,600	18,600	15,000
J120D	Professional Services (labor consultant)	16,000	8,000	8,000
	TOTAL	$3,917,897	$3,817,897	$100,000

The hearing examiner has reviewed the record in its entirety and has weighed the testimony and documentation presented by the litigants. He finds that the Committee's reductions were not made in an arbitrary nor capricious manner but were procedurally defective pursuant to *N.J.A.C.* 6:24-1.4, wherein the Committed failed to serve an answer upon the Board and proof of service thereof. In all other respects the Committee was within the guidelines established by the Supreme Court of New Jersey in the case of *Board of Education of East Brunswick Township v. Township Council of East Brunswick,* 48 *N.J.* 94 (1966). The findings and recommendations of the hearing examiner in regard to the controverted line items are set forth *seriatim* as follows:

J212 Salaries – Supervisors *Reduction $23,000*

The Committee contends that the Board's previous practice of assigning responsibility for curriculum improvement and development to the existing supervisors should continue.

The Board proposes to employ a curriculum director to coordinate the research, planning, development and implementation of the instructional programs pursuant to the Public School Education Act of 1975. *N.J.S.A.* 18A:7A-1 *et seq.* The Board asserts that this additional burden cannot be assumed by its Superintendent of Schools nor can it be effectively performed by its three existing helping teacher-supervisors. Additionally, the Board anticipates an increasing volume of reports and statistical data concomitant with the Public School Education Act and maintains that one individual must assume the primary responsibility for accuracy in reporting to the Board and subsequently to the State.

The hearing examiner finds that the added burden of coordination of

You are viewing an archived copy from the New Jersey State Library.

curricular modifications and the added responsibility of the implementation of the Act and regulations does indeed increase substantially the volume of work that must be performed in this sector. He finds that the work load of the Board's administrative and supervisory staff, including the Superintendent, is such that this important function cannot be delegated to any one of those staff members at the present time to efficiently perform the required tasks. Accordingly, he recommends that the salary for a director of curriculum be restored to the Board's budget.

J213 Teachers – Salaries *Reduction $34,000*

The Committee asserts that the amount of $3,627,532 budgeted for teachers' salaries appears to be a twelve percent increase above the 1975-76 budget wherein the negotiated agreement between the Board and the teachers for 1976-77 calls for a ten percent increase. The Committee maintains that the Board's increase for this line item is excessive and has proposed to reduce it to an amount equal to ten percent above that of 1975-76. The Committee avers that this amount allows sufficient funds to provide for the Board's negotiated salary increases for teaching staff members.

The Board contends that this line item includes salary items other than those for the contracted classroom teaching staff members. In addition to the ten percent negotiated increase for contracted teachers' salaries, it asserts that this line item includes increases for salary guide track changes as well as stipends for two sabbatical leaves, two mathematics in-service teachers and eight teachers to work during the summer months on curriculum development.

Additionally, the Board averred that a teaching staff member in its employ was elected to the New Jersey Legislature and, therefore, it was required to grant him leave to serve in that capacity pursuant to *N.J.S.A.* 18A:6-8.1. The Superintendent testified that rather than engage a day-to-day substitute teacher, the Board employed a full-time classroom teacher to replace the teacher-legislator for the duration of his term in office. This action, opined the Superintendent, provided the pupils a continuity of program as opposed to the employment of a substitute teacher when the teacher-legislator was called upon to carry out his legislative duties. (Tr. II-53-76) The Superintendent testified that the teacher-legislator is assigned substitute teaching duties when the Legislature is not in session. In any event. the Board asserts that it is required to pay the teacher-legislator an annual salary of approximately $18,000 and that it has assumed an additional expenditure of $11,000 in this line item to replace him during his term of service.

The hearing examiner finds that the Board budgeted for teachers' salaries in 1975-76 a total of $3,243,018 of which $3,133,559 was expended. (Tr. II-81) Its proposed budget for this line item in 1976-77 is $3,627,532, an increase of $493,973 over the previous year's actual expenditure for the same number of teachers, with the exception of the one additional teacher to replace the teacher-legislator. The hearing examiner finds that the Board can meet its obligation to increase teachers' salaries by ten percent as negotiated, as well as provide for the replacement of the teacher-legislator, sabbatical leaves,

You are viewing an archived copy from the New Jersey State Library.

mathematics in-service program, teachers' summer curriculum development and salary guide track adjustments as budgeted. With respect to these budgeted items, the Board would experience a surplus of $133,350 over its actual expenditure for the 1975-76 school year. Accordingly, the hearing examiner recommends that the $34,000 reduction deemed appropriate by the Committee be sustained, which will allow the Board a surplus of $99,350 in its J213 line item.

J640B Electricity *Reduction $10,000*

The Committee asserts that the 1976-77 proposed budget anticipates a twenty-five percent increase in electrical costs over the 1974-75 budget, while it had experienced a ten percent increase in its costs during the same period. The Committee reduced this line item from $130,000 to $120,000.

The Board Secretary testified that the Board budgeted $130,000 for the 1975-76 school year but it expended $84,065 in its J640B line item. (Tr. II-78-79)

The hearing examiner observes that the Board's electrical costs are indeed greatly inflated. While further increases are threatened, such predictions are uncertain and no precise calculation of electrical use and costs may be made. The hearing examiner finds that to sustain the Committee's recommended reduction the Board would retain an amount in excess of twenty-five percent over its 1975-76 budget for this line item. The hearing examiner therefore recommends that the $10,000 reduction stand.

J720A Contracted Services *Reduction $10,000*
J1220C Improvement of Sites *Reduction $15,000*

The Board proffered extensive credible testimony for its need to upgrade and improve its building sites for health and safety reasons. (Tr. II-11-31) The Committee argued that the costs for these projects could be greatly reduced through the use of Township owned equipment and personnel. The testimony revealed that discussions between the Board and the Committee had in fact taken place with respect to such use. No agreement or determination had been reached at the time of the hearing in the instant matter. (Tr. II-15, 22)

The hearing examiner would encourage the efforts of governing bodies and boards of education to work cooperatively to utilize joint facilities, equipment and personnel to effect a savings to the taxpaying public. While no definite commitment had been made between the parties with regard to this cooperative arrangement, the hearing examiner recommends that the amounts of $10,000 for contracted services and $15,000 for improvement of sites be restored to the Board's respective budget line items.

J120D Professional Services *Reduction $8,000*

The Board budgeted $16,000 for the services of a consultant to negotiate its agreements with the teachers' representatives and other employee groups. The record reveals that the Board expended $16,747 for the 1973-74 school year,

You are viewing an archived copy from the New Jersey State Library.

$7,775 for the 1974-75 school year and budgeted $17,000 for the 1975-76 school year. Although the Committee held that this line item could be reduced by $8,000, its representative at the hearing stated, "***I can't in good conscience argue *** that there has been an excessive appropriation in that category***. Even if it were so, it would be *** very difficult to pin down and prove***." (Tr. II-103)

The Board's extensive testimony revealed that its consultant, in addition to negotiations, is responsible for the processing of grievances filed by the employees and representing the Board in those cases which are processed through binding arbitration (Tr. II-32-44) and, therefore, requests that the Committee's suggested reduction be restored.

The hearing examiner finds that the Board is presently engaged in negotiations with its employee groups and has been since September 1976. He therefore recommends that $8,000 be restored to this line item.

The hearing examiner's recommendations are recapitulated as follows:

Account Number	Item	Amount of Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
J212	Sal., Supervisor	$ 23,000	$23,000	$ –0–
J213	Sal., Teachers	34,000	–0–	34,000
J640B	Electricity	10,000	–0–	10,000
J720A	Contracted Services	10,000	10,000	–0–
J1220C	Improvement of Sites	15,000	15,000	–0–
J120D	Professional Services (labor consultant)	8,000	8,000	–0–
	TOTALS	$100,000	$56,000	$44,000

In summary, the hearing examiner recommends that the Commissioner restore $56,000 to the Board's budget for the 1976-77 school year from unbudgeted State aid funds provided pursuant to *c.*113, *L.*1976 (Senate Bill No. 1503).

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner and concurs in the findings. He observes that neither the Board nor the Township Committee filed exceptions to the report. He therefore finds the amounts certified by the Township Committee to be insufficient to maintain a thorough and efficient school system in the Township of Howell.

The Commissioner hereby authorizes the Howell Township Board of Education to expend $56,000 from its unbudgeted current expense State aid

You are viewing an archived copy from the New Jersey State Library.

during the 1976-77 school year. This authorization does not increase the local tax levy for 1976-77 school purposes in the Township of Howell.

COMMISSIONER OF EDUCATION

April 11, 1977

**In the Matter of the Tenure Hearing of Catherine Reilly,
School District of the City of Jersey City, Hudson County.**

COMMISSIONER OF EDUCATION

DECISION

For the Complainant Board, William S. Massa, Esq., and George R. Blaney, Esq.

For the Respondent, Philip Feintuch, Esq.

Written charges against respondent, a teacher with a tenure status, including inefficiency, conduct unbecoming a teacher, chronic and excessive absenteeism and other charges related to respondent's performance of her teaching duties, were certified to the Commissioner of Education by the Board of Education of the City of Jersey City, hereinafter "Board," by resolution dated October 8, 1975. Subsequently a copy of the charges and the resolution were mailed to respondent by the Board. The complainant Board certified that the charges would be sufficient, if true in fact, to warrant respondent's dismissal from her position.

The Board asserts that respondent's absence from her assigned teaching duties has been excessive since the time of her initial appointment for the 1954-55 school year. The charges were recommended to the Board by the Superintendent of Schools after he was informed that respondent failed to appear for her assigned duty at the opening of the 1975-76 school year.

Subsequent to the Board's certification of charges, respondent filed a Petition of Appeal before the Commissioner to recover the net sum of $3,220, plus interest, which she asserted was due her through the Board's erroneous termination of her services during the 1973-74 school year. The Petition of Appeal alleges that respondent's annual salary as of the date of her termination was $16,100 and that the Board reimbursed her on the basis of an annual gross amount of $12,880. Therefore, respondent prays that the Commissioner award a judgment in the amount of $3,220, plus interest.

On February 5, 1976, respondent filed a notice of Motion for Summary

You are viewing an archived copy from the New Jersey State Library.

Judgment in the instant matter, for failure of the Board to offer her written notice of the alleged inefficiency, specifying the nature thereof with such particulars as to furnish her the opportunity to correct and overcome the same as provided by *N.J.S.A.* 18A:6-12. Counsel for the Board hand-delivered its Answer to the Motion for Summary Judgment to respondent and the Commissioner's representative on February 17, 1976, the morning of the scheduled hearing in the instant matter. (Tr. 3)

The hearing examiner entertained oral argument on the Motion with respect to the charge of inefficiency and, after hearing the arguments of counsel, recommended that the Motion for Summary Judgment be held in abeyance and proceeded with the Board's proofs. (Tr. 9-10)

The charges will now be considered *seriatim* with respect to the proofs and *in pari materia* with the arguments advanced in support of, and opposed to, the Motion for Summary Judgment.

CHARGE NO. 1

> "That the said Catherine Reilly is guilty of inefficiency in that her irregular attendance precludes an efficient teaching program with the consequent disruption of the course of study to which her students are entitled."

The Superintendent testified that he began his present appointment in October 1974 and became aware of respondent's absentee record in the spring of 1975 as reported to him by the Assistant Superintendent in Charge of Personnel for the district. (Tr. 13-14) The Superintendent learned from the Assistant Superintendent that respondent had not appeared for her assigned duties at the opening of the 1975-76 school year and promptly notified the President of the Board of respondent's failure to appear. Subsequently the Board acted upon the Superintendent's recommendation to suspend respondent, pending the certification of charges against her. (Tr. 15) The Superintendent testified that he had two principal reasons for his recommendation to suspend respondent. Such reasons were that respondent's absence caused an interruption in the educational program of school pupils and additionally, that respondent's notice of impending absence was inappropriate. (Tr. 15)

The Superintendent proffered extensive testimony with respect to the use of substitute teachers in the absence of the regularly assigned teacher and its effect upon the continuity of the instructional program and the learning process. He further testified that he had no knowledge from personal observation of any adverse or detrimental effect respondent's absence had upon the classes to which she had been assigned. (Tr. 19-20)

The Assistant Superintendent in Charge of Personnel testified that, although he had only held his present position since September 1973, he was familiar with the absence record of respondent. He further testified that he had not conducted any conferences or discussions with respondent with respect to her absence from her assigned teaching duties. (Tr. 100) His testimony elicited a

You are viewing an archived copy from the New Jersey State Library.

year-by-year account of respondent's absence record on file in the Board's Office of Personnel. This record revealed that respondent had been absent a total of 982 1/2 days from the time of her initial appointment by the Board for the 1954-55 school year up to the time of certification of charges by the Board. (Tr. 97-99) This record will be dealt with in detail.

At the beginning of the 1975-76 school year, the principal of School No. 14 notified the Assistant Superintendent that respondent had reported that she was ill and unable to assume her teaching duties. Thereupon the Assistant Superintendent advised the Superintendent that a substitute would be necessary to replace respondent for an undetermined period of time. (Tr. 101) Subsequently, on September 12, 1975, the Assistant Superintendent requested permission of the Board President to suspend respondent and the Board President granted permission as follows:

> "Permission is hereby requested to suspend Mrs. Catherine Reilly, a teacher in the Jersey City School District assigned to School No. 14, effective September 12, 1975, pending preparation of Specifications and charges which are to be filed against her.
>
> "Permission is hereby granted to suspend Mrs. Catherine Reilly, teacher assigned to School No. 14, effective September 12, 1975." (P-11)

Similarly, the Superintendent informed respondent of her suspension in a letter dated September 12, 1975, as follows:

> "You are hereby suspended effective September 12, 1975 under provisions of New Jersey Statutes 18A:25-6 pending the filing of formal charges against you for chronic and excessive absenteeism, failure to communicate with your superiors on numerous occasions and such other charges as the Board of Education will present in accordance with New Jersey Statutes 18A:6-10 et seq. (Tenure Employees Hearing Law)." (P-12)

Although Charge No. 1 states, *inter alia*, "the said Catherine Reilly is guilty of inefficiency" the Assistant Superintendent testified that he was not aware of any specific charge of inefficiency filed against her by any principal supervising her work. (Tr. 119-120)

Respondent argues that the Board failed to meet its burden of proof with respect to Charge No. 1 and the clear, explicit language of the statute with regard to the charge of inefficiency. Respondent read into the record *N.J.S.A.* 18A:6-12 which provides:

> "The board shall not forward any charge of inefficiency to the commissioner, unless at least 90 days prior thereto and within the current or preceding school year, the board or the superintendent of schools of the district has given to the employee, against whom such charge is made, written notice of the alleged inefficiency, specifying the nature thereof with such particulars as to furnish the employee an opportunity to correct and overcome the same."

You are viewing an archived copy from the New Jersey State Library.

Respondent asserts that the Motion for Summary Judgment should be granted by the Commissioner inasmuch as the Board sought to remove respondent on the grounds of inefficiency by virtue of her chronic and irregular attendance. She avers the failure of the Board to comply with the provision of *N.J.S.A.* 18A:6-12 precludes the Board from using chronic and excessive absenteeism as the basis for the remaining charges filed against her.

With respect to the Motion for Summary Judgment and Charge No. 1, the hearing examiner finds no testimony or documentation to support the Board's position that it followed the statutory mandate of *N.J.S.A.* 18A:6-12. The Superintendent's statement "***that notice was inappropriate***" is clearly without merit. (Tr. 15) *In the Matter of the Tenure Hearing of Anna Simmons, School District of the Borough of Eatontown, Monmouth County,* 1973 *S.L.D.* 721, aff'd State Board of Education 1975 *S.L.D.* 1160 There was no showing that the Board gave respondent the required written notice of the alleged inefficiency. Nor was there a showing that the Board specified the nature of the alleged inefficiency, allowing respondent the necessary ninety days to correct same. Lacking such proofs, the hearing examiner, therefore, recommends that Charge No. 1 be dismissed.

CHARGE NO. 2

"That the said Catherine Reilly is guilty of conduct unbecoming an employee in that she has on numerous occasions failed to communicate promptly her absence and the reasons therefore (sic)."

The former Assistant Superintendent in Charge of Personnel presented extensive testimony with respect to respondent's absentee record from the period of her initial appointment by the Board in 1954-55 until his retirement from the Board's employment in 1973. (Tr. 22-50) Several documents and direct testimony were presented to demonstrate the difficulty the former Assistant Superintendent faced in his attempts to contact respondent by telephone. On the occasions when a representative of the Personnel Office called respondent's home, the former Assistant Superintendent testified, "It was impossible to get an answer***." (Tr. 37) The testimony continues as follows:

***

Q. "You stated that it was impossible or difficult to communicate with her by phone. Did you make efforts to telephone her prior to this visit that she had with you, which was sometime late in 1966?

A. "Yes, I had tried to get Mrs. Reilly on the telephone a number of times.

Q. "And there would be no response to your phone calls? Did she answer the phone, or the phone was unanswered?

A. "It was usually a busy signal.***" (Tr. 38)

The unsuccessful efforts of the former Assistant Superintendent to contact

You are viewing an archived copy from the New Jersey State Library.

respondent by telephone prompted him to write to her requesting that she visit the Board's Medical Director for a physical evaluation. (P-1) Respondent's reply stated, *inter alia,* as follows:

> "***I realize it is very difficult to understand how a 47 year old woman can be so cowardly but the more I thought about seeing Dr. Skrypski again the more scared I got. Therefore I kind of retreated into a shell and *did not even answer the phone. It rang several times and I knew [I] was taking a desperate chance of being accused of not being home.* I guess I am very foolish.***" (*Emphasis supplied.*) (P-2)

Respondent's failure to respond to telephone calls is further alleged in a letter from the former Assistant Superintendent to the Board's Medical Director wherein he stated:

> "***Mrs. Reilly apparently does not answer her phone. She has been seen outside of the house as recently as December 8.***" (P-4)

In a subsequent letter to respondent, the former Assistant Superintendent stated:

> "***Once again you are out and, because you have again taken the telephone off the hook, it is impossible to reach you.***" (P-8)

Despite the difficulty in contacting respondent by telephone, the former Assistant Superintendent testified that, through written correspondence, he was able to make contact with respondent to ascertain whether or not she would be able to return to duty. It was his testimony that he was assured by respondent that she was able to return to duty and, therefore, he permitted her to do so. (Tr. 39-40) He stated that it was also necessary for him to remind respondent of her responsibility to file the required leave of absence forms as provided by the Board's policy. Such reminders to respondent were incorporated in the former Assistant Superintendent's correspondence from 1966 through 1973 as follows:

> "October 11, 1966
>
> "***As of today your leave papers have not reached us and I am, frankly, puzzled and disturbed. Technically you are absent without leave.***"(P-1)
>
> "April 2, 1970
>
> "***You have been absent *without leave* for the greatest part of this school year and, as a result, your salary has been withheld.***" (P-6)

And,

> "***As recently as yesterday I checked with your school and learned that there was still no word from you.***
>
> "I suggest that you request a leave of absence for personal business for the rest of this year, at loss of full pay***." (P-7)

You are viewing an archived copy from the New Jersey State Library.

The former Assistant Superintendent subsequently testified that, to the best of his recollection, neither the Medical Director nor the Board had denied respondent's requests for medical leave or personal leaves of absence.

Respondent denied that she had violated any of the Board's policies or rules and regulations with respect to her absences. (Tr. 125) She testified that she had always notified the Board the first day that she was to be absent (Tr. 131) and that the Board had approved all of her requests for leaves of absence for personal as well as medical reasons. (Tr. 125-126)

With respect to the allegation that respondent refused to answer her telephone or that the telephone emitted a "busy signal" when a representative of the Board attempted to call her home, she testified as follows:

> "Well, when I [was] home sick, very often I couldn't sleep too well at night and towards morning I would find that I could drop off to sleep and the telephone was right next to my bed and I just would get this feeling that it was going to ring any minute, and I am just ready to drop off, so I would take it off the hook." (Tr. 130-131)

Respondent testified that she responded to all of the Board's correspondence and followed its directives. (Tr. 131)

The hearing examiner has examined all of the evidence with respect to this charge and finds that the alleged failure of respondent to properly communicate her absence and the reasons for such absence has merit. The hearing examiner's finding herein, based on the testimony and documentation, is that respondent did, in the course of her twenty-one years of employment by the Board, fail to properly communicate with the Board the reasons, extent and duration of her absences. Respondent's admission that she deliberately failed to answer her telephone in anticipation of a call from the Board (P-2) and the uncontroverted testimony and documentation of the former Assistant Superintendent that respondent either failed to answer or caused her telephone to be inoperative to receive calls (P-1, P-4, P-8) indeed constitutes conduct unbecoming a teacher. Additionally, respondent's failure to appropriately communicate with the Board supports such a charge. (P-7) The Commissioner held *In the Matter of the Tenure Hearing of William Megnin, School District of the Township of Wayne, Passaic County,* 1973 *S.L.D.* 641:

> "***the absolute failure of respondent to promptly notify anyone in authority with respect to such cause [of absence] is, in the Commissioner's opinion, reason for censure.***" (at p. 647)

The question for decision by the Commissioner is what, if any, penalty should be meted out to respondent for such failure to communicate properly with the Board with regard to her absence.

CHARGE NO. 3

"That the said Catherine Reilly is guilty of chronic and excessive

You are viewing an archived copy from the New Jersey State Library.

absenteeism in that on divers and numerous occasions since her employment with the Board she has established a pattern of spotty attendance which has adversely affected not only the conduct of her class, but has disrupted the normal educational process of her students. It has denied her students their right to be taught without constant disruption of learning routine.

"This chronic absenteeism culminated on September 3, 1975 when the said Catherine Reilly telephoned the clerk at P.S. 14 and stated that she would be absent as she did not feel well and that she would probably be in the next day. As of September 8, 1975, Mrs. Reilly neither appeared at her regular school assignment nor did she call the office to report her absence. The principal thereafter requested that disciplinary action be taken to resolve this situation. A review of Mrs. Reilly's record reveals that from the period of June 1965 to June 1975, she has been absent from her classroom for 519 days, plus 5 hours. A school year consists of 180 days and her absence over a ten year period would average 51.9 days absence for each 180 day school year."

Although this charge was limited to the period of time from 1965-75 with respect to respondent's absence from duty, the Board presented the complete history of respondent's absentee record from the time of her initial appointment in 1954 until her suspension by the Board in September 1975. Both the former and the present Assistant Superintendent in Charge of Personnel presented extended testimony with respect to respondent's record of absenteeism. The following chart is a summary:

	REASON FOR ABSENCE		
School Year	**Personal Illness**	**Personal Business**	**Total**
1954-55	23	74	97
1955-56	24 (+2¼ hrs.)	–0–	24
1956-57	31	–0– (+1 hr.)	31
1957-58	78	8	86
1958-59	52	–0–	52
1959-60	30	–0–	30
1960-61	19 (+4 hrs.)	–0–	19
1961-62	4	–0–	4
1962-63	37	1	38
1963-64	67 (+2 hrs.)	–0–	67
1964-65	38	–0–	38
1965-66	53	–0–	53
1966-67	64	2	66
1967-68	28	–0–	28
1968-69	61 (+4 hrs.)	–0–	61
1969-70	149	–0–	149
1970-71	45 (+4 hrs.)	–0–	45
1971-72	5	–0–	5
1972-73	31	32	63

You are viewing an archived copy from the New Jersey State Library.

1973-74	No record		
1974-75	24	–0–	24
TOTALS	863	117	980

Correspondence from the former Assistant Superintendent to the Medical Director reveals that respondent was under medical observation by the Board during the 1965-66 school year. (P-4) The former Assistant Superintendent testified that despite the difficulty in communicating with respondent by telephone, he held conferences with her in 1966 and 1967 and discussed her excessive absenteeism. On these occasions respondent assured the former Assistant Superintendent that her attendance would improve and she was then permitted to resume her teaching duties. (Tr. 39-40) Subsequent correspondence during the years 1969-71 reveals that respondent continued to be absent from duty (P-5) and that the former Assistant Superintendent reminded her that she was absent without leave (P-6) and, further, that her continued absences seriously diminished her effectiveness as a teacher. (P-8)

The former Assistant Superintendent testified that he discussed the possibility of disability retirement with respondent following his letter to her dated April 2, 1970. (P-6; Tr. 45) It was his testimony that respondent "***requested strongly that we not take any formal action and that we not require her to submit retirement papers, and we permitted her return to duty.***" (Tr. 46) Subsequently, on April 7, 1971, the Assistant Superintendent informed respondent that the "***Payroll Department will send you the forms needed for application to Trenton for pension." (P-8) A conference followed between the Assistant Superintendent and respondent. His testimony with respect to the conference is recited as follows:

***

Q. "Now, following your letter identified as P-8 for identification, the 1971 letter, Doctor, did you have occasion to have a conversation or to speak with Mrs. Reilly?

A. "Yes, I did. Mrs. Reilly came to my office upon receipt of this letter and also upon receipt of the application form, application for retirement.

Q. "What did she advise you on the occasion that she came to your office***?

A. "She spoke of the impossibility of retiring because of her age and because of other factors, and again said that she was now ready and able to return to duty, and her return to duty followed.***"(Tr. 47)

On March 28, 1973, the Assistant Superintendent wrote to respondent as follows:

"Thus far this year – up to March 23 – you have been absent 44 days.

You are viewing an archived copy from the New Jersey State Library.

"Do you realize that in the last nine years, from September, 1964 to March 23, 1973 you have been absent 495 days?

"As recently as yesterday I checked with your school and learned that there was still no word from you.

"We have reached the end of the line. Too often you have been given the 'second' chance. In fairness to the children who have lost much by your absence you should retire.

"I suggest that you request a leave of absence for personal business for the rest of the year, at loss of full pay, and submit your application for retirement as of June 30, 1973 to Trenton. The forms are enclosed. The pension application should go to Trenton. The leave papers you will return to me." (P-7)

The former Assistant Superintendent retired on July 1, 1973, and testified that he did not recall seeing respondent subsequent to his letter to her dated March 28, 1973, and the time of his retirement. (Tr. 48)

With regard to the 1973-74 school year wherein there was no record of respondent's attendance and/or absence it appears that the Board's action wherein it terminated respondent's services was found to be *ultra vires* by the Board. In its Answering Statement to Notice of Motion for Summary Judgment of February 17, 1976, the Board stated, *inter alia,* as follows:

"***A series of communications, starting with September 29, 1969 and ending March 28, 1973, (copies of which are attached hereto), advised Catherine Reilly of her chronic absenteeism and its impact on the learning process, as a consequence of which Catherine Reilly, was terminated on September 1, 1973. However, the Board did not follow the applicable procedure for such termination and the said Respondent was subsequently restored on September 1, 1974 and received full salary for the aforementioned period, during which time she performed no services.***"

The record reveals that respondent did, in fact, return to duty and was assigned to School No. 14 for the 1974-75 school year.

Respondent testified with respect to her medical history prior to her employment by the Board. She stated that she suffered from tuberculosis and was a patient in the Pollack Hospital for Chest Diseases for a period of twenty-one months during 1949-1950. As a consequence of a collapsed lung she said that she had been under constant observation by her personal physician for chronic respiratory ailments. (Tr. 125-126) The record reveals that the vast majority of respondent's medical leaves of absence were granted for acute upper respiratory infection. (P-13) In addition to personal business days, one major exception to this reason for absence for respiratory infection was that which occurred during the 1969-70 school year, wherein respondent was charged with 149 days of absence due to "depressed reaction." (Tr. 134-135; P-13)

You are viewing an archived copy from the New Jersey State Library.

Respondent testified that she had abided by all of the Board's regulations with respect to her absences and obtained the necessary leave of absence when she was required to do so. (Tr. 125) She stated that she had no recollection of the Board's rejection or denial of her requested leaves of absence (Tr. 126-127), nor had she had any formal disciplinary measures taken against her.

Respondent asserts that inasmuch as the Board had approved her past absences and failed to meet its burden of proof that pupils under her care suffered any detriment whatsoever, the charge should be dismissed. Respondent further avers that excessive absence in and of itself is not sufficient grounds for a tenured teacher to be discharged.

The Board asserts that it had offered sufficient proof to show that the irregular attendance and the chronic absenteeism of respondent had affected the normal educational process of the pupils assigned to her and that the absences were so excessive that she had failed to perform the required services for which she was employed. (Tr. 141-142)

The Board avers that respondent had been warned on many occasions with regard to her excessive absenteeism, and although the Board had been more than lenient in permitting her to return to the classroom, her nonperformance and nonproductiveness were sufficient grounds for her dismissal as a tenured teacher.

The hearing examiner finds that respondent was absent from her assigned duties approximately one fifth of her contracted time. From the testimony adduced at the hearing, as well as the documentary evidence, the hearing examiner finds that the Board brought forth sufficient credible evidence to sustain its Charge No. 3.

The Commissioner addressed himself to such instances of excessive absence on the part of Board employees. In *Elizabeth Gilchrist v. Board of Education of the Township of Livingston, Essex County,* 1959-60 *S.L.D.* 90, aff'd State Board of Education 1961-62 *S.L.D.* 203, the Commissioner sustained the Board's action to dismiss a school nurse for excessive absence from her assigned duties and held, *inter alia*:

> "***Recurrent absence of the kind indicated in this case can be more disruptive to the continuity of school work than one extended absence over a prolonged period of time because it is easier to provide suitable substitute service on a long term than on a short term basis.***" (at 95)

In the judgment of the hearing examiner, respondent demonstrated conduct unbecoming a teacher through chronic and excessive absenteeism.

The hearing examiner finds in summary that:

1. The Board failed to follow the statutory provision of *N.J.S.A.* 18A:6-12 with respect to its charge that respondent was inefficient, and it is recommended that Charge No. 1 be dismissed.

You are viewing an archived copy from the New Jersey State Library.

2. Respondent failed to properly communicate to the Board her absence, and the reasons for such absence, from her assigned duties.

3. Respondent was chronically and excessively absent from her assigned duties.

The question that remains for determination is the weight that must be afforded such findings and how they are to be viewed with respect to the entitlement of a tenured employee. The courts and the Commissioner have considered just such facts in a long series of cases and have reached some significant conclusions. The Commissioner said in *Shroeder v. Lakewood Board,* 1960-61 *S.L.D.* 37 with reference to *Redcay v. State Board of Education,* 130 *N.J.L.* 369 (*Sup. Ct.* 1943), 131 *N.J.L.* 326 (*E.&A.* 1944):

> "***[I]t was held that unfitness might be shown by a series of incidents or by one flagrant incident. Tenure charges often result not from one flagrant instance but from the cumulative effect of a series of occurrences over a period of years, the climactic incident of which, while no more serious than the others, becomes the proverbial straw that breaks the camel's back.***" (at 48)

In *Gilchrist, supra,* the Commissioner advanced the position that:

> "***In dealing with such cases, a board has a dual obligation. On the one hand, it has the obligation to be patient and to show consideration and kindness and, on the other hand, it must ever be mindful of its obligation to maintain the efficiency of school work. Eventually the latter obligation becomes paramount. At what time this obligation becomes paramount is a matter of the board's judgment, honestly and fairly exercised.***" (at 94)

Further, the Court held in *Borough of Park Ridge v. Salimone,* 21 *N.J.* 28, 44 (1956) that "***[t]he welfare of the people as a whole, and not specifically or exclusively the welfare of the civil servant, is the basic policy underlying the law***."

The hearing examiner observes that respondent has suffered greatly and has sought and received medical attention from her personal physicians in addition to that of the Board's Medical Director. There was no showing that respondent committed an overt act against one pupil, but rather that she, by her absence from the classroom, denied many pupils her expertise in the teaching-learning process. *In the Matter of the Tenure Hearing of Paula M. Grossman, a/k/a Paul M. Grossman, School District of the Township of Bernards, Somerset County,* 1972 *S.L.D.* 144, aff'd in part/rev'd in part State Board of Education 1973 *S.L.D.* 769, aff'd in part/rev. and rem. in part 127 *N.J. Super.* 13 (*App. Div.* 1974), *cert.* denied 65 *N.J.* 292 (1974), the Commissioner stated, "***that a school district has a responsibility to teachers who are plagued with illness and have medical problems***" and "***the overarching responsibility of the Commissioner and the local Board of Education is to the children***." (1972 *S.L.D.* at 161) The hearing examiner therefore recommends that the Commissioner consider a directive to the Board to make application to

You are viewing an archived copy from the New Jersey State Library.

the Teachers' Pension and Annuity Fund, pursuant to the procedure outlined in *N.J.S.A.* 18A:66-39 *et seq.* on behalf of respondent for a disability pension. (See *Grossman v. School District of Bernards, supra.*)

This concludes the report of the hearing examiner.

* * * *

The Commissioner has carefully reviewed the record in the instant matter including the exceptions filed by counsel for respondent pursuant to *N.J.A.C.* 6:24-1.17(b). He concurs with the findings, conclusions and recommendations of the hearing examiner. The Commissioner concurs also with the hearing examiner's dismissal of Charge No. 1 for the reasons stated and observes that the statutory provision with respect to a charge of inefficiency is quite clear and may not be vitiated by a board of education. *N.J.S.A.* 18A:6-12, repealed by *L.*1975, *c.*204, § 2, eff. Feb. 7, 1976; see *N.J.S.A.* 18A:6-11, as amended. The question before the Commissioner, therefore, is whether the proven charges are sufficient to warrant such penalty, and, if so, what that penalty should be.

The record is clear and respondent admits to a poor attendance record. Additionally, she failed on numerous occasions to communicate with the Board with regard to the nature of her absence. The Commissioner cannot in any sense condone the misconduct demonstrated by respondent in the actions and statements found in the charges sustained wholly or in part against her. Schools cannot operate effectively when individual teachers ignore, disobey, or are indifferent to the rules and procedures which have been designed for the good order of the school and the welfare and protection of the pupils. Such misconduct is not tolerated among pupils; it can no more be tolerated among teachers. The Commissioner has held that pupils are required to be in regular attendance in the public schools. *William J. Wheatley et al. v. Board of Education of the City of Burlington, Burlington County,* 1974 *S.L.D.* 851 No less a requirement should be made upon the teachers who are to serve the pupils required to be in attendance pursuant to the compulsory education statutes of this State. *N.J.S.A.* 18A:38-25 *et seq.*

Frequent absences of teachers from regular classroom learning experiences disrupt the continuity of the instruction process. The benefit of regular classroom instruction is lost and cannot be entirely regained, even by extra effort, when the regular teacher returns to the classroom. Consequently, many pupils who do not have the benefit of their regular classroom teacher frequently experience great difficulty in achieving the maximum benefit of schooling. Indeed, many pupils in these circumstances are able to achieve only mediocre success in their academic program. The entire process of education requires a regular continuity of instruction with the teacher directing the classroom activities and learning experiences in order to reach the goal of maximum educational benefit for each individual pupil. The regular contact of the pupils with their assigned teacher is vital to this process.

The Commissioner repeats his position with respect to the protection of tenure as previously articulated *In the Matter of the Tenure Hearing of Joseph*

You are viewing an archived copy from the New Jersey State Library.

A. Maratea, Township of Riverside, Burlington County, 1966 *S.L.D.* 77, aff'd State Board of Education 106, aff'd New Jersey Superior Court, Appellate Division (1967 *S.L.D.* 351):

> "***The Commissioner is assiduous to protect school personnel in their employment when they are subjected to unfair or improper attacks or when they are unable to perform effectively because of conditions not of their own making or beyond their control. An employee is not entitled to the protection of tenure, however, when, by his own acts or failures, he creates conditions under which the proper operation of the school is adversely affected. When the responsibility for the conditions unfavorable to the effective operation of the schools rests with the employee then, the Commissioner holds, the protection of tenure is forfeit.***" (at 106)

Due to the nature of this matter and respondent's long years of service, the Commissioner directs the Jersey City Board of Education to apply to the Teachers' Pension and Annuity Fund for a disability pension on behalf of respondent pursuant to *N.J.S.A.* 18A:66-39 *et seq.* The Commissioner recognizes that the Teachers' Pension and Annuity Fund is an autonomous body and must make an independent finding regarding this matter; however, he directs the Assistant Commissioner for Controversies and Disputes to make the entire record of this proceeding available to the trustees of the Teachers' Pension and Annuity Fund, should they deem such a record useful in their deliberations.

In view of respondent's record of chronic absence, the Commissioner is constrained to observe that the Board waited for an excessive period of time to resolve this matter. The Board's delay and inaction demonstrated an abrogation of its mandated responsibility to insure a thorough and efficient educational program for a segment of its pupil population. *Redcay v. State Board of Education,* 130 *N.J.L.* 369 (*Sup. Ct.* 1943), aff'd 131 *N.J.L.* 326 (*E.&A.* 1944)

Finally, the Commissioner orders and directs that respondent be dismissed as a teacher in the Jersey City School System, pursuant to *N.J.S.A.* 18A:6-10 *et seq.*, for reason of conduct unbecoming a teacher and incapacity. Such penalty shall be held in abeyance pending a determination by the Board of Trustees of the Teachers' Pension and Annuity Fund of the Jersey City Board of Education's application for disability pension for respondent.

COMMISSIONER OF EDUCATION

April 11, 1977

You are viewing an archived copy from the New Jersey State Library.

Vivienne Pedersen,

Petitioner,

v.

Board of Education of the Borough of Midland Park, Bergen County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Saul R. Alexander, Esq.

For the Respondent, Podesta, Myers & Crammond (John H. Crammond, Esq., of Counsel)

Petitioner, a teacher with a tenure status employed by the Board of Education of Midland Park, hereinafter "Board," avers that she was improperly induced to submit her resignation for lack of certain information and by misrepresentation on the part of the Board. She avers also that by virtue of the effective date of her resignation letter, the former Board lacked jurisdiction to act on her resignation, and by so acting usurped the authority of the succeeding Board. The Board denies making any misrepresentation to petitioner and asserts that it acted within its authority when it accepted her resignation.

A hearing was held on October 7 and 24, 1975 in the office of the Union County Superintendent of Schools, Westfield, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner follows:

Petitioner was issued a certificate by the State Board of Examiners in November 1967 as a Teacher of the Mentally Retarded, and was thereafter issued a certificate as a Teacher of the Handicapped in June 1970. (Exhibits A, B) Her qualifications for the positions in which she taught are not questioned.

Petitioner had problems of pupil control on the first or second day of school in September 1974. Petitioner was then assigned to teach a class of five emotionally disturbed boys at the high school level. (Tr. I-3, 117, 144-148) A school psychologist testified that the classroom situation was chaotic and that no discipline was evident and no learning was taking place. (Tr. I-86-87) The Superintendent testified that he was made aware of this situation during the first week in September through the complaint of a parent to the Board and that he visited petitioner's class frequently to observe her. He later sent other specialists to her classroom to assist her, but the classroom situation did not improve. (Tr. I-144-148)

Petitioner admits having trouble with the class of five boys and testified that they were not getting the education they were entitled to receive. (Tr. I-29-32) She admits, also, that she heard rumors as early as October that her class of emotionally disturbed boys would be phased out. (Tr. I-34) It is not

You are viewing an archived copy from the New Jersey State Library.

disputed that this particular class could not be taught or disciplined by petitioner and that the administrators decided, with her concurrence, to disband the class. (Tr. I-4-5, 28-29, 34, 119-120, 123-124, 149-151) The target date for phasing out petitioner's class was December 31, 1974. The Superintendent testified that he had discussed the phasing out of petitioner's class with her in November or December and that they had previously held such discussions. At that time petitioner had only one or two boys left in her class, and the last boy was reassigned or moved away during the first week in January 1975. (Tr. I-159, 169) It is at this point that the controversy began.

Petitioner testified that the Superintendent asked her to resign, asserting that if she did she would be assured of a job until June 30, 1975, but if she did not, her position would be abolished and she would be given sixty days' notice of termination. (Tr. I-9-10) Petitioner testified further that the Superintendent advised her that she had seniority rights, but that he did not explain such rights to her. (Tr. I-10-11) Essentially, her testimony was that she was given three alternatives by the Superintendent. They were: (1) to resign, in which case she would be assured employment through June 30, 1975; (2) to have her position abolished if she failed to resign, in which case she would receive sixty days' notice terminating her employment; and (3) to replace a teacher with lesser seniority. (Tr. I-50)

Although petitioner admits that she was advised that she could replace two teachers with lesser seniority, she testified that she was discouraged from doing so. (Tr. I-50) In this regard, the Superintendent testified that he informed her that she could not handle the pupils in the "Resource Room," where the two teachers with lesser seniority were assigned, because those pupils had special kinds of handicaps. He did not believe she could be effective with them because she lacked the experience necessary for teaching those pupils. (Tr. I-152-154)

Regarding her knowledge of her right to replace teachers with lesser seniority, petitioner testified that because she was discouraged by the Superintendent, she did not want to run the risk of not being able to succeed in the resource center. Therefore, she acted out of panic of an impending sixty days' notice, elected not to utilize the seniority procedure and submitted her resignation on January 8, 1975, which was accepted by the Board at its regular meeting on January 13, 1975. (Exhibits C, D)

Petitioner testified that she later learned that the teachers in the resource center had the same qualifications as she had. Consequently, she submitted a letter rescinding her resignation on February 6, 1975. (Tr. I-16-17; Exhibit D) The Board denied her letter of rescission on February 27, 1975 (Exhibit E), and from January to June 30, 1975, petitioner taught selected small groups of pupils with specialized learning problems. (Tr. I-20-22)

Finally, petitioner testified that she learned that she was not eligible for unemployment insurance because she had resigned, and that if she could have received unemployment insurance she would not have elected to rescind her resignation. (Tr. I-63)

You are viewing an archived copy from the New Jersey State Library.

The principal testified that he and the Superintendent held several meetings with petitioner to discuss disbanding the class and her seniority rights (Tr. I-119-120, 122-124) and that petitioner alone decided not to exercise seniority rights over her fellow teachers. (Tr. I-125-126) The principal admitted advising petitioner to resign since he believed that was the better option for her inasmuch as she had decided not to utilize her seniority right to replace another teacher and because there were no other classes for emotionally disturbed pupils in the school district. (Tr. I-135-136) He admitted that petitioner would have accepted any other position in the district if offered, but none was offered to her. (Tr. I-142)

The Superintendent denied that there was any suddenness to the events which transpired and testified that he was called by a representative from the New Jersey Education Association (N.J.E.A.) as early as October to discuss the options he had offered petitioner. (Tr. I-163)

The Superintendent testified, also, that the position petitioner formerly held was never abolished by the Board and that petitioner told him she did not elect to utilize seniority over other teachers because she did not want to make enemies. (Tr. II-16-17, 52) When asked why it was necessary for the Board to act on the resignation letter so quickly, the Superintendent testified that as a procedural matter he moves on all resignations in that manner. (Tr. II-57)

A review of the testimony and the exhibits in this matter leads the hearing examiner to the conclusion that petitioner resigned her position voluntarily and that she was not under duress when she did so. The reasons for this conclusion are set forth as follows:

Petitioner claims that she was under "duress," and that she was wrongfully induced to submit her resignation. (Petitioner's Brief, at pp. 3-4, 7-8) Nevertheless, the hearing examiner finds that a review of the definitions of duress and coercion gives the reader further perspective concerning the matter herein controverted. *Black's Law Dictionary* 324, 594 (Rev. 4th ed. 1968) defines "duress" as:

> "Unlawful constraint exercised upon a man whereby he is forced to do some act that he otherwise would not have done.***
>
> "Duress consists in any illegal imprisonment, or legal imprisonment used for an illegal purpose, or threats of bodily or other harm, *or other means amounting to or tending to coerce the will of another, and actually inducing him to do an act contrary to his free will.****" (*Emphasis supplied.*)

"Coercion" is defined as:

> "Compulsion; constraint***.
>
> "It may be actual, direct, or positive, as where physical force is used to

You are viewing an archived copy from the New Jersey State Library.

> compel act against one's will, or *implied, legal or constructive, as where one party is constrained by subjugation* to other to do what his free will would refuse. ***It may be actual or threatened exercise of power possessed, or supposedly possessed.***
>
> "Duress and coercion are not synonymous though their meanings often shade into one another.***" (*Emphasis supplied.*)

See *Joan Sherman v. Malcolm Conner et al.*, 1972 *S.L.D.* 340, 367, 1973 *S.L.D.* 51, aff'd State Board of Education 1974 *S.L.D.* 1433, aff'd Docket No. A-2122-73, N.J. Superior Court, Appellate Division, January 28, 1975, *cert.* denied New Jersey Supreme Court June 4, 1975.

Petitioner also cites *Evaul v. Camden Board of Education,* 35 *N.J.* 244 (1961) in which the Court did not find duress, but did hold that Miss Evaul's

> "***submission of her resignation was an impetuous act prompted by her understandably distraught condition.***" (35 *N.J.* at 249)

The Court, therefore, ordered her reinstatement in her position on "equitable principles." 35 *N.J.* at 250

In the instant matter, the hearing examiner does not find that petitioner was pressured to resign nor does he find an "impetuous act" as set forth in *Evaul, supra.* The record shows that there was good reason to disband her class of emotionally disturbed pupils. When the decision to disband the class was reached, petitioner concurred with it, although it appears from the record of the hearing that petitioner did not, at the time of the decision, understand its effects on her employment status. Petitioner admits knowing about the options given her; however, she does not admit having conversations with her representatives and being advised by them prior to submitting her resignation letter. That denial cannot be supported by the testimony since the president of the Association testified that he advised her not to resign. (Tr. II-79-80, 82) Petitioner testified that she knew that the advice of the N.J.E.A. field representative would be that she should not resign, although she stated that she did not discuss the matter with him until after the letter of resignation was submitted. (Tr. I-44-46) The Superintendent reviewed all options with her several times. (Tr. I-155-156) It is also significant that the Superintendent testified that he helped her compose her resignation letter, had it retyped with any additions or changes she wished, and that she had the letter in her possession for four days before handing it to his secretary. (Tr. I-163-165) This testimony was not refuted by petitioner and the hearing examiner finds it inconceivable that, if she had any doubts at all, she would not have discussed them with her representatives. Petitioner did not call any witnesses to corroborate her testimony regarding when discussions took place between her and her representatives.

Finally, petitioner's testimony concerning her unemployment status should not go unnoticed. It is recalled that petitioner testified she told the Superintendent that, if she could have received unemployment compensation, she would not have elected to rescind her resignation.

You are viewing an archived copy from the New Jersey State Library.

After reviewing this testimony, the hearing examiner cannot conclude that petitioner was wrongfully induced to resign. Nor can the hearing examiner find any violation of a statute or impediment in the manner in which the Board approved her resignation. No authority is cited by petitioner which requires the acceptance of a letter of resignation by recorded roll call majority vote of the full membership of the Board as she asserts.

For the above-mentioned reasons, the hearing examiner recommends that the Petition of Appeal be dismissed.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner and the exceptions filed thereto by petitioner pursuant to *N.J.A.C.* 6:24-1.17(b).

Petitioner's exceptions state, in effect, that she was not aware of her rights when she resigned, and that the Superintendent failed to inform her fully about the positions for which she was eligible. The Commissioner cannot agree.

Petitioner's own testimony reveals that she concurred with the administrative determination to disband her class which she was unable to control. (Tr. I-4-5, 28-32) She testified that the Superintendent advised her that she had seniority rights and that she was given three alternatives relative to her continued employment, one of which was to exercise her seniority. (Tr. I-10-11, 50) Her testimony further asserts that she was discouraged from exercising such rights. (Tr. I-50)

The record also reveals that petitioner did not want to risk failure by being reassigned to the resource center, and that the Superintendent communicated with an N.J.E.A. field representative concerning the options given her as early as October. (Tr. I-163) As set forth in the hearing examiner's report, there is no finding of duress or coercion. On the contrary, the Commissioner determines that petitioner's resignation was entirely voluntary. If petitioner did not understand fully how her employment status would be affected by her resignation, she had opportunities to secure such knowledge. The president of the Association testified that he advised her not to resign. (Tr. II-79-80) The Superintendent helped her compose her resignation letter which she had in her possession for four days before submitting it to his secretary. (Tr. I-163-165) This factor alone gave her ample opportunity to discuss her concerns with her Association representatives if she was unsure of her impending status. Finally, the Commissioner determines that petitioner's attempt to rescind her resignation was effected because she learned that she was ineligible for unemployment compensation insurance. She testified that she would not have elected to rescind her resignation if she could have received such insurance. (Tr. I-63)

Therefore, for all of these reasons, and considering the evidence as set

You are viewing an archived copy from the New Jersey State Library.

forth more fully in the hearing examiner's report, the Commissioner finds no merit in petitioner's allegations. Accordingly, the Petition of Appeal is dismissed.

COMMISSIONER OF EDUCATION

April 11, 1977

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, April 11, 1977

For the Petitioner-Appellant, Saul R. Alexander, Esq.

For the Respondent-Appellee, Podesta, Myers, Crammond & Cunningham (John H. Crammond, Esq., of Counsel)

The decision of the Commissioner of Education is affirmed for the reasons expressed therein.

August 3, 1977

You are viewing an archived copy from the New Jersey State Library.

Lorraine E. Laing,

Petitioner,

v.

Board of Education of the Township of Edison, Middlesex County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Harvey Levine, Esq.

For the Respondent, R. Joseph Ferenczi, Esq.

Petitioner, a teacher with a tenured status, alleges that the Board of Education of the Township of Edison, hereinafter "Board," has refused to allow her to resume her position as an active teacher and to make its required contributions to the Teachers' Pension and Annuity Fund, hereinafter "TPAF," retroactive to September 1, 1973. Petitioner prays for back salary together with medical expenses incurred since that date and for such other relief as the Commissioner of Education shall deem just under the circumstances of this particular matter. The Board avers that it has at all times acted properly and consistent with its discretionary authority pursuant to the relevant statutes and that petitioner did voluntarily apply for and have her application accepted and approved for retirement by the TPAF, thereby terminating her employment in the district effective September 1, 1973, and forfeiting any salary and/or emoluments commensurate with her prior employment.

An Order to Show Cause why petitioner should not be reinstated was argued before a representative of the Commissioner at the State Department of Education, Trenton, on July 16, 1975. No final determination was reached, therefore, a hearing was held on September 19, 1975 in the office of the Middlesex County Superintendent of Schools, New Brunswick. Several documents were admitted in evidence and Briefs were filed subsequent to the hearing. The report of the hearing examiner follows:

The following facts are not in dispute:

1. Petitioner is a tenured teacher who began her employment in February 1968 and taught continuously from her initial employment through June 1973.

2. In August 1973 petitioner applied to the TPAF for accidental disability retirement, effective September 1, 1973. (J-1)

3. Petitioner stated in that application that she could no longer "do a good job as a teacher" because of the pain in her injured foot, and because of emotional problems arising from harassment by "the administration." (J-2)

You are viewing an archived copy from the New Jersey State Library.

4. Petitioner's application for disability retirement is based on her affirmation that she was injured in her classroom on March 26, 1973, when she was stepped on by a pupil. This injury was confirmed by her personal physician who examined her on April 23, 1973, and found that she was "totally and permanently disabled as a direct result of a traumatic event occurring during and as a result of the performance of [her] regular or assigned duties." (J-6) (Petitioner, however, worked for the remainder of the 1972-73 school year.)

5. Petitioner applied for and was paid temporary disability through Workmen's Compensation in the amount of $1,296 as of September 16, 1973. (J-5)

6. On September 4, 1973, petitioner met with the Superintendent of Schools and the president of the Edison Township Teachers Association to discuss her employment status. (Tr. 17-18)

7. Aware of the conversation at that meeting and having received copies of petitioner's retirement application, the Board approved petitioner's retirement at its meeting on October 8, 1973. (J-3, J-10; Tr. 20-21)

8. Petitioner notified the TPAF on November 28, 1973, that she wished to rescind her application for retirement; however, she proceeded with a scheduled physical examination by a physician appointed by the TPAF and was in fact retired from the TPAF, on ordinary disability. (P-1; J-7, J-8)

9. Petitioner was thereafter successful in having the TPAF rescind its earlier determination to retire her on ordinary disability effective September 1, 1973, and she was reinstated in the TPAF. (Exhibit A)

Petitioner's reinstatement gives rise to the instant controversy. Essentially, the issue to be decided is as follows: Is the Board obligated to reinstate petitioner to a position as a teacher or does her retirement, which was effectuated by the TPAF, permanently terminate her employment irrespective of the later decision by TPAF to rescind its earlier determination?

A review of the record reveals that petitioner intended to retire and communicated that desire to the Board through the Superintendent and the Board Secretary. (Tr. 19-21) When she decided that her retirement benefits would not be sufficient for her needs, she decided to return to work. (Tr. 25-28)

Petitioner testified that her application for retirement was voluntary and that she at no time was coerced or pressured by the Board or its administrators to resign or retire. (Tr. 41) Prior to filing her application for retirement, petitioner conferred with officials of the local teachers association and with officials of the TPAF, seeking their advice concerning retirement. The forms were thereafter sent to her by the TPAF and she executed them. (J-1, J-2, J-3; Tr. 38-39) When petitioner became hospitalized in October 1973, she learned that her medical coverage through Blue Cross and Blue Shield had been dropped by the Board. (Tr. 29) Petitioner thereafter on November 28, 1973, notified the

You are viewing an archived copy from the New Jersey State Library.

TPAF to rescind her application for retirement until further notice (P-1), and the TPAF replied to her by letter dated December 6, 1973, in part, as follows:

> "***We would appreciate your explaining why you now wish to cancel your application for accidental disability retirement because on your application *you alleged that you were totally disabled for continued employment as a teacher, Dr. S.L. Schoenberger indicated that you were totally and permanently disabled and the Secretary of the Edison Township Board of Education, in completing the employer portion of your application for disability retirement, also certified that you were totally and permanently disabled for the continued performance of your duties and should be retired.*
>
> "As you know, we initiated processing of your application for retirement and arranged for you to be examined by Dr. Paul Van Horn, a physician appointed by the Board of Trustees of the Teachers' Fund, with the examination scheduled for Tuesday, October 30, 1973. The October examination was cancelled because you were hospitalized at that time. *We then arranged for you to be examined by Dr. Van Horn on Tuesday, December 11, 1973 to determine your eligibility for a disability retirement benefit. If the retirement application which was received in our office on August 28th is now to be voided we should immediately contact Dr. Van Horn and advise him that the examination scheduled for December 11th has been cancelled. If this is your intention we would appreciate your confirmation *** that the *** examination *** has been cancelled.*
>
> "In addition to your immediately notifying [us] we would also appreciate a statement from you as soon as possible indicating exactly why you have now decided to cancel your application for disability retirement.***" (*Emphasis supplied.*) (J-7)

Petitioner did not notify the TPAF to cancel the scheduled examination which is required prior to a determination that a member of the TPAF may be retired. Instead, petitioner met her appointment and was examined by Dr. Van Horn. The Board of Trustees, relying on her application, her many telephone conversations with the Secretary of the TPAF, and her decision to take the medical examination given by its physician, thereafter determined to retire her from the TPAF. (Exhibit A)

Petitioner had been receiving one hundred eight dollars per week in temporary disability payments from Workmen's Compensation. She testified that she learned for the first time on January 30, 1974, that her pension benefits would be offset by any Workmen's Compensation benefits she had received. (Tr. 43) She learned also that her request for accidental disability retirement had been denied, but TPAF did award her an ordinary disability retirement. (The monetary benefits of accidental disability retirement are greater in petitioner's case.) (P-3, at p. 16) Petitioner was also notified that prior to her receipt of any pension benefits she would have to buy credit in the TPAF in the amount of $2,303.00 "***to cover the discounted balance of [her] purchase***." (P-4, at

You are viewing an archived copy from the New Jersey State Library.

p. 3) The record reflects that as late as March 19, 1974, petitioner requested by letter through her attorney that the TPAF review its denial of her claim for accidental disability retirement from the TPAF. (P-4, at p. 1)

It is clear to the hearing examiner, therefore, that as late as March 19, 1974, petitioner's intention was to retire if her retirement benefits could sustain her needs. Further, petitioner testified that her physical condition had "deteriorated completely" (Tr. 15), and that she was physically unable to work during the 1973-74 and the 1974-75 academic years. She also testified at the hearing that she was physically unable to work full time. (Tr. 54-55) The record does not support her contention that she requested sick leave or medical leave because of her health. (Tr. 103)

In *La Tronica et al. v. Board of Trustees of the Teachers' Pension and Annuity Fund,* 1962 *S.L.D.* 67, affirmed State Board of Education 1963 *S.L.D.* 252, reversed 81 *N.J. Super.* 461 (*App. Div.* 1963), the Court held that the Commissioner had no jurisdiction over the TPAF stating:

> "***It is clear that since the enactment of *L.* 1955, *c.* 70 (*N.J.S.A.* 52:18A-95 *et seq.*), the Board of Trustees is an administrative agency within the Department of the Treasury and a review of its decisions lies with the Appellate Division pursuant to *R.R.* 4:88-8. The appeal from the decision of the Board of Trustees in the instant case was improperly taken to the Commissioner of Education and to the State Board which no longer has jurisdiction in pension matters.***" (at p. 469)

Petitioner is a teacher as defined in *N.J.S.A.* 18A:66-2(p) and all teachers are required to be members of the TPAF. In that regard *N.J.S.A.* 18A:66-4 reads in part as follows:

> "The *membership* of the retirement system *shall consist of*:
>
> "***
>
> "(b) *any person becoming a teacher****." (*Emphasis supplied.*)

Membership in the TPAF ceases upon retirement. *N.J.S.A.* 18A:66-7(b) Therefore, previously eligible persons who retire from TPAF can no longer claim the status of teacher for the purpose of employment. The fact that the TPAF rescinded its determination and, in effect, reinstated petitioner in the TPAF, should not bind the Board to reinstate her. It would appear from an equitable point of view that, since the Commissioner lacks jurisdiction over the TPAF, then the operation of the TPAF cannot manipulate the employment of teachers under the school laws. The record shows that petitioner's intentions and her actions were to retire and that she was in fact retired. In view of her testimony that she is, and has been, physically unable to work since September 1973, the hearing examiner finds it inconceivable that she did not intend to retire.

Unfortunate as the situation is regarding petitioner's retirement entitlement and her physical condition, there is no statutory authority that

You are viewing an archived copy from the New Jersey State Library.

would now compel the Board to reinstate her. There is no evidence that she has been misled or advised improperly by the Board or its administrators. Quite the contrary. Petitioner had a meeting with the Superintendent, the president of the local association, and a personnel officer on September 4, 1973, the day before school opened, to determine whether or not she would teach during the 1973-74 academic year. The Superintendent testified that, as a result of that meeting, petitioner was either unable or not desirous of returning to school. (Tr. 75-76, 82) The hearing examiner finds, therefore, that petitioner forfeited her tenure entitlement because of her retirement, and that the determination by the TPAF to reinstate her in its pension fund does not automatically compel the Board to reinstate her as a teacher. The hearing examiner recommends, therefore, that the Petition of Appeal be dismissed.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner and the exceptions filed thereto by petitioner pursuant to *N.J.A.C.* 6:24-1.17(b).

Petitioner draws a distinction between the Board's approval of her application for retirement and a letter of resignation. The Commissioner finds no such distinction in this matter. Petitioner submitted her application for retirement to the TPAF and made this fact known to the Superintendent on September 4, 1973. (Tr. 86-87) The Board considered this a *fait accompli* and approved her retirement from the Edison school district. This act terminated her employment just as effectively as the acceptance of a letter of resignation would have done. Petitioner clearly intended to terminate her employment and she did so. Nowhere is it suggested that a teacher must resign a position before having an application for retirement considered by the TPAF.

The record discloses that petitioner attempted to have her disability retirement application approved by the TPAF as late as March 19, 1974, nearly seven months after she notified the Superintendent that she could not, or did not wish to, perform her duties. Moreover, the TPAF clearly considered petitioner retired as of September 1, 1973, and sought further information from her so that her retirement payments would be accurate and retroactive to that date. (P-1)

Petitioner asserts that her employment was never terminated and that she was on a medical leave. She admits in her exceptions that she was unable to work in September 1973 and she testified at the hearing on September 19, 1975 two years later, that she was still unable to perform in a teaching capacity because of her physical disability. (Tr. 114-115) Further, the record does not reveal that petitioner asked for a medical leave of absence.

It is clear to the Commissioner that petitioner voluntarily terminated her employment with the Board and was thereafter retired by the TPAF on ordinary

You are viewing an archived copy from the New Jersey State Library.

disability. (P-4) At no time has petitioner stated that she is able to perform her teaching duties.

The Commissioner adopts the report and findings of the hearing examiner as his own. The determination of the TPAF to reinstate petitioner in its pension fund does not give rise to an automatic reinstatement of petitioner as a teacher in the Edison school district. Petitioner has forfeited her right to a tenure status. The Petition of Appeal is accordingly dismissed.

COMMISSIONER OF EDUCATION

April 11, 1977

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education April 11, 1977

For the Petitioner-Appellant, Harvey Levine, Esq.

For the Respondent-Appellee, R. Joseph Ferenczi, Esq.

The State Board of Education denies the request for Oral Argument, and affirms the decision of the Commissioner of Education.

August 3, 1977
Pending New Jersey Superior Court

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Township of Fairfield,

Petitioner,

v.

Township Committee of the Township of Fairfield, Cumberland County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Allan H. Harbert, Esq.

For the Respondent, Ivan M. Sherman, Esq.

Petitioner, the Board of Education of the Township of Fairfield, hereinafter "Board," appeals an action taken by the Fairfield Township Committee, hereinafter "Committee," certifying to the Cumberland County Board of Taxation a lesser amount of appropriation for current expenses of the school district than the amount proposed by the Board in its 1976-77 school budget which was rejected by the voters.

A hearing was held on January 13, 1977 at the office of the County Superintendent of Schools before a hearing examiner appointed by the Commissioner of Education.

The report of the hearing examiner is as follows:

At the annual school election held March 9, 1976, the voters rejected the Board's proposal to raise $966,996 in local taxes for current expenses of the Fairfield Township schools in the 1976-77 school year. The budget was then sent to the Committee for its determination of the amount to be raised to provide a thorough and efficient program of education pursuant to *N.J.S.A.* 18A:22-37.

The Committee met on March 25, 1976, and made its determination to certify the sum of $485,075 to the Cumberland County Board of Taxation. The Committee's resolution certifying the aforementioned amount reads in pertinent part as follows:

> "WHEREAS, the Board of Education of the Township of Fairfield *** previously approved a school budget for the year 1976-77 and submitted a budget proposal to the legal voters of the school district providing for the aggregate amount to be raised by local taxation as follows:
>
> "Current Expenses $553,700.00
>
> "***NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Fairfield, that the proposed school budget

You are viewing an archived copy from the New Jersey State Library.

(current expenses)*** for the year 1976-77 be and the same is hereby approved as to form and the same is hereby reduced by the sum of Sixty-Eight Thousand Seven Hundred Five Dollars ($68,705.00) and the aggregate amount to be raised by local taxation is hereby fixed and determined as follows:

"Current Expenses $485,075***"
(C-1)

The hearing examiner finds that the pertinent part of the Committee's resolution which states that the aggregate amount of the Board's current expense proposal submitted to the voters in the amount of $553,700 is incorrect. (C-1) The correct amount should be $966,996 as it appears in the budget advertisement (C-2) and also on the ballot (C-3) as presented to the voters.

The effect of the Committee's reductions on the current expense budget is summarized as follows:

Board's Total 1976-77 Current Expense Budget Request	$1,960,706
Less Board's Anticipated State Aid Revenues	- 993,710
Proposed Amount of Current Expenses to be Raised by Local Tax Levy	$ 966,996
Less Committee's Certified Local Current Expense Tax Levy	- 485,075
Actual Reduction by Committee in Local Tax Levy	$ 481,921
Less Amount of Available Unbudgeted State Aid Applied to Local Tax Levy Reduction	- 371,874
Balance of Local Tax Levy Reduction not Covered by Unbudgeted State Aid	$ 110,047

The Committee avers that the only specific reduction it actually made in the Board's 1976-77 current expense proposal was $68,705 which was reduced from local taxes. Thus, it is the Committee's position that the remaining amount of its reduction totaling $413,216 should have been anticipated by the Board in the form of unbudgeted State aid pursuant to the enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976.

The hearing examiner observes that the total amount of unbudgeted State aid available to the Board is, in fact, $413,360. Pursuant to the passage of the aforementioned legislation, only $371,874 is available to be applied to the current expense portion of the budget controverted herein. The remaining $41,486 was subsequently applied to an approved program of compensatory education to be implemented by the Board during the 1976-77 school year. *c.*113, *L.*1976, section 3b

Consequently, notwithstanding the amount of $371,874 in unbudgeted State aid which the hearing examiner hereby recommends be restored to the Board's current expense account, there is in effect a remaining Committee

You are viewing an archived copy from the New Jersey State Library.

reduction in the amount of $110,047 of which $68,705 has been specifically set forth by the Committee in line item reductions. (C-4)

These specific line item reductions are summarized in chart form as follows:

CHART I

Account Number	Item	Board's Proposal	Committee's Proposal	Reduction
CURRENT EXPENSE:				
J110A	Sal., Bd. Secy.	$ 12,000	$ 11,000	$ 1,000
J110B	Sal., Clerk (2)	12,800	6,800	6,000
J110F	Sal., Supt.	22,500	21,500	1,000
J130N	Misc. Exps.	4,205	1,000	3,205
J211	Sal., Prins.	37,060	35,060	2,000
J213.1	Sal., Reg. Tchrs.	557,600	507,600	50,000
J215A	Sal., Clerk	11,400	10,900	500
J215C	Sal., Duty Aides	27,606	22,606	5,000
	TOTAL			$68,705

At this juncture, the hearing examiner will set forth his findings and recommendations with respect to the specific line item economies suggested by the Committee.

J110A Salary, Board Secretary *Reduction $1,000*

The Board's budget proposal reflects an amount of $12,000 in this line item. The Committee maintains that over a two year period the salary of the Board Secretary has increased thirty percent which it considers excessive. The Board avers that it was necessary to increase the salary of the Board Secretary in order to reflect the additional responsibilities and work load. The Board also asserts that the increase in the salary for this position is warranted by virtue of the higher salaries paid by the Board in the surrounding school districts. (Tr. 55-60)

The hearing examiner finds that the salary of the Board Secretary has been set at $11,500 for the 1976-77 school year (Tr. 55) and recommends that $500 of the Committee's suggested reduction be restored to this line item.

Summary:	Amount of Reduction	$1,000
	Amount Restored	500
	Amount not Restored	500

J110B Salary, Clerks (Board Secretary's Office) *Reduction $6,000*

The total amount proposed in this line item by the Board is $12,800. The Board Secretary testified that these funds were allocated to compensate the payroll clerk and a secretary located in the Board's office. The secretary's salary was previously paid from federally funded programs allocated to the Board.

You are viewing an archived copy from the New Jersey State Library.

Such federal funds were no longer available for this purpose. (Tr. 22, 40-41)

The hearing examiner recommends full restoration with respect to this reduction.

Summary:	Amount of Reduction	$6,000
	Amount Restored	6,000
	Amount not Restored	–0–

J110F Salary, Superintendent *Reduction $1,000*

The hearing examiner has reviewed the testimony of the Board Secretary with respect to the suggested reduction of $1,000 in this line item. This testimony reveals that the Superintendent's salary was set at an amount less than the Committee's proposal of $21,500. (Tr. 61) Accordingly, the hearing examiner recommends that the Committee's proposed reduction of $1,000 be sustained.

Summary:	Amount of Reduction	$1,000
	Amount Restored	–0–
	Amount not Restored	1,000

J130N Miscellaneous Expenses (Board Office) *Reduction $3,205*

The Committee maintains that an increase in this line item of more than $3,000 over the previous year is excessive and unwarranted. The testimony of the Board Secretary indicates that the expenses of the Superintendent's office and the Board's office have been consolidated for the 1976-77 school year and that the overall increase is justified inasmuch as the expenses in these offices were previously underbudgeted for postage, stationery and travel. This testimony also reflects that the Board determined there was a need for additional office equipment and supplies required for the operation and management of the Board's administrative offices. (Tr. 69-81)

The hearing examiner finds that while such increases in this line item may be reasonably justified, the corresponding increases in the line items in which some of the funds were previously allocated appear to be excessive. The hearing examiner recommends that a portion of the Committee's suggested reduction be sustained in the amount of $500.

Summary:	Amount of Reduction	$3,205
	Amount Restored	2,705
	Amount not Restored	500

J211 Salary, Principal *Reduction $2,000*

The hearing examiner has reviewed the testimony with respect to the salaries established in this line item by the Board. (Tr. 66, 83-86) These salaries were budgeted for an elementary principal, intermediate principal and intermediate vice-principal in the amount of $37,060. The hearing examiner recognizes that during the course of the school year it may be necessary for the

You are viewing an archived copy from the New Jersey State Library.

Board to reassign certain administrative staff members. The hearing examiner finds that the amount budgeted in this line item is not excessive.

The hearing examiner recommends that the full amount of this line item be restored to the budget.

Summary:	Amount of Reduction	$2,000
	Amount Restored	2,000
	Amount not Restored	—0—

J213.1 Salary, Regular Teachers *Reduction $50,000*

The testimony of the Board Secretary (Tr. 114) and the Superintendent (Tr. 139, 141) reveals that all the regular teaching staff members who were employed by the Board for the 1976-77 school year had been hired and their salaries determined. These salaries for the entire school year in the aggregate amounted to $504,400.

The hearing examiner finds that the Committee's reduction with respect to this line item is reasonable and recommends that the full amount of the reduction be sustained.

Summary:	Amount of Reduction	$50,000
	Amount Restored	—0—
	Amount not Restored	50,000

J215A Salary, Clerk *Reduction $500*

The Committee maintains that the salaries paid to secretaries who are assigned to the principals of the elementary school and the intermediate school, respectively, are well under the amount proposed by the Board in this line item. Therefore, it considers its reduction of $500 reasonable.

The hearing examiner has reviewed the testimony of the Board Secretary (Tr. 92-95) and finds that the Board had paid a combined amount of $4,879 to these employees as of December 1976. At the time the budget was adopted the Board anticipated that it would be granting salary increases to both secretaries during the school year. The hearing examiner finds the salary increases granted by the Board to each of these employees exceeds the amount budgeted in this line item by $400. While the hearing examiner will not comment on the wisdom of such action, he finds and recommends that the full amount of the Committee's reduction be restored.

Summary:	Amount of Reduction	$500
	Amount Restored	500
	Amount not Restored	—0—

J215C Salary, Duty Aides *Reduction $5,000*

The Committee's reduction in this line item is grounded on the contention that the number of duty aides is excessive and, furthermore, unnecessarily adds

You are viewing an archived copy from the New Jersey State Library.

to the aides already supported in federally approved programs implemented by the Board during the 1976-77 school year. The Board maintains that these positions are necessary for a thorough and efficient program of education in its school system. The Board concedes that it has other personnel serving as aides in its federally funded programs. The Board asserts that it was necessary to transfer some of these aide positions to its regular budget because the functions of these personnel were precluded from the respective federally funded programs.

The hearing examiner observes that many of the federally funded programs currently operated by the Board are categorical in intent and therefore the use of these funds is to supplement and not supplant the regular educational programs for which the Board is responsible.

The hearing examiner finds and recommends full restoration of the Committee's suggested reduction in this line item.

Summary:	Amount of Reduction	$5,000
	Amount Restored	5,000
	Amount not Restored	–0–

A composite listing of the current expense line item reductions and recommendations of the hearing examiner follows:

CHART II

Account Number	Item	Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
J110A	Sal., Bd. Secy.	$ 1,000	$ 500	$ 500
J110B	Sal., Clerk (2)	6,000	6,000	–0–
J110F	Sal., Supt.	1,000	–0–	1,000
J130N	Misc. Exps.	3,205	2,705	500
J211	Sal., Prin.	2,000	2,000	–0–
J213.1	Sal., Reg. Tchrs.	50,000	–0–	50,000
J215A	Sal., Clerk	500	500	–0–
J215C	Sal., Duty Aides	5,000	5,000	–0–
	TOTALS	$68,705	$16,705	$52,000

The hearing examiner finds that the remaining sum of $41,342 of the $110,047 not specifically delineated by the Committee in suggested line item reductions cannot be restored to the Board's current expense budget through the application of unbudgeted State aid since there are no such additional funds available.

In this regard the hearing examiner finds that it was the Committee's position that the amount of $41,342 was not intended to be reduced from the Board's budget, but rather that there would be sufficient State aid available to the Board for such purposes.

You are viewing an archived copy from the New Jersey State Library.

The hearing examiner finds and determines that the Board has established the necessity for the additional $41,342 in its current expense budget and recommends that this amount be added to the sum of $16,705 to be restored from the Committee's suggested line item reductions.

In conclusion, the hearing examiner finds and recommends to the Commissioner that the following amount of current expense funds be restored to the Board's 1976-77 school budget as expressed in chart form below:

CHART III

Current Expense State Aid Budgeted by Board	$ 993,710
Unbudgeted State Aid Recommended to be Added to Board's Budget	371,874
Compensatory Education Categorical Aid Approved by Department	$ 41,486
SUBTOTAL	$1,407,070
Current Expense Funds Certified by Committee in Local Tax Levy	$ 485,075
Amount of Current Expense Funds Recommended to be Added to Local Tax Levy	58,047
SUBTOTAL	$ 543,122
Board's Total Current Expense Budget for 1976-77 School Year	$1,950,192

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner and concurs with the recommendations contained therein. He takes notice that neither party has filed exceptions to this report within the period of time prescribed in *N.J.A.C.* 6:24-1.17(b). Accordingly, the Commissioner authorizes expenditure by the Board of an additional $371,874 in unbudgeted State aid for a total amount of $1,407,070 in unbudgeted State aid, which includes $41,486 previously approved by the Department for a program of compensatory education and $993,710 originally budgeted by the Board. He further directs the Cumberland County Board of Taxation to raise an additional sum of $58,047 for the maintenance of a thorough and efficient program of education in the Township of Fairfield for the 1976-77 school year. This latter sum when added to the previously certified tax levy of $485,075 shall result in a total local tax levy of $543,122.

COMMISSIONER OF EDUCATION

April 11, 1977

You are viewing an archived copy from the New Jersey State Library.

**In the Matter of the Tenure Hearing of Arthur Kaplan,
School District of the Township of Weehawken, Hudson County.**

COMMISSIONER OF EDUCATION

ORDER

For the Complainant Board, Le Roy D. Safro, Esq.

For the Respondent, Libero D. Marotta, Esq.

It appearing that the Board of Education of the Township of Weehawken, hereinafter "Board," having considered tenure charges made against Arthur Kaplan by the Superintendent of Schools pursuant to *N.J.S.A.* 18A:6-10 *et seq.*; and

It appearing that the Board determined by a majority vote of its membership on July 13, 1976 to suspend respondent without pay from his teaching duties and to certify said charges to the Commissioner of Education; and

It appearing that respondent was directed in writing on September 1, 1976 to file a formal Answer to the Board's charges by a hearing officer appointed by the Commissioner; and

It appearing that counsel for respondent was contacted by telephone on November 23, 1976, urging the filing of an Answer; and

It appearing that respondent was directed in writing on December 21, 1976 and February 24, 1977 to file a formal Answer to the Board's charges by a hearing officer appointed by the Commissioner; and

It appearing that respondent failed to comply with the last directive of the hearing officer on February 24, 1977 to file a formal Answer to the Board's tenure charges against him; therefore, as notified in the letter of February 24, 1977, the matter is hereto referred to the Commissioner for determination; and

It appearing that the matter has not been moved before the Commissioner and it further appearing that respondent has been given every opportunity to defend himself for more than six months; now therefore

IT IS ORDERED on this 12th day of April 1977 that Respondent Arthur Kaplan is dismissed from his employment with the School District of the Township of Weehawken, Hudson County, as of the date of his suspension by the Board of Education of the Township of Weehawken.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

COMMISSIONER OF EDUCATION

DECISION ON MOTION TO RE-OPEN

For the Complainant Board, Le Roy D. Safro, Esq.

For the Respondent, Libero D. Marotta, Esq.

The Board of Education of the Township of Weehawken, hereinafter "Board," having considered tenure charges made against Arthur Kaplan by the Superintendent of Schools pursuant to *N.J.S.A.* 18A:6-10 *et seq.*, suspended respondent without pay on July 13, 1976 by majority vote of its full membership and certified charges to the Commissioner of Education.

Respondent was directed in writing on September 1, 1976 to file a formal Answer to the Board's charges, which he failed to do. Counsel for respondent was urged to file an Answer and was contacted by telephone and in writing on the subsequent dates of November 23 and December 21, 1976 and February 24, 1977 with no response.

On April 12, 1977, the Commissioner ordered that Respondent Kaplan be dismissed from his employment with the School District of the Township of Weehawken as of the date of his suspension.

Subsequently, a Motion to Re-Open was made by counsel for respondent with affidavit of counsel on June 27, 1977 and the Board filed a letter in opposition on July 12, 1977.

The Commissioner has examined the record before him including the pleadings of counsel as set forth in the affidavit and the recorded opposition of the Board.

The Commissioner finds nothing in the pleadings to convince him to re-open the matter and, accordingly, the Motion to Re-Open is dismissed.

COMMISSIONER OF EDUCATION

September 2, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Borough of Farmingdale,

Petitioner,

v.

Mayor and Council of the Borough of Farmingdale, Monmouth County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Sim, Sinn, Gunning, Serpentelli & Fitzsimmons (Kenneth B. Fitzsimmons, Esq., of Counsel)

For the Respondent, Saling, Gassert & O'Mara (John W. O'Mara, Esq., of Counsel)

Petitioner, the Board of Education of the Borough of Farmingdale, hereinafter "Board," appeals from an action of the Mayor and Council of the Borough of Farmingdale, hereinafter "Council," taken pursuant to *N.J.S.A.* 18A:22-37 certifying to the Monmouth County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The facts of the matter were adduced at a hearing conducted on March 1, 1977 at the State Department of Education, Trenton, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

At the annual school election held March 9, 1976, the Board submitted to the electorate a proposal to raise $314,559 by local taxation for current expense costs of the school district. This item was rejected by the voters and, subsequent to the rejection, the Board submitted its budget to Council for its determination of the amount necessary for the operation of a thorough and efficient school system in Farmingdale for the 1976-77 school year, pursuant to the mandatory obligation imposed on Council by *N.J.S.A.* 18A:22-37.

After consultation with the Board, Council made its determination and certified to the Monmouth County Board of Taxation an amount of $284,559 for current expenses. The pertinent amount in dispute is shown as follows:

	Current Expense
Board's Proposal	$314,559
Council's Proposal	$284,559
Amount Reduced	$ 30,000

The Board contends that Council's action was arbitrary, unreasonable, and

You are viewing an archived copy from the New Jersey State Library.

capricious and documents its need for restoration of the reductions recommended by Council with written testimony and a further oral exposition at the time of the hearing. Council maintains that it acted properly and after due deliberation and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system. Council also supports its position with written and oral testimony. As part of its determination, Council suggested specific line items of the budget in which it believed economies could be effected as follows:

CHART I

Account Number	Item	Board's Proposal	Council's Proposal	Amount Reduced
CURRENT EXPENSE:				
J130	Trans. Allowance	$ 600	$ 300	$ 300
J213	Sal., Adm. Repl.	9,300	–0–	9,300
J215	Sal., Exec. Secy.	7,500	–0–	7,500
J410	Sal., Health	8,340	5,340	3,000
J630, 640	Operation	8,550	7,350	1,200
J730C	Maint., New Equip.	2,025	25	2,000
J910	Food Servs.	15,375	9,375	6,000
	TOTALS	$51,690	$22,390	$29,300
	Reduction in Excess of Budgeted Sum			700
	TOTAL REDUCTION			$30,000

It is noted that the Board has an appropriation of $30,109 in unbudgeted State aid funds including categorical aid for compensatory and bilingual programs, and that such categorical aid totals $4,574.

There appears no necessity to deal *seriatim* with each of the areas in which Council recommended reduced expenditures. As the Commissioner said in *Board of Education of the Township of Madison v. Mayor and Council of the Township of Madison, Middlesex County,* 1968 *S.L.D.* 139:

> "***The problem is one of total revenues available to meet the demands of a school system***. The Commissioner will indicate, however, the areas where he believes all or part of Council's reductions should be reinstated. It must be emphasized, however, that the Board is not bound to effect its economies in the indicated items but may adjust its expenditures in the exercise of its discretion as needs develop and circumstances alter.***"
>
> (at 142)

The hearing examiner, based on his review of the record including the testimony elicited by the parties and the documentary evidence submitted, will set forth in chart form his recommendations with respect to each item reduced by Council.

You are viewing an archived copy from the New Jersey State Library.

CHART II

Account Number	Item	Amount of Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
J130	Trans. Allowance	$ 300	$ –0–	$ 300
J213	Sal., Adm. Repl.	9,300	9,300	–0–
J215	Sal., Exec. Secy.	7,500	7,500	–0–
J410	Sal., Health	3,000	2,600	400
J630, 640	Operation	1,200	1,200	–0–
J730C	Maint., New Equip.	2,000	1,120	880
J910	Food Servs.	6,000	3,000	3,000
	TOTALS	$29,300	$24,720	$4,580
		*700	–0–	*700
	ADJUSTED TOTALS	$30,000	$24,720	$5,280

*See Chart I.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner as set forth above and concurs in the findings and recommendations therein. He observes that neither the Board of Education nor the Mayor and Council filed exceptions to the report. He finds the amounts certified by Council to be insufficient to maintain a thorough and efficient school system in the Borough of Farmingdale. He therefore authorizes the expenditure of the additional amount of $24,720 of unbudgeted current expense State aid by the school district of Farmingdale for the 1976-77 school year. The Commissioner observes that such addition will not increase the amount to be raised by local taxation for the 1976-77 school year.

COMMISSIONER OF EDUCATION

April 12, 1977

You are viewing an archived copy from the New Jersey State Library.

Mary Ann Popovich,

Petitioner,

v.

Board of Education of the Borough of Wharton, Morris County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Saul R. Alexander

For the Respondent, Fullerton & Porfido (Eugene J. Porfido, Esq., of Counsel)

Petitioner alleges that the abolishment of her teaching position by the Wharton Board of Education, hereinafter "Board," was an act of bad faith, punitive in nature, and a subterfuge to effectuate the termination of her employment. The Board denies that its act was other than a reasoned exercise of its discretionary authority under law.

A hearing was conducted on November 12 and December 27, 1976 at the office of the Morris County Superintendent of Schools by a hearing examiner appointed by the Commissioner of Education. The hearing examiner reports as follows setting forth first those uncontroverted facts providing the contextual background of the dispute.

Petitioner, whose sole certificate is as a teacher of music, had taught vocal music for the Board for an uninterrupted period of sixteen years when she was reduced by the Board to less than full-time employment and salary during the 1974-75 school year. This action was contested by petitioner before the Commissioner in *Mary Ann Popovich v. Board of Education of the Borough of Wharton, Morris County,* 1975 *S.L.D.* 737. The Commissioner determined in that case, the details of which are incorporated by reference herein, that petitioner was wrongfully reduced to a part-time teacher in contravention of her seniority rights under the tenure statutes and the rules of the New Jersey State Board of Education. *N.J.S.A.* 18A:28-10; *N.J.A.C.* 6:3-1.10(h) The Board, in compliance with the Commissioner's directive, restored petitioner's lost salary and assigned her to a full-time position as teacher of vocal and instrumental music for the 1975-76 school year. During March 1976 she was evaluated as an instrumental music teacher by a consultant employed by the Board. (J-10)

On April 21, 1976, the Board passed resolutions abolishing both positions of its instrumental and vocal music teachers. Those resolutions state that the actions were taken for reasons of economy because "***budgetary requirements of the school district exceed monies presently available for the 1976-77 school year." (J-4; J-5; J-8) Companion resolutions were passed by the Board on the same date directing the Superintendent to conduct studies and make

You are viewing an archived copy from the New Jersey State Library.

recommendations to the Board regarding alternate methods of teaching vocal and instrumental music by classroom teachers and volunteers. (J-5; J-7; J-8) Subsequent thereto, on April 28, the Board acted to terminate the employment of both petitioner and its part-time tenured instrumental music instructor effective July 1, 1976. Thereupon, petitioner filed the Petition of Appeal in the instant matter.

Petitioner testified at the hearing that, after she was reinstated to her full-time position, she was unfairly evaluated in March by the Board's music consultant who, she believed, had not only come with a preconceived intention to develop an unfavorable report, but was there to get her out of the school system. (Tr. I-52) Petitioner testified that, although she disagreed with many of the consultant's criticisms, she nevertheless sought to carry out her recommendations. (J-9; J-10; P-2)

The Board Secretary, called as petitioner's witness, testified that during the 1976-77 school year instrumental lessons are being given before and after regular school hours as part of a program conducted by a band boosters group. He stated that another teacher in the school is paid by the Board an extracurricular stipend of $1,500 to conduct a band program and give instrumental lessons before and after school and during part of the summer vacation. (Tr. I-75-81, 115; Tr. II-37)

The Board Secretary also testified that, although the budget adopted in March by the Board provided for the salary of petitioner, unanticipated emergency matters arose that caused the Board to reevaluate its priorities. These matters included emergency gymnasium floor repairs, hazards that required an additional parking lot, emergency upgrading of the cafeteria kitchen, and unanticipated expenses attendant upon the sale of bonds. (Tr. I-85, 95-103, 127) He related that only after much debate and consideration of alternatives did the Board decide on April 21, 1976 to abolish its music instruction program in order to authorize the aforenamed projects. (Tr. II-18-22, 26-35, 47)

This testimony of the Board Secretary was corroborated by that of the Superintendent who estimated that the named emergent matters required approximately $40,000 not provided in the budget. (Tr. II-85, 127, 170-172) He stated that although it was his recommendation that neither instrumental nor vocal instruction be dropped from the curriculum, the problem of attempting to meet emergency problems and adhere to the cap limitations on the budget caused him and the Board to reorder their priorities. In this regard he stated that he felt that the allied subjects of art, industrial arts and home economics do not lend themselves as well to alternate programs or to instruction by elementary classroom teachers as do vocal music and instrumental music. (Tr. II-91-95, 102-113, 141, 165, 170-172)

The Superintendent testified that it was with reluctance that he finally was forced to agree that the music positions should be abolished. He stated that this conclusion was in no way prompted by petitioner's teaching performance or by the consultant's evaluation which he had ordered in an attempt not only to

You are viewing an archived copy from the New Jersey State Library.

improve petitioner's effectiveness as an instrumental teacher, but to forestall pupils from continuing to drop that option. (Tr. II-115-124, 130, 143-146) He testified further that the $1,500 stipend for the band director is, as previously, paid for summer instruction and before/after-school extracurricular duties. He also affirmed that no other stipends or salaries are paid for instrumental and vocal instruction. (Tr. II-127)

The Superintendent testified that in response to the Board's directive to provide alternate instructional programs in music, funds have been expended for materials and workshops in order to prepare classroom teachers to conduct vocal music activities with their pupils. (Tr. II-128, 165)

Finally, the Superintendent testified that his hiring of a consultant to evaluate petitioner's instrumental instruction program was in no way oriented toward eliminating her or the instrumental music program from the school system. This testimony was corroborated by the consultant who stated that, had she received a directive or suggestion to give other than an honest evaluation, she would not have accepted the assignment. (Tr. II-56-59, 67-71, 77)

The hearing examiner has carefully reviewed the testimony of witnesses and the documents in evidence and concludes that petitioner has failed in her burden of presenting a sufficient quantum of credible evidence upon which to base a conclusion that the Board or its administrators either engaged in subterfuge, acted in bad faith or attempted punitive reprisal against petitioner when it abolished the elementary school instrumental and vocal music programs and notified her that the action had been taken as an economy measure. This finding is grounded on the convincing testimony of the Board Secretary and the Superintendent that the Board was faced with stringent limitations arising from the budget cap and that financial exigencies necessitating expenditures approximating an additional $40,000 unexpectedly arose after the budget providing for salaries of music teachers was finalized. This concludes the report of the hearing examiner.

* * * *

The Commissioner has carefully reviewed the pleadings, testimony of witnesses, exhibits in evidence and the arguments of law entered into the record on the first day of hearing. It is noted that the litigants have waived their rights to submit Briefs or to file exceptions to the hearing examiner's report pursuant to *N.J.A.C.* 6:24-1.17(b). The Commissioner concurs with and adopts as his own the finding of the hearing examiner that petitioner has failed to prove that the Board acted punitively or in bad faith against her. Absent a finding of taint or impropriety, the Board's actions, if otherwise in accordance with requirements of existing law, must be accorded a presumption of correctness. *Thomas v. Morris Township Board of Education,* 89 *N.J. Super.* 329 (*App. Div.* 1965), aff'd 46 *N.J.* 581 (1966); *Boult and Harris v. Board of Education of the City of Passaic,* 1939-49 *S.L.D.* 7, aff'd State Board of Education 15, aff'd 135 *N.J.L.* 329 (*Sup. Ct.* 1947), aff'd 136 *N.J.L.* 521 (*E.&A.* 1948)

N.J.S.A. 18A:11-1 provides authority to local boards of education to

You are viewing an archived copy from the New Jersey State Library.

exercise broad general mandatory powers and duties in their government and management of the public schools. Included therein is the requirement that employment and discharge of employees be "***not inconsistent with [Title 18A, Education] or with the rules of the state board***." Accordingly, the Board's actions must be scrutinized in the light of the applicable statutes and *N.J.A.C.* 6.

N.J.S.A. 18A:28-9 provides that:

> "Nothing in this title or any other law relating to tenure of service shall be held to limit the right of any board of education to reduce the number of teaching staff members, employed in the district whenever, in the judgment of the board, it is advisable to abolish any such positions for reasons of economy or because of reduction in the number of pupils *** or for other good cause***."

The Board's emergency financial problems provided what it determined on April 21 to be good cause to abolish its then existing music instructional program for the ensuing year. Thereupon, petitioner was duly noticed that, since she was certified only as a teacher of music, her employment would be terminated on June 30, 1976.

N.J.A.C. 6:8-4.3, adopted by the State Board of Education on January 7, 1976, pursuant to authority of *N.J.S.A.* 18A as amended by Chapter 212, Laws of 1975, seeks to define more precisely than heretofore those components of a thorough and efficient education as contemplated by the Legislature and the New Jersey State Constitution. Therein it is provided, *inter alia,* that:

> "(a)***The district board of education shall provide certified personnel needed to implement a thorough and efficient system of free public schools, which *may* include but not be limited to the following: *** art teachers, educational supervisors, foreign language teachers, health teachers, *** *instrumental and vocal music teachers,* nurses***."
>
> (*Emphasis supplied.*)

The Commissioner finds that such regulation is permissive as it applies to petitioner in that it employs the word "may" in reference to employment of certified music teachers. No State Board rule or regulation mandates that the Board employ certified music teachers or maintain or adopt a specific type of music curriculum for its elementary school. Nor does such requirement appear in the New Jersey statutes.

The Commissioner has in the past consistently recognized the discretionary authority of local boards to determine the type of music program to be offered in local districts. In one such instance, he stated in *Frank W. Zimmermann et al. v. Board of Education of the Southern Regional High School District, Ocean County,* 1973 *S.L.D.* 741, aff'd State Board of Education 1974 *S.L.D.* 1441, aff'd Docket No. A-1682-73 New Jersey Superior Court, Appellate Division, March 18, 1975 (1975 *S.L.D.* 1160):

You are viewing an archived copy from the New Jersey State Library.

> "***The Commissioner is of the opinion that musical offerings set forth by the Board could be more advanced, extensive, and individualized, but such offerings frequently have not been possible in public schools, and their establishment is subject to the discretionary judgment of local boards of education.***" (at 748)

Similarly, herein, the Commissioner finds it lamentable that circumstances have so conspired that the Board deemed it necessary to abolish both positions of its professional music instructors thus depriving pupils of their ministrations. The record is clear that the Board is actively moving to establish an alternative program of vocal music instruction utilizing its elementary classroom teachers. Similarly, it is expending limited funds and making its facilities available for instrumental instruction and a band activity during the summer and extracurricular hours. The effectiveness of such programs will routinely come under the scrutiny of the monitoring procedures mandated by the State Board and the Commissioner in the rules for a *Thorough and Efficient System of Free Public Schools. N.J.A.C.* 6:8-1.1 *et seq.*

The Commissioner finds no violation of either the statutes or rules of the State Board. Absent a finding that the Board acted in bad faith, punitively in reprisal, arbitrarily, capriciously or in subterfuge, the Board's determination must stand, however regrettable may be the diminution of its instructional program. The Commissioner so holds. *Boult, supra; Thomas, supra; Zimmermann, supra* As was said by the Commissioner in *Boult*:

> "***[B]oards of education are responsible not to the Commissioner but to their constituents for the wisdom of their actions.***"
> (1939-49 *S.L.D.* at 13)

See also *Sally Klig v. Board of Education of the Borough of Palisades Park, Bergen County,* 1975 *S.L.D.* 168.

There being no relief which may legally be afforded to petitioner, the Petition of Appeal is dismissed.

COMMISSIONER OF EDUCATION

April 14, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the City of Passaic,

Petitioner,

v.

Municipal Council of the City of Passaic, Passaic County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Louis Marton, Jr., Esq.

For the Respondent, Mark Weber, Esq.

Petitioner, the Board of Education of the City of Passaic, hereinafter "Board," appeals from an action of the Municipal Council of the City of Passaic, hereinafter "Council," taken pursuant to *N.J.S.A.* 18A:22-37 certifying to the Passaic County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The facts of the matter were adduced at a hearing conducted on April 6, 1976 at the State Department of Education, Trenton, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

At the annual school election held March 9, 1976, the Board submitted to the electorate a proposal to raise $7,185,888 by local taxation for current expenses. This item was rejected by the voters, and the Board subsequently submitted its budget to Council for its determination of the amount necessary for the operation of a thorough and efficient school system in the City of Passaic in the 1976-77 school year, pursuant to the mandatory obligation imposed on Council by *N.J.S.A.* 18A:22-37.

After consultations with the Board, Council made its determinations and certified to the Passaic County Board of Taxation an amount of $6,576,868 for current expenses. The pertinent amount in dispute is shown as follows:

	Current Expense
Board's Proposal	$7,185,888.41
Council's Proposal	6,576,868.87
Amount Reduced	$ 609,019.54

The Board contends that Council's action was arbitrary, capricious and unreasonable and documents its need for the restoration of the reductions recommended by Council with written testimony and a further oral exposition at the time of hearing. Council maintains that it acted properly and after due deliberation, and that the items reduced by its action are only those which are

You are viewing an archived copy from the New Jersey State Library.

not necessary for a thorough and efficient educational system. Council also documents its position with written and oral testimony.

The Board moved at the outset of the hearing to suppress all but five of Council's line item reductions for the alleged reason that they were not independently determined pursuant to *Board of Education of East Brunswick v. Township Council of East Brunswick,* 48 *N.J.* 94 (1966). This motion was held in abeyance for action of the Commissioner. In consideration of the testimony adduced at the hearing, it is recommended that the Commissioner deny the motion and consider all of Council's proposed reductions in the light of items in evidence and written and oral testimony. Nor can the hearing examiner conclude from the record that the action of Council in reducing the budget was arbitrary, capricious or unreasonable. The record shows Council's concern for the total expenditure proposed by the Board and its later reduction of that budget after consultation with the Board. As part of its determination, Council suggested specific line items of the budget in which it believed economies could be effected as follows:

CHART I

Account Number	Item	Board's Proposal	Council's Proposal	Amount Reduced
CURRENT EXPENSE:				
J110F	Sal., Supt. Off.	$ 135,708	$ 127,812	$ 7,896
J130A	Bd. Mem. Exps.	10,235	7,235	3,000
J130E	Legal Exps.	2,500	2,000	500
J130M	Prntg. & Publ.	9,500	9,141	359
J212	Sal., Supvrs.	228,111	165,451	62,660
J213	Sal., Tchrs.	6,092,407	5,917,121	175,286
J214B	Sal., Guid.	175,347	151,213	24,134
J214C	Sal., Psych.	229,587	141,460	88,127
J215A	Sal., Sec'y.	209,140	193,538	15,602
J216	Sal., Aides	54,204	37,704	16,500
J240-3	Tchng. Supls.	72,376	70,376	2,000
J410A3	Sal., Nurse	117,703	106,040	11,663
J410B	Sal., Health Secy.	10,306	2,410	7,896
J610A	Sal., Cust.	567,159	556,059	11,100
J650A	Cust. Supls.	25,000	22,000	3,000
J720A	Contr. Servs.,Grounds	4,200	2,200	2,000
J720B	Contr. Servs., Bldgs.	90,235	43,735	46,500
J730A4	Repl. Band Equip.	3,019	519	2,500
J730A11	Repl. Band Uniforms	15,000	–0–	15,000
J730C6	New Instr. Equip.	29,550	2,050	27,500
J5	H.S. Equiv.	69,066	45,000	24,066
J6	Summer School	11,730	–0–	11,730
	Unapprop. Reserve	–0–	(50,000)	50,000
	TOTALS	$8,162,083	$7,553,064	$609,019

The hearing examiner has carefully considered the testimony and

You are viewing an archived copy from the New Jersey State Library.

documentary evidence relevant to the line items in contention and sets forth for certain major reductions his findings and recommendations. These and other recommendations not set forth *seriatim* are included in Chart II, *post. Board of Education of the Township of Madison v. Mayor and Council of the Township of Madison, Middlesex County,* 1968 *S.L.D.* 139

J212 Salaries, Supervisors *Reduction $62,660*

The Board admits that two positions will remain unfilled but urges that the amounts budgeted for those positions and for a coordinator of ESEA projects whose salary has in fact been funded by federal appropriations be restored in order that funds be available for transfer to other line items in deficit. The Board justifies this on grounds that it had to authorize unavoidable overexpenditures for pupil transportation, tuition, heat, electricity, insurance and emergency replacement of the roofs of two schools. (P-7; P-14, at pp. 2-3) An examination of the Board's appropriations to line items providing for these essential elements of school operation convinces the hearing examiner that the Commissioner may wish to give consideration to the Board's request that the amount to be restored be determined in the light of apparent underbudgeting, increased rates for utilities and fuel, a markedly severe winter, emergency roof replacements and unexpected increases of tuition for vocational and special education pupils. Such considerations would also be applicable to the Board's position on other unexpended amounts in line items J213, 216, 410A3, 410B, 730C6. Therein, as here, the hearing examiner will not recommend restoration of the Board's entire appropriation for equipment or positions for which the Board has neither contracted nor has intention of contracting during 1976-77. In this regard it is noted that the hearing has been long delayed not only by substitution of counsel but by numerous abortive attempts by the parties to reach an amicable settlement of the dispute.

In this line item the hearing examiner recommends that $34,344 be restored and that the reduction be sustained in the amount of $28,316. This will enable the Board to meet its obligation to pay those supervisors who are employed. (P-4; P-14)

J213 Salaries, Teachers *Reduction $175,286*
J214B,C Salaries, Guidance & Psychological *Reduction $112,261*

The Board, upon the reduction of its budget by Council, reduced its instructional and child study staff by one entire child study team and numerous teachers. Upon further assessment of its instructional needs, consideration of mandated special education pupil services and the requirements of *N.J.S.A.* 18A:7A-1 *et seq.* (Public School Education Act, enacted subsequent to adoption of the Board's budget), the child study team and most of the teaching staff positions were restored by September 1, 1976.

The hearing examiner finds the Board's arguments convincing that those personnel restored were necessary, but finds no compelling reason as to why others should be added at this time. The fully encumbered line items including salaries for the remainder of the school year and an allowance for modest contingency indicate that the following amounts must be restored:

You are viewing an archived copy from the New Jersey State Library.

	J213	J214B	J214C
Encumbrance	$5,822,707	$165,004	$205,771
Contingency	20,000	5,000	10,000
Required Approp.	$5,842,707	$170,004	$215,771
Council's Proposal	5,917,121	151,213	141,460
Required Restoration	–0–	$ 18,791	$ 74,311

Accordingly, it is recommended that the entire reduction in J213 be sustained and that $18,791 be restored to J214B and $74,311 be restored to J214C. (P-4; P-14)

J410A3 Salaries, Nurse — *Reduction $11,663*
J410B Salaries, Health Secretary — *Reduction $7,896*

The Board admits that one nurse's position has been eliminated but alleges that it needs a restoration in these line items to comply with the terms of an adverse judgment of $15,675. In consideration of unencumbered balances in these line items of $19,559, which is greater than the judgment, the hearing examiner recommends no restoration to these line items. (P-4; P-14)

J720B Contracted Services, Buildings — *Reduction $46,500*

There was convincing testimony at the hearing that it was imperative to replace two roofs to avert extensive water damage. This, in part, caused this line item to be overexpended by March 31 beyond the amount originally budgeted by the Board. (P-4; P-14) It is recommended that the Commissioner restore $46,500 to this line item.

Unappropriated Reserve — *Reduction $50,000*

There was ample testimony that the Board intended to utilize a substantially larger amount of its unappropriated balance to meet budgetary needs for 1977-78, if necessary, in order to pay those teaching staff members restored prior to September 1, 1976. The hearing examiner recommends that this reduction be sustained in full but that no more of the Board's limited unappropriated balance be applied to the revenue portion of its 1976-77 budget. (P-8; P-12, at Exhibit C-3)

A summary of the hearing examiner's recommendations is shown in Chart II below.

CHART II

Account Number	Item	Amount of Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
J110F	Sal., Supt. Off	$ 7,896	$ 7,896	$ –0–
J130A	Bd. Mem. Exps.	3,000	1,000	2,000
J130E	Legal Exps.	500	500	–0–
J130M	Prntg. and Publ.	359	359	–0–

You are viewing an archived copy from the New Jersey State Library.

J212	Sal., Supvrs.	62,660	34,344	28,316
J213	Sal., Tchrs.	175,286	–0–	175,286
J214B	Sal., Guid.	24,134	18,791	5,343
J214C	Sal., Psych.	88,127	74,311	13,816
J215A	Sal., Secy.	15,602	15,602	–0–
J216	Sal., Aides	16,500	–0–	16,500
J240-3	Tchng. Supls.	2,000	2,000	–0–
J410A3	Sal., Nurse	11,663	–0–	11,663
J410B	Sal., Health Secy.	7,896	–0–	7,896
J610A	Sal., Cust.	11,100	11,100	–0–
J650A	Cust. Supls.	3,000	3,000	–0–
J720A	Contr. Servs., Grounds	2,000	2,000	–0–
J720B	Contr. Servs., Bldgs.	46,500	46,500	–0–
J730A4	Repl. Band Equip.	2,500	1,500	1,000
J730A11	Repl. Band Uniforms	15,000	–0–	15,000
J730C6	New Instr. Equip.	27,500	–0–	27,500
J5	H.S. Equiv.	24,066	24,066	–0–
J6	Summer School	11,730	–0–	11,730
	Unapprop. Reserve	50,000	–0–	50,000
	TOTALS	$609,019	$242,969	$366,050

This concludes the report of the hearing examiner.

* * * *

The Commissioner, having carefully considered the evidence and the report and recommendations of the hearing examiner, observes that both litigants have waived their rights to receive and file exceptions to a hearing examiner report pursuant to *N.J.A.C.* 6:24-1.17(b). Petitioner's Motion to Suppress is denied for lack of convincing evidence that Council did not independently determine which line items it should reduce. The Commissioner concurs with the findings of the hearing examiner, accepts them for his own, and concludes that $242,969 must be restored to those line items reduced by Council.

The Board's plea for restoration of additional funds to meet its obligations in fixed charges, pupil transportation, maintenance, tuition, plant operation and instruction line items merits further examination. Witnesses for the Board have testified that the schools must be closed early for lack of funds if funding is not forthcoming to meet its obligations in line items which are or soon will be in deficit as follows:

J200 Series (Instruction)	$283,309
J500 Series (Transportation)	18,000
J600 Series (Plant Operation)	92,543
J700 Series (Maintenance)	95,000
J800 Series (Fixed Charges)	140,714
J870 Series (Tuition)	64,878
	$694,444

(P-7)

You are viewing an archived copy from the New Jersey State Library.

It has been previously shown that J213 has a substantial reserve with salaries already encumbered for the entire year. The same is found to be true of the entire J200 series which will be further relieved by the restorations to line items J212, 214, 215, *ante.* Accordingly, the Commissioner will not consider further restoration to the J200 series. The increases in staff are justified to meet the special needs of pupils, but further additions at this time are unwarranted.

Pupil transportation has been overexpended, as have maintenance, fixed charges and tuition for reasons beyond the Board's control. The Commissioner is of the opinion that the heat portion of plant operation for the remaining three months is overestimated. It is not necessary to top the Board's fuel tanks prior to the end of June as was testified to be the Board's intent. This may in part be deferred until July as an expenditure in the 1977-78 budget which was approved by the voters. Nevertheless, in the absence of appreciable unappropriated balances upon which the Board may draw, it must be provided additional funds to complete the 1976-77 school year. Such relief in budget disputes has been provided, albeit infrequently, in other instances. *Board of Education of the City of Rahway v. Municipal Council of the City of Rahway, Union County,* 1975 *S.L.D.* 966; *Board of Education of the City of New Brunswick v. Mayor and Council of the City of New Brunswick, Middlesex County,* 1975 *S.L.D.* 36

The Commissioner determines that the additional amount necessary beyond the line item restorations in this instance is $185,000. This, with careful budget controls, transfers between line items, and deferral of certain services and purchases until July 1, will enable the Board to complete its normal school year.

The restorations may be summarized as follows:

Amount of Reduction		$609,019
Line Item Restorations	$242,969	
Emergency Restoration	185,000	
Total Restoration		427,969
Amount not Restored		$181,050

The Commissioner notices that, pursuant to the enactment into law of *c.*113, *L.* 1976 on November 9, 1976, unbudgeted current expense State aid is available upon approval by the Commissioner in an amount greater than the amount to be restored. Accordingly, it is directed that, of this amount, $427,969 be made available to the Board in order to provide for a thorough and efficient educational program in its schools for the 1976-77 school year. Council's reduction in the amount of $181,050 is sustained. The Commissioner observes that this use of available unbudgeted State aid will not increase the local tax levy applicable to the 1976-77 school year.

COMMISSIONER OF EDUCATION

April 14, 1977

You are viewing an archived copy from the New Jersey State Library.

**In the Matter of the Tenure Hearing of Marilyn Feitel,
School District of the City of Newark, Essex County.**

COMMISSIONER OF EDUCATION

DECISION

For the Complainant Board, Pickett and Jennings (Robert T. Pickett, Esq., of Counsel)

For the Respondent, Liss and Meisenbacher (Raymond Meisenbacher, Esq., of Counsel)

The Board of Education of the City of Newark, hereinafter "Board," certified charges of inefficiency and unbecoming conduct pursuant to *N.J.S.A.* 18A:6-11 to the Commissioner of Education for determination against respondent, a teaching staff member with a tenure status. Respondent denies the allegations and moves for dismissal of the charges grounded upon the alleged failure of the Board to follow statutory prescription with respect to the certification of tenure charges.

Oral argument on the Motion to Dismiss was heard on September 20, 1976 by a representative of the Commissioner at the office of the Essex County Superintendent of Schools, East Orange. Thereafter, the Board filed a memorandum in opposition to the Motion.

The facts of the matter are these:

Respondent was notified by letter dated February 23, 1976 from the assistant executive superintendent for pupil personnel services that her teaching performance was considered unsatisfactory by virtue of certain alleged inefficiencies. Specifically, respondent was advised, *inter alia,* as follows:

> "***You have failed to prepare and submit written meaningful instructional plans for your classes; you have failed to provide meaningful learning experiences for your classes; you have failed to provide structure to your classes and lessons; you have on occasion not prepared lesson plans; you exhibit a general attitude of uncooperativeness affecting the operation of your classes and the English Department; you have irresponsibly used instructional time for insignificant matters; and your behavior is conduct unbecoming a professional teacher.***" (C-2)

Respondent was further advised that she had ninety days from February 25, 1976 within which to improve her alleged inefficiencies, otherwise "***charges of inefficiency will be forwarded to the Executive Superintendent with a recommendation for termination as a teacher.***" (C-2)

The assistant executive superintendent in charge of Board affairs notified respondent by letter dated June 11, 1976, that:

You are viewing an archived copy from the New Jersey State Library.

> "Pursuant to N.J.S.A.18A:6-11, the Board of Education of the City of Newark, County of Essex and State of New Jersey, hereby provides you with a copy of charges of misconduct, in writing, and a written statement of evidence to support such charges.***" (R-2)

The specification of the charges set forth inefficiency as the first major area, supported by thirteen specific examples, and conduct unbecoming a teacher as the second major area, followed by eleven specific examples. The written statement of evidence in support of the charges, executed under oath, is a compendium of evaluations of respondent's performance.

Respondent was also advised that she had ten days from June 11, 1976 to submit to the Board a written statement and evidence in opposition to the charges.

Respondent replied by letter (C-1) dated June 18, 1976, that the Board did not supply her with a written statement of evidence as required by *N.J.S.A.* 18A:6-11; rather, the compendium of evaluations represented nothing more than conclusionary statements. Respondent, in the same letter, objected to being afforded only ten days in which to file her statement and evidence in opposition to the charges and further asserted that the Board had already determined to certify the charges to the Commissioner prior to its receipt of her statement and evidence, thereby denying her due process of law.

The assistant executive superintendent in charge of Board affairs by letter (P-1) dated June 22, 1976, and Board counsel, by letter (P-2) dated June 23, 1976, granted respondent an additional ten days or until July 3, 1976, in which to submit her statement and evidence. Respondent did file her statement and evidence in opposition to the charges by letter (R-5) dated July 7, 1976.

The minutes (J-2) of a meeting conducted by the Board on July 30, 1976, entitled "Executive Session," establish that the Board certified the charges of inefficiency and unbecoming conduct against respondent to the Commissioner for determination. There is nothing in the record to show that the Board acted to suspend respondent from her teaching duties. The Board's executive director of personnel notified respondent by letter (J-3) dated August 24, 1976, that she was suspended from her teaching duties pending determination of the charges by action of the Executive Superintendent.

The issues to be adjudicated with respect to respondent's Motion to Dismiss are whether the Board failed to comply with the requirements of *N.J.S.A.* 18A:6-11, 18A:6-13 and 18A:6-14.

In the first instance, *N.J.S.A.* 18A:6-11 was amended by the enactment of *c.*304, *L.*1975 which became effective February 7, 1976. Prior to the passage of the amendment, the full text of the law read as follows:

> "If written charge is made against any employee of a board of education under tenure during good behavior and efficiency, it shall be filed with the secretary of the board and the board shall determine by majority vote of

You are viewing an archived copy from the New Jersey State Library.

its full membership whether or not such charge and the evidence in support of such charge would be sufficient, if true in fact, to warrant dismissal or a reduction in salary, in which event it shall forward such written charge to the commissioner, together with certificate of such determination."

The statute of reference, as amended, now provides in full as follows:

"Any charge made against any employee of a board of education under tenure during good behavior and efficiency shall be filed with the secretary of the board in writing, and a written statement of evidence under oath to support such charge shall be presented to the board. The board of education shall forthwith provide such employee with a copy of the charge, a copy of the statement of the evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto. After consideration of the charge, statement of position and statements of evidence presented to it, the board shall determine by majority vote of its full membership whether there is probable cause to credit the evidence in support of the charge and whether such charge, if credited, is sufficient to warrant a dismissal or reduction of salary. The board of education shall forthwith notify the employee against whom the charge has been made of its determination, personally or by certified mail directed to his last known address. In the event the board finds that such probable cause exists and that the charge, if credited, is sufficient to warrant a dismissal or reduction of salary, then it shall forward such written charge to the commissioner for a hearing pursuant to N.J.S. 18A:6-16, together with a certificate of such determination. Provided, however, that if the charge is inefficiency, prior to making its determination as to certification, the board shall provide the employee with written notice of the alleged inefficiency, specifying the nature thereto, and allow at least 90 days in which to correct and overcome the inefficiency. The consideration and actions of the board as to any charge shall not take place at a public meeting."

The amending legislation, *c.*304, *L.*1975, not only expanded the requirements of *N.J.S.A.* 18A:6-11, but also provided for the repeal of *N.J.S.A.* 18A:6-12 and 18A:6-15 which had provided in full as follows:

N.J.S.A. 18A:6-12

"The board shall not forward any charge of inefficiency to the commissioner, unless at least 90 days prior thereto and within the current or preceding school year, the board or the superintendent of schools of the district has given to the employee, against whom such charge is made, written notice of the alleged inefficiency, specifying the nature thereof with such particulars as to furnish the employee an opportunity to correct and overcome the same."

N.J.S.A. 18A:6-15

"The board shall forthwith serve a copy of every written charge which is

You are viewing an archived copy from the New Jersey State Library.

determined to be sufficient and to be supported by sufficient evidence, if true in fact, to warrant dismissal or a reduction in salary and a copy of its certification of determination upon the employee against whom charge has been made personally or by certified mail directed to his last known address immediately after such determination and the commissioner shall forthwith serve a copy of every written charge made lawfully to him upon the person against whom the charge has been made in the same manner immediately after receipt thereof."

N.J.S.A. 18A:6-13, which was not specifically amended by *c.*304, *L.*1975 but which must be read with *N.J.S.A.* 18A:6-11, provides in full as follows:

"If the board does not make such a determination [to certify charges to the Commissioner] within 45 days after receipt of the written charge, or within 45 days after the expiration of the time for correction of the inefficiency, if the charge is of inefficiency, the charge shall be deemed to be dismissed and no further proceeding or action shall be taken thereon."

The pertinent portion of *N.J.S.A.* 18A:6-14 which respondent alleges the Board violated is as follows:

"Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is made, with or without pay***."

In order to determine whether the Board's action with respect to its certification of charges against respondent violated the provisions of *N.J.S.A.* 18A:6-11, as amended, *N.J.S.A.* 18A:6-13 and *N.J.S.A.* 18A:6-14, the Commissioner must examine the statutes.

The New Jersey Supreme Court has held with respect to ascertaining the meaning of a statute that every effort should be made to harmonize the law relating to the same subject matter. *State v. Green,* 62 *N.J.* 547 (1973) Because the forty-five day time requirement in *N.J.S.A.* 18A:6-13 is affected by the provisions of *N.J.S.A.* 18A:6-11, both statutes shall be considered together. The pertinent requirements of *N.J.S.A.* 18A:6-14 must also be considered.

Prior to the enactment of *c.*304, *L.*1975, the Appellate Division of the Superior Court of New Jersey thoroughly reviewed and clarified the Tenure Employees Hearing Law, as then written, in the case of *In re Fulcomer,* 93 *N.J. Super.* 404 (*App. Div.* 1967). Judge Carton, writing for the Court, stated that a board's responsibility with respect to tenure charges filed with it against one of its employees was limited to a "***preliminary review of the charge and the required certification [of the charge] to the Commissioner.***" (at p. 412) Thereafter, the Commissioner, quoting Judge Carton, held in *James McCabe v. Board of Education of the Township of Brick, Ocean County,* 1974 *S.L.D.* 299, aff'd State Board of Education 1974 *S.L.D.* 315:

"***The 'limited function' of '***preliminary review of the charge and

You are viewing an archived copy from the New Jersey State Library.

> the required certification to the Commissioner***,' in the words of the Court, strictly delimits the breadth of the Board's discretionary authority. The statute, *N.J.S.A.* 18A:6-11 [prior to amendment] requires a local board of education to view such charge as being true. The description of the charge as being 'true in fact,' prohibits a local board from exercising judgment regarding the truthfulness of the charge. A local board of education, assuming the truth of the written charge and having examined the evidence, exercises discretion solely by determining whether the charge would '***warrant a dismissal or a reduction in salary***.'***" (at 314)

Prior to the enactment of *c.*304, *L.*1975, a charge filed with a board of education against one of its tenured employees did not have to be supported by a statement of evidence, executed under oath by the complainant, nor did the affected employee have to be notified that a tenure charge was filed until the board, in its limited function, determined whether to certify the charge to the Commissioner. The enactment of *c.*304, *L.*1975 does have an effect upon the "limited function" of a board of education with respect to the receipt, processing, and determination as to certification of tenure charges filed with it against one of its employees.

N.J.S.A. 18A:6-10 specifies the nature of complaints which may be considered as tenure charges. The statute provides that a tenured employee may be disciplined by way of dismissal or a reduction in salary for "***inefficiency, incapacity, unbecoming conduct, or other just cause***." Setting aside momentarily the consideration of a charge of inefficiency, the Commissioner holds that *N.J.S.A.* 18A:6-11, as amended, now requires that a charge of incapacity, unbecoming conduct, or other just cause against an employee of a board of education must be filed in writing with the board secretary, accompanied by a statement of evidence, executed under oath by the complainant, in support of the charge. The board, through its board secretary, shall, within seventy-two hours cause a copy of the charge and the written statement of evidence to be served upon the affected employee, either personally or by registered or certified mail to the employee's last known address. The employee shall also be notified of the opportunity to respond in writing to the charge and to file a statement of evidence, executed under oath, with the board. Fifteen days shall be allowed, from the date of service of the charge, for the employee to file a statement with any supporting evidence.

Once the employee's statement is filed, *N.J.S.A.* 18A:6-11 requires that the board consider the charge and the statements in support of and in opposition to the charge, and determine whether probable cause exists to credit the evidence in support of the charge. The statute further directs the board to determine whether, if probable cause exists, the charge would be sufficient to warrant dismissal or reduction in salary.

The Commissioner holds with respect to *N.J.S.A.* 18A:6-11, as amended, that the board may not properly consider a filed charge and the evidence in support thereof until the fifteen day period for the affected employee to file a statement has elapsed. Consequently, the forty-five day period provided the

You are viewing an archived copy from the New Jersey State Library.

board in *N.J.S.A.* 18A:6-13 to determine whether to certify to the Commissioner begins to toll when the employee files his statement or when the allotted time for the employee to file the statement expires. Until then, filed charges are not properly cognizable by a local board of education. The Commissioner so holds.

While the board's limited function with respect to the processing of tenure charges has been expanded to now include determining probable cause, there is no provision for the affected employee to be granted an appearance before it, nor is the board to arrive at any finding of fact on the merits of the charge. The responsibility for the conduct of tenure hearings remains solely with the Commissioner of Education. *In re Fulcomer, supra*

The board shall notify the affected employee in writing of its final determination with respect to the certification of the tenure charges to the Commissioner for adjudication.

N.J.S.A. 18A:6-11, as amended, is unequivocal in its requirement that the consideration and actions of a local board of education on any tenure charge shall not take place at a public meeting. Should a board determine to certify charges to the Commissioner, it must still file "***a certificate of such determination***." (*N.J.S.A.* 18A:6-11, as amended) Consequently, the Commissioner directs that all local boards of education consider filed tenure charges at closed meetings and, further, that each board cause official minutes of such closed meetings to be taken, which minutes shall be subject to scrutiny by order of the Commissioner or the courts of this State.

The Commissioner shall now discuss appropriate procedures with respect to charges of inefficiency. *N.J.S.A.* 18A:6-11 requires that prior to the certification of charges of inefficiency, the board must provide the affected employee a ninety-day period in which to overcome the specified inefficiencies.

As was previously stated, the provisions of *N.J.S.A.* 18A:6-11, as amended, affect the forty-five day period set forth in *N.J.S.A.* 18A:6-13 with respect to a board determining whether to certify charges to the Commissioner.

N.J.S.A. 18A:6-11, as amended, is clear and unequivocal that the board alone shall notify the employee of charges of inefficiency and afford a ninety day period for improvement. Thus, charges of inefficiency must, in the first instance, be filed with the board secretary along with a statement of evidence in support thereof executed under oath. The board, through its board secretary, shall direct that a copy of those charges and a written statement of evidence in support thereof be served on the employee within a seventy-two hour period. The board shall direct that the employee be informed that, unless such inefficiencies are corrected within ninety days, the board intends to certify those charges of inefficiency to the Commissioner pursuant to *N.J.S.A.* 18A:6-11.

Upon the completion of the ninety day period for improvement, the board shall determine whether the employee has corrected all the originally stated

You are viewing an archived copy from the New Jersey State Library.

inefficiencies. If all the originally stated inefficiencies have been corrected to the satisfaction of the board, the board shall advise the affected teaching staff member that the charges are withdrawn. If, however, the board has reason to believe that any or all inefficiencies have not been corrected, it shall notify the employee in writing of an opportunity to respond within fifteen days to the charges of inefficiency by filing a statement of evidence, under oath, in opposition to those charges. When such statement is filed or when the allotted time for the employee to file the statement expires, the board shall within the next forty-five days consider such statement and determine whether to certify charges of inefficiency to the Commissioner. In the event that the board determines to certify such charges, it shall forward them to the Commissioner accompanied by a copy of the original charges of inefficiency, the sworn statement of evidence in support thereof, and a statement of the basis upon which the board relied to determine that the alleged deficiencies were not corrected. Those charges which are certified, with accompanying documentation, shall also be served on the tenured employee.

In the instant matter, the original charges of inefficiency were transmitted to respondent by the assistant executive superintendent for pupil personnel services. There is no evidence of the Board's consideration of such charges as required by *N.J.S.A.* 18A:6-11. Such a defect constitutes a fatal flaw in the statutorily prescribed procedure. Accordingly, the Commissioner finds and determines that the Board did violate the provisions of *N.J.S.A.* 18A:6-11, as amended, in regard to the charges of inefficiency. Consequently, those charges of inefficiency are hereby dismissed, without prejudice.

The Commissioner finds no such error with respect to the charges of conduct unbecoming a teacher. The assistant executive superintendent in charge of Board affairs notified respondent by letter (R-2) dated June 11, 1976 of the charges, and a statement of the evidence, under oath, in support thereof.

Respondent did file her statement of position (R-5) on July 7, 1976, and the Board acted to certify on July 30, 1976, well within the forty-five days required by *N.J.S.A.* 18A:6-13. Accordingly, the Commissioner finds no basis upon which to grant respondent's Motion to Dismiss the charges of conduct unbecoming a teacher.

A last matter remains. *N.J.S.A.* 18A:6-14 specifically authorizes a local board of education to suspend an employee from teaching duties upon the certification of tenure charges. The resolution (J-2) of the Board adopted at its July 30 meeting provides only for the certification of charges. There is nothing in the record to support the assertion of the executive director of Board affairs (C-3) that the failure to record the Board's action suspending respondent from her teaching duties is a clerical error. Consequently, respondent's suspension by the Executive Superintendent, as reported (J-3) by the executive director of personnel, is *ultra vires* and hereby set aside.

In summary, the Commissioner finds and determines that the Board of Education of the City of Newark failed to properly certify charges of

You are viewing an archived copy from the New Jersey State Library.

inefficiency against respondent and they are accordingly dismissed without prejudice; that the Board properly certified charges of unbecoming conduct against respondent and that they are properly before the Commissioner for adjudication; and that respondent has been illegally suspended from her teaching duties. Accordingly, the Commissioner directs that Marilyn Feitel be immediately reinstated to her teaching duties with all back pay and emoluments which may have been withheld and further directs that tenure proceedings be forthwith arranged by his representative into the charges of unbecoming conduct which remain against her.

COMMISSIONER OF EDUCATION

April 15, 1977

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, April 15, 1977

For the Petitioner-Appellant, Pickett & Jennings (Robert T. Pickett, Esq., of Counsel)

For the Respondent-Appellee, Liss and Meisenbacher (Raymond Meisenbacher, Esq., of Counsel)

The decision of the Commissioner of Education is affirmed for the reasons expressed therein.

August 3, 1977

You are viewing an archived copy from the New Jersey State Library.

COMMISSIONER OF EDUCATION

DECISION ON MOTION

For the Petitioner, Pickett and Jennings (Robert T. Pickett, Esq., of Counsel)

For the Respondent, Liss and Meisenbacher (Raymond Meisenbacher, Esq., of Counsel)

Charges of inefficiency and conduct unbecoming a teaching staff member were certified on August 9, 1976 to the Commissioner of Education for determination by the Board of Education of the City of Newark, hereinafter "Board," against respondent, a teacher with a tenure status in its employ. The charges of inefficiency were dismissed without prejudice on April 15, 1977 for failure of the Board to comply with the provisions of *N.J.S.A.* 18A:6-11. (See *In the Matter of the Tenure Hearing of Marilyn Feitel, School District of the City of Newark, Essex County,* 1977 *S.L.D.* (decided April 15, 1977, affirmed State Board of Education, August 3, 1977).)

A hearing into the remaining charges was scheduled for October 19, 20 and 21, 1977 by a hearing examiner appointed by the Commissioner. Prior to the presentation of oral testimony by any of the Board's witnesses in support of the charges, the parties of interest presented and argued several Motions, including respondent's Motion to Dismiss the charges. It is this latter Motion which is referred to the Commissioner on the record for adjudication.

The Commissioner observes that respondent's Motion to Dismiss is grounded upon the assertions that procedural and substantive due process was denied her through the Board's failure to inform her of the specifications on the eleven remaining charges of conduct unbecoming a teaching staff member.

The eleven charges which remain as certified by the Board are as follows:

"***1. Teacher is capricious and erratic in her approach to students, and on occasion teases, threatens, 'playfully' hits and kicks students. Such behavior has led to many disciplinary problems.

2. Refuses to submit progress reports on students even at the behest of parental request.

3. Refuses to cooperate in departmental writings skills program in which all teachers in the department are required to participate.

4. Refuses to submit copies of tests.

5. Abusive to members of the administration without apparent reason.

6. Refuses to appear and cooperate at conferences unless several requests are made.

You are viewing an archived copy from the New Jersey State Library.

7. Many times failed to report to Service Assignment which is contractual and the teacher's daily responsibility.

8. Refused to accept work done by students during her extended absence so that students could receive credit.

9. Refused to do the monthly register consequently another staff member had to do it.

10. Teacher has left building at the time when she should have been at work.

11. Left classes unattended during the year (1975-76)."

Subsequent to the affirmation of the Commissioner's decision, *supra,* by the State Board of Education on August 3, 1977, the hearing examiner, by letter to the parties dated September 14, 1977, set down the October hearing dates. Thereafter, respondent notified the hearing examiner by telephone that a Notice of Motion to Dismiss was being submitted for failure of the Board to submit the specifications of the charges, *ante,* to her.

The hearing examiner, by letter dated September 22, 1977 advised counsel to the Board as follows:

***

"Please be advised that counsel for respondent in the above-entitled matter made telephone application on September 21, 1977 for an order to compel the Board to provide specifications on the charges of unbecoming conduct which still remain. The remaining charges have been reviewed and the writer concludes that specifications on those charges are required to be served upon respondent no later than September 30, 1977.***"

Neither the Board nor counsel for the Board complied with this directive of the hearing examiner by September 30, 1977 or by October 19, 1977, the first day of the scheduled hearing.

The Board argues that respondent has already been informed of the specifications of the charges by virtue of the statement of evidence it supplied her when the charges were first being considered by the Board, prior to its certification of the charges to the Commissioner. In this instance, the statement of evidence required by *N.J.S.A.* 18A:6-11 is a compendium of evaluations which are attached to the filed charges.

Counsel for the Board then produced two sets of documents, which would support the specific charges, one for respondent and one for the record, which thereafter were marked P-1 through P-51 for identification. The Board explained that each of the marked documents had earlier been submitted to respondent and to the Commissioner when it certified the charges.

You are viewing an archived copy from the New Jersey State Library.

A comparison of the documents produced by the Board on October 19, 1977 and marked P-1 through P-51 with the documents it earlier filed with the Commissioner and which were to have comprised the statement of evidence shows that the documents marked P-1, P-3, P-4, P-5, P-6, P-10, P-11, P-12, P-13, P-14, P-15, P-16, P-17, P-18, P-19, P-24, P-26, P-29, P-34, P-39, P-40 had not been previously filed by the Board.

The Commissioner has reviewed these specific documents which were produced by the Board on October 19, 1977 and finds that they consist of evaluations of respondent's teaching performance, some of which she signed, some of which it is asserted she refused to sign, and others which simply state a copy of the evaluation was placed in her personnel file. There are also copies of memoranda addressed to respondent, memoranda between the school principal and department chairperson with respect to respondent, lesson plans, a grievance report, and a report of a pupil conference.

The Commissioner has reviewed the provisions of *N.J.S.A.* 18A:6-11 and finds nothing therein which would preclude the Board from relying on the above-cited documents it produced initially on October 19, 1977. The Board does, however, carry the burden to establish through testimony that respondent had knowledge of the documents and refused to read the documents, or that events set forth in memoranda exchanged between administrators have a direct bearing on the charges.

The Commissioner has reviewed each of the eleven charges of unbecoming conduct, in light of the documents P-1 through P-51, and determines that the Board shall be granted the opportunity to establish the truth of the charges and to establish that respondent had knowledge of the specificity of the charges.

Respondent's Motion to Dismiss the charges is hereby denied. Plenary hearings into the charges shall be forthwith set down.

COMMISSIONER OF EDUCATION

November 10, 1977

You are viewing an archived copy from the New Jersey State Library.

Robert and Barbara Foote,

Petitioners,

v.

Board of Education of the Township of Wall and the Old Wall Historical Society, Monmouth County,

Respondents.

COMMISSIONER OF EDUCATION

ORDER

For the Petitioners, Norton and Kalac (Peter P. Kalac, Esq., of Counsel)

For the Respondent Board, Mirne, Nowels, Tumen, Magee and Kirschner (William C. Nowels, Esq., of Counsel)

For the Respondent Society, Parsons, Canzona, Blair, and Warren (William R. Blair, Jr., Esq., of Counsel)

This matter having been opened before the Commissioner of Education (Joseph F. Zach, Assistant Commissioner of Education, Division of Controversies and Disputes) after receipt of a preliminary injunction enjoining the Board from entering into a lease agreement with the Society as issued by the Honorable Merritt Lane, Jr., J.S.C. (Superior Court of New Jersey, Chancery Division, Monmouth County, Docket No. C-602-75) by Peter P. Kalac, Esq., attorney for petitioners, on a Notice of Motion for Interim Relief dated November 7, 1975, requesting the continuation of temporary restraint against the Board of Education of the School District of the Township of Wall to prevent said Board from entering into any lease agreement with the Old Wall Historical Society, nor allow said Society to occupy the Board owned premises known as the "Barkalow Home," William C. Nowels, Esq., counsel for the School District of the Township of Wall, and William R. Blair, Jr., Esq., counsel for the Old Wall Historical Society, a nonprofit corporation of the State of New Jersey; and

The arguments of counsel having been heard regarding the allegations by petitioners that Respondent Board is in violation of existing school law and should be restrained from proceeding with the aforementioned lease and occupancy pending the final determination by the Commissioner of the merits of the Petition of Appeal; and

The Commissioner having considered the criteria set forth by the courts for the exercise of discretion in the issuance of a restraint *pendente lite* (*United States v. Pavenick,* 197 *F. Supp.* 257, 259-60 (*D.N.J.* 1961) and *Communist Party of the United States of America v. McGrath,* 96 *F. Supp.* 47 (*D.D.C.* 1951)) as follows at p. 48:

"*** Issuance of a preliminary injunction is a matter within the sound

You are viewing an archived copy from the New Jersey State Library.

discretion of the court. That discretion is traditionally exercised upon the basis of a series of estimates: the relative importance of the rights asserted and the acts sought to be enjoined, the irreparable nature of the injury allegedly flowing from denial of preliminary relief, the probability of the ultimate success or failure of the suit, the balancing of damage and convenience generally.***" and

Petitioners having raised pertinent legal questions arising out of the Board's bidding procedure which might result in the awarding of a lease to the Old Wall Historical Society, specifically, having established a *prima facie* case of a defect with such bidding procedures wherein a ninety day termination clause is found in the proposed lease but is absent in the specifications; and

Although the Board is entitled to a presumption that its actions have been correct, in this instance the Commissioner having carefully considered and balanced the respective aforementioned arguments and determined that no permanent irreparable harm may result to respondents by the issuance of a temporary restraint preventing said Board from entering into any lease agreement with said Society nor allowing said Society to occupy said Board premises; and

Taking full cognizance and consideration of the action of the court in the instant matter to maintain the status quo; and

There being the possibility of disputed relevant facts which may require an evidentiary hearing in the matter; now therefore

IT IS ORDERED that petitioners' request for interim relief, *pendente lite,* is granted until a final determination is made by the Commissioner; and

IT IS FURTHER ORDERED that this matter proceed to final determination as expeditiously as possible.

Entered this 18th day of November 1975.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioners, Norton and Kalac (Peter P. Kalac, Esq., of Counsel)

For the Respondent Wall Board of Education, Mirne, Nowels, Tumen, Magee and Kirschner (William C. Nowels, Esq., of Counsel)

For the Respondent Old Wall Historical Society, Parsons, Canzona, Blair and Warren (William R. Blair, Jr., Esq., of Counsel)

Petitioners are residents and taxpayers of the Township of Wall who allege that the Board of Education of the Township of Wall, hereinafter "Board," illegally entered into a lease agreement with the Old Wall Historical Society, hereinafter "Society." They seek relief from the Commissioner of Education in the form of an Order to preclude the Society from occupying and renovating a dwelling known as the "Barkalow Home" situated on Board owned property.

The Board maintains that it acted properly and legally pursuant to applicable statutes of the State of New Jersey, specifically *N.J.S.A.* 18A:53-1 *et seq.* The Board contends that it has the implied power to lease its premises for use as an historical museum and its actions were valid and legally correct in all respects. The Board further declares that petitioners have not suffered any harm and do not have a cause of action against it.

The Society asserts that it is a nonprofit corporation of the State of New Jersey and admits to the allegation that it did request a lease of a dwelling owned by the Board for the purpose of providing an historical museum for the use of the Board and the general public of the Township of Wall.

On October 31, 1975, petitioners were granted a preliminary injunction by the Chancery Division of the Superior Court, restraining the Board from entering into a lease agreement with the Society and directing a cessation of renovations to the Board owned dwelling then being carried out by the Society. The Court's order was effective for only twenty days during which time petitioners were provided the opportunity to seek continued interim relief, *pendente lite,* and a final determination of this matter by the Commissioner. (P-5)

Oral argument on the Motion for Interim Relief, *pendente lite,* was heard at the State Department of Education, Trenton, November 13, 1975 by the Assistant Commissioner, Division of Controversies and Disputes, to restrain the Board from entering into a lease agreement with the Society and to restrain the Society from continuing renovations on the Board owned dwelling. The Commissioner, by decision dated November 18, 1975, ordered that petitioners' request for interim relief be granted until a final determination of the Petition of Appeal.

Subsequent to the oral argument held November 13, 1975, a conference of

You are viewing an archived copy from the New Jersey State Library.

counsel was held wherein Briefs and affidavits submitted to the Court by the parties were received and stipulated documents were marked into evidence.

A hearing in this matter was conducted by a hearing examiner appointed by the Commissioner on January 12, 1976 at the State Department of Education, Trenton. The report of the hearing examiner follows.

The undisputed material facts were stipulated and are set forth as follows:

The Board adopted a resolution on August 8, 1972 to submit a proposal to the legal voters of the school district for the acquisition of certain property known as Lot 47, Block 266, on the Tax Map of Wall Township for the construction of a proposed elementary school building. (P-1) On September 26, 1972, a majority of the legal voters cast ballots in favor of the proposal. Subsequently on December 10, 1974, the Board adopted a resolution authorizing a contract to purchase the aforesaid premises at a cost of $125,000. (P-2) Title to the premises was transmitted to the Board in April 1975.

On a portion of the Board owned property there is a dwelling known as the Barkalow Home, which is said to be of some historical value to the community, as it is alleged to date from the Eighteenth Century and to be located in an area which at one time was the center of Wall Township.

Affidavits of the Superintendent and Assistant Superintendent of Schools assert that the Barkalow Home was originally to have been used as administrative offices for the school district, but that financial considerations prevented the necessary renovations, repair and maintenance for that purpose. (R(2)-1; R(2)-3)

Subsequently, the Society sought to rent the Barkalow residence at a nominal fee and to use it as a museum. The Society further proposed to make the necessary capital improvements and provide for the maintenance of the building. In anticipation of favorable Board action upon its request, the Society occupied the building and commenced repairs, all prior to public notice or bidding on a proposed lease. This action was sanctioned by a resolution adopted by the Board on August 12, 1975. (P-4)

On the same date the Board passed a resolution to accept bids for the lease of that portion of Lot 47, Block 266, which contains the Barkalow Home. In its description of the property to be leased the Board erroneously referred to Lot 42, Block 266. (P-3) Subsequently, on September 9, 1975, a corrected notice was authorized by the Board, but a notice containing a similar error was again published on September 24, 1975. A corrected description soliciting bids for the leasing of the Barkalow Home was finally published on September 25, 1975.

In the advertised notice, the lease was specified to be for a ten year term with renewal options. It was also specified that the premises were to be used as a museum and that the lessee was responsible for repairs, maintenance and a resident caretaker. Additionally, the lessee was required to be an existing incorporated, nonprofit entity. The lease was to be terminable upon ninety days'

You are viewing an archived copy from the New Jersey State Library.

notice, although this provision did not appear in the notice or advertisement. The corrected advertised resolution published in the local daily newspaper on September 25, 1975, reads as follows:

"CORRECTION

"A RESOLUTION AUTHORIZING A LEASE OR A PART OF LOT 47 IN BLOCK 266

"WHEREAS, the Board of Education of the Township of Wall has determined to lease a part of lands owned by it, and

"WHEREAS, it is deemed in the public interest that the proposed use thereof be of a public nature,

"BE IT RESOLVED, by the Board of Education of the Township of Wall that sealed written bids be taken by the Secretary of the Board of Education on or before October 6, 1975 for a lease of a part of the premises of Lot 47 in Block 266 as shown on Wall Township Tax Map having a dimension of 320 feet frontage and a depth of 150 feet subject to the following conditions:

"(1) A term of 10 years – with an option to renew for a similar period.

"(2) The premises shall be used solely for and as a historical museum with teaching stations for pupil study, etc.

"(3) The lessee shall be a duly incorporated and existing non-profit historical society, and all activities and uses shall be under its supervision.

"(4) A resident caretaker shall be hired.

"(5) The lessee shall be responsible for repairing and maintaining the premises in a good condition.

"The Board of Education reserves the right to reject any and all bids and to waive any informalities, in its discretion.

"BE IT FURTHER RESOLVED that a copy of this resolution be published at least twice in two weeks and that the Board of Education will award said bids at a meeting to be held on October 14, 1975, at 8 p.m. prevailing time."

The Petition of Appeal contains twenty-three separate paragraphs which enumerate stipulations of fact and the allegations in the instant matter. In its Brief submitted to the Court, petitioners enunciated five specific allegations against the Board and Society which will be considered, *seriatim,* by the hearing examiner.

You are viewing an archived copy from the New Jersey State Library.

ALLEGATION NO. 1

"Absent specific limited exceptions enunciated by case law and school law decision, a board of education, as a non-continuous body, cannot bind successive boards by its actions."

Petitioners assert that a board of education is a body corporate whose authority and power are circumscribed by its term of duration as prescribed by *N.J.S.A.* 18A:10-1. They further assert that the duration of the Board's authority, except in well-defined areas granted to it by the Legislature, is limited to the next annual organizational meeting. Petitioners argue that the inability of a board of education to bind subsequent boards by exercising powers not granted to it by the Legislature has been upheld by the Commissioner and the courts. *Skladzien v. Board of Education of Bayonne,* 12 *N.J. Misc.* 602 (*Sup. Ct.* 1934), affirmed 115 *N.J.L.* 203 (*E.& A.* 1935)

In *Skladzien, supra,* the Court stated:

"***A new board comes into being each year since, as here, the term of three members expires each year, and whether new persons are appointed to complete the board or the personnel remains the same, in fact and in law it is a new board of education. Such board is not therefore a continuous body for that reason. It has all the indicia of non-continuous bodies. It organizes in February of each year, adopts rules for its own administration each year, is completed each year by the selection of three new members in the place and stead of those three whose terms have expired.***" (12 *N.J. Misc.* at 604)

Petitioners further cite decisions wherein the Commissioner has relied upon the language of *Skladzien, supra,* to limit the authority of a noncontinuous board to bind successor boards. *Henry S. Cummings v. Board of Education of Pompton Lakes, Passaic County et al.,* 1966 *S.L.D.* 155 and *In re Bruck,* 1953-54 *S.L.D.* 72

Petitioners argue that the Legislature and the courts have clearly defined and delineated those exceptions wherein a board may bind its successor or successors. They particularly cite *Cummings, supra,* wherein the Legislature conferred upon a board of education express authority

"***by *R.S.* 18:13-6 [now *N.J.S.A.* 18A:27-3] to employ personnel beyond its official life for the balance of the current school year in order that there may be no interruption of the school program in February when a new board comes into being***." (at 156)

Petitioners state that another exception to the rule regarding actions binding subsequent boards is found in the tenure laws for teaching staff members, *N.J.S.A.* 18A:28-1 *et seq.,* wherein the Legislature preempted successor boards from an exercise of their authority to disturb the grant of tenure by a previous board. *Harold Reinish v. Board of Education of Cliffside Park, Bergen County,* 1965 *S.L.D.* 50, 54; aff'd State Board of Education 1966 *S.L.D.* 252

You are viewing an archived copy from the New Jersey State Library.

The third exception of petitioners relates to employment contracts whose life may exceed the life of the board entering into the contract. It cites *Board of Education of the Vocational School of Union v. Finne,* 88 *N.J. Super.* 91 (*Law Div.* 1965), wherein the Court held that an employment contract between a board of education and an architectural firm for services to be rendered for a proposed school was valid and binding, even though the predecessor board was probably engaged in a governmental and not a proprietary operation. In *Finne,* the Court stated:

> "***[T]he general rule seems to be that a contract of employment extending beyond the term of the office of the members of a public board, such as a board of county commissioners, a municipal board, or other like controlling body representing a municipal corporation, is, if made in good faith, ordinarily a valid contract***." (at 103)

Petitioners assert that in the instant matter, the general rule must prevail that a board may not bind its successors unless the actions fall within the closely circumscribed exceptions noted, *ante.*

The specifications, *ante,* as published in the newspaper on September 25, 1975, stated, *inter alia,* the following conditions with regard to the term of the lease:

> "(1) A term of 10 years – with an option to renew for a similar period."

Petitioners argue that the aforementioned condition would be invalid as an act which would bind successor boards.

Petitioners further assert that despite the fact that the specifications in the advertised resolution failed to mention a ninety day termination clause to be exercised by either party, the exercise of this provision would be *ultra vires* in that it would bind a subsequent board for at least ninety days.

ALLEGATION NO. 2

> "The Board of Education of Wall Township is without authority, express or implied, to lease part of the premises designated as Lot 47 in Block 266 on the Tax Map of Wall Township."

Petitioners state that Article 2 of Chapter 20, Title 18A, deals with the acquisition and disposition of property by a board of education. *N.J.S.A.* 18A:20-1 *et seq.* Petitioners state that the Legislature has specifically mentioned the sale of land and the exchange of lands as the manner in which a board of education shall dispose of real property as provided in *N.J.S.A.* 18A:20-5:

> "The board of education of any district by a recorded roll call majority vote of its full membership may dispose, by sale or otherwise, in the manner prescribed in this chapter, of any lands or any rights or interests therein, owned by it, which cease to be suitable or convenient for the use for which they were acquired or which are no longer needed for school

You are viewing an archived copy from the New Jersey State Library.

purposes, whether acquired by purchase or through condemnation proceedings and the purchaser thereof shall acquire title thereto free from any use or purpose for which it may have been acquired by the board."

Petitioners assert that reading the complete statute in its entirety is required to ascertain legislative intent and cites *Elizabeth Federal Savings and Loan Association v. Howell,* 24 *N.J.* 488, 507 (1957); 2 *Sutherland, Statutory Construction,* Section 4703-4 (3rd ed. 1943) that disposition of property relates to sale of property. Petitioners also state that the only other mention in the statutes with regard to the disposition of property is the exchange of lands found in *N.J.S.A.* 18A:20-8. Petitioners also note that the statute *N.J.S.A.* 18A:20-4.1 makes reference to the board of education in the position of a tenant for the purpose of leasing buildings for school purposes.

Petitioners argue that if the Legislature had determined that a board of education should be permitted to act in the capacity of landlord and lessor it would have provided legislation to this end. Petitioners continue, *arguendo,* that the disposition of Board owned lands can only be effectuated upon a roll call vote of a majority of the full membership of the Board provided the said land ceases to be suitable or convenient for the use for which it was acquired or is no longer needed for school purposes. *N.J.S.A.* 18A:20-5

Petitioners assert, therefore, that the Board is without authority to lease a part of its premises to the Society.

ALLEGATION NO. 3

"*N.J.S.A.* 18A:53-1 is inapposite to the case *sub judice* since that statute applies only to existing museum facilities."

The statute *N.J.S.A.* 18A:53-1 provides:

"The board of education of any school district may provide by contract and appropriate funds for the support and maintenance of existing museum facilities and services for the educational or recreational use and benefit of pupils in the public schools. Appropriations for such facilities and services shall be made in the same manner as for other school purposes."

Petitioners argue that the statute explicitly denotes existing museum facilities as being eligible for support and maintenance by a board of education. In this regard, petitioners aver that a statute must be viewed as a whole to seek the Legislature's intent to enact it and cites *Jamouneau v. Harner,* 16 *N.J.* 500, 513 (1954); 2 *Sutherland, Statutory Construction,* Sections 4702, 4704, 4812 (3rd ed. 1943). Petitioners continue, *arguendo,* that it is held that every provision has significance in the delineation of the Legislature's intent and purpose. *Crater v. County of Somerset,* 123 *N.J.L.* 407 (*E.&A.* 1939); *Mahoney v. Parole Board of New Jersey,* 10 *N.J.* 269 (1952), appeal dismissed 344 *U.S.* 871, 73 *S.Ct.* 173, 97 *L.Ed.* 675 (1952)

You are viewing an archived copy from the New Jersey State Library.

Accordingly, petitioners assert that since the Board is without authority to contract and appropriate funds for the support and maintenance of museum facilities other than those that presently exist, the Society should be ordered to cease any renovations, alterations or improvements and should be ordered to vacate and remove itself from the Board's premises.

(Note: The Court granted petitioners a preliminary injunction on October 31, 1975, which restrained the Board from its entry into a lease agreement with the Society and further directed the Society to cease all renovations to the Board's premises. On November 18, 1975, the Commissioner's subsequent decision on Motion granted petitioners interim relief, *pendente lite.*)

ALLEGATION NO. 4

"The defendant Board of Education has failed to comply with the provisions of the Local Public Contracts Law, *N.J.S.A.* 40A:11-1, *et seq.*"

Petitioners aver that the Board's corrected advertisement published on September 25, 1975 to lease the controverted premises was framed and articulated to limit the number of bidders and also failed to disclose that the proposed lease agreement could be canceled by either party on ninety days' notice. Petitioners specifically cite *N.J.S.A.* 40A:11-13 which provides, *inter alia*:

"Any specifications for an acquisition under this act, whether by purchase, contract or agreement, shall be drafted in a manner to encourage free, open and competitive bidding. In particular, no specifications under this act may:

"***(e) Fail to include any option for renewal, extension, or release which the contracting unit may intend to exercise or require; ***or fail to disclose any matter necessary to the substantial performance of the contract or agreement.

"Any specification adopted by the governing body, which knowingly excludes prospective bidders by reason of the impossibility of performance, bidding or qualification by any but one bidder, except as provided herein, shall be null and void and of no effect***."

With respect to the allegations that the advertised specifications were drafted to restrict free and competitive bidding and the failure of the specifications to mention the ninety day cancellation provision, petitioners state that readvertisement of the specifications should have been required of the Board.

ALLEGATION NO. 5

"The defendant Board of Education has attempted according to its bid specifications, to delegate its responsibility to the successful bidder to abide by guidelines issued by the State Department of Education regarding

You are viewing an archived copy from the New Jersey State Library.

the construction and maintenance of structures which are to be occupied by school pupils."

By the relegation of the maintenance and repair of its property to a proposed tenant, petitioners allege that the Board's bid specifications in the resolution are improper and an illegal attempt to delegate its mandatory responsibility to the Society. Petitioners note that the administrative regulation dictates standards with regard to the acquisition and repair of structures to be used for pupil instruction as provided in *N.J.A.C.* 6:22-7.2(b):

"A board of education planning to acquire any existing building for instructional purposes through purchase, gift, lease or otherwise, shall comply with all procedures and regulations pertaining to the appropriation and use of capital funds and to have the building approved in accordance with the regulations of the State Board of Education which apply to the construction of a new building."

And in *N.J.A.C.* 6:22-7.1(a):

"No contract for the erection, improvement or repair of any public school building or any part thereof shall be made until and after plans and specifications therefor have been submitted to and approved by the State Board of Education***."

Allegation No. 5 refers to the Board's advertised specification, *ante,* which provides:

"***(5) The lessee shall be responsible for repairing and maintaining the premises in a good condition.***"

Petitioners declare that the Board is proscribed from delegating to a proposed tenant its mandatory responsibility for the maintenance and repair of its premises. Such action, aver petitioners, should therefore be set aside as improper.

Respondents limit their affirmative defense to the argument that the statutes do indeed provide authority for the Board to enter into a lease agreement with the Society for the purpose of the support and maintenance of museum facilities.

The Board asserts that it is authorized not only to purchase property but also to sell or lease property when it is not needed for school purposes as provided by *N.J.S.A.* 18A:20-2:

"The board of education of any district may***acquire, by purchase or lease, receive, hold, hold in trust and sell and lease real estate***."

In its oral argument on petitioners' Motion for Interim Relief, *pendente lite* (Tr. I-13), the Board cited *John J. Caffrey, Jr. et al. v. Board of Education of*

You are viewing an archived copy from the New Jersey State Library.

the Township of Millburn, Essex County, 1975 *S.L.D.* 630 which quotes *Silverman et al. v. Board of Education of the Township of Millburn,* Docket No. L-31899-74, New Jersey Superior Court, Law Division, Essex County, May 14, 1975:

"*** The Court stated that:

> '***The voters of Milburn have elected the Board of Education to formulate and execute educational policies for Millburn Township. The members of the Board are responsible for the efficient operation of the school system. If the Board were so limited in its discretion as to prevent it from making the best use of the physical assets of the school district, the voters would ultimately be the ones to suffer. Here, the Board has determined that the Washington School is not needed as an elementary school.*** When the circumstances upon which a referendum is based have so changed, the Board must be able to act, albeit in a reasonable manner, in a way consistent with the public interest.***' (at pp. 7-8)

> '***This is not a case where a facility was built with funds from a bond issue for school purposes and then the use changed to a remote use. Rather the change present here is still an educational use consistent with the purposes for which the school was built. *Shuster v. Board of Education of the Township of Hardwick,* 17 *N.J. Super.* 357 (*App. Div.* 1952)***' (at p. 8)

"And,

> '***Further, the Board's action is not taken in bad faith. The bonds were requested and authorized for a needed purpose. This purpose was fulfilled with the construction and operation for 7 years of the Washington School. Changed circumstances dictate the change of use.***' (at pp. 8-9)***" (at 634)

The Commissioner sustained the hearing examiner's recommendation in *Caffrey, supra,* wherein the hearing examiner stated:

> "***In the context of this authoritative dicta, the hearing examiner recommends that the Commissioner concur in the determination that the Board is not legally restrained from alternate designated use of its schoolhouse during the lifetime of the bonded indebtedness thereon.***" (at 635)

The Board further cites its authority as provided by *N.J.S.A.* 18A:53-1 and in addition cites *N.J.S.A.* 18A:53-2 which provides:

> "Such museum facilities and services may include exhibition in a museum building or elsewhere of subjects of natural, historical, educational, scientific, industrial or cultural nature; operation of arts, crafts and other

You are viewing an archived copy from the New Jersey State Library.

hobby workshops; conduct of field trips and other projects of an educational or recreational nature and provision for the personal services required in connection with any of the foregoing."

With respect to *N.J.S.A.* 18A:53-1 and 2 the Board refers to the affidavits of the Superintendent of Schools (R(2)-3) and the Assistant Superintendent of Schools (R(2)-1) to establish that the Board intended to store, in the leased premises, school artifacts in its possession for the benefit of the pupils of the district and also make available teaching stations for the use of pupils.

The Board concludes that it not only acted pursuant to statutory authority but also had the implied power to lease the Barkalow Home for a use which is educational and in furtherance of school purposes.

The Society asserts that it is a nonprofit corporation of the State of New Jersey incorporated pursuant to *N.J.S.A.* 15:1-1 *et seq.* In addition, it is recognized as a nonprofit organization by the United States Internal Revenue Service. (R(2)-4)

The Society maintains that the proposed lease would provide an easily available existing historical museum in an existing building repaired and renovated without any expense to the Board. Further, it avers that it has expended approximately $6,200 of its own funds in renovations and improvements to weatherproof and preserve the Barkalow Home. (Tr. I-18) These expenditures, the Society contends, were made in the spirit, intent and language of *N.J.S.A.* 18A:53-1 and 2.

The Society avers that if, as specifically authorized by the statutes, the Board may "appropriate funds," it is within the intent and spirit of the statutes that the Board may furnish, for a limited period of time, premises which are not needed for other school purposes when such premises will be substantially improved, restored and preserved without cost to the Board. The Society observed in a brief historical note with respect to *N.J.S.A.* 18A:53-1 and 2 as follows:

> "***It may be of interest to note that this statute, L. 1956 C.33, p. 76 § § 1 and 2, formerly *N.J.S.A.* 18:14-86.1 and 86.2, when enacted was not accompanied by a legislative statement and to the best of this writer's knowledge has not been tested, construed or applied by the Courts of this State. There was no change in the text of the act when Title 18 was revised and became Title 18A.***" (Society's Brief, at p. 8)

Both the Board and the Society assert that petitioners have not suffered harm and do not have a cause of action against them and, therefore, the Petition should be dismissed.

This completes a recital of the allegations against respondents, the evidence adduced in support thereof and respondents' affirmative defense. The hearing examiner has reviewed all of the evidence pertinent to the allegations and sets forth his findings as follows:

You are viewing an archived copy from the New Jersey State Library.

Allegations Nos. 2 and 5 lack sufficient credible evidence for the Commissioner to make a determination in the instant matter. With respect to Allegation No. 2, the hearing examiner finds that the courts have upheld the prerogative of a local board of education to enter into a lease arrangement, particularly where the leased property would have been used for educational purposes. *Caffrey v. Millburn, supra* With respect to Allegation No. 5, there were no proofs advanced to show that the Board attempted to delegate its responsibility to the Society with regard to the State Department of Education guidelines for schoolhouse construction and maintenance.

With respect to Allegations Nos. 1 and 4, the hearing examiner finds that the Board's advertised specifications (P-3) were defective with respect to a condition of the lease to continue for a "term of 10 years with an option to renew for a similar period." While it is held that a board of education may lease property, it may do so only during the life of the board itself. The Court in *Skladzien, supra,* held that a local board of education is not a continuous body and therefore a lease with a "term of 10 years" is *ultra vires.* Accordingly, a board of education may not enter into a lease agreement for a period longer than the life of that board. Subsequent board or boards may renew a lease or make a new lease, providing the board owned property is not needed for school purposes.

The hearing examiner observes in Allegation No. 3, that the meaning of the word "existing" as it appears in *N.J.S.A.* 18A:53-1 is not crystal clear.

The Commissioner's final determination of the construction of the language of the controverted statute *N.J.S.A.* 18A:53-1 will therefore determine the future course of action by the Board.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the entire record in the instant matter, including the report of the hearing examiner and the exceptions thereto filed by petitioners pursuant to *N.J.A.C.* 6:24-1.17(b).

The Commissioner has considered and carefully weighed the respective arguments of the parties in reference to the controverted language of the statute, *N.J.S.A.* 18A:53-1. He observes that the parties attach significance to that part of the statute which states that a board of education may provide by contract and appropriate funds for the support and maintenance of "existing" museum facilities. Petitioners interpret this word to apply strictly to existing and operative museums.

The Commissioner cannot agree. In *Louis Alfonsetti and Lakewood Education Association v. Board of Education of the Township of Lakewood,* 1975 *S.L.D.* 297, he stated:

You are viewing an archived copy from the New Jersey State Library.

"***[T]he matter is fundamentally one of statutory interpretation. The Courts have said that:

> '***in every case involving the interpretation of a statute, it is the function of the court to ascertain the intention of the Legislature from the plain meaning of the statute and to apply it to the facts as it finds them, *Carley v. Liberty Hat Mfg. Co.,* 81 *N.J.L.* 502, 507 (*E.&A.* 1910).***'

***

> '***The purpose of [statutory] construction is to bring the operation of a statute within the apparent intention of the Legislature.***' *Sperry & Hutchinson Co. v. Margetts,* 15 *N.J.* 203 (1954) (at p. 209)
>
> '*** A statute should not be construed to permit its purpose to be defeated by evasion.***' *Grogan v. DeSapio,* 11 *N.J.* 308 (1953) (at p. 322)***" (at 299-300)

The Commissioner opines that the words in the instant statute are determinative that boards of education may provide for the support and maintenance of existing museum facilities "*** and services for the educational or recreational use and benefit of pupils in the public schools. ***" Such words are clear and the Commissioner holds that, in this instance, a structure suitable for a museum is available for the educational use and benefit of pupils in the public schools.

The Commissioner observes that in the instant matter *N.J.S.A.* 18A:20-2 must be considered in *pari materia* with *N.J.S.A.* 18A:53-1. *N.J.S.A.* 18A:20-2 provides, *inter alia,* as follows:

> "The board of education *** may, in and by its corporate name, acquire, by purchase or lease, receive, hold, hold in trust *and sell and lease* real estate and personal property***." (*Emphasis supplied.*)

Thus, a board of education is empowered by statute to lease its real estate holdings. See *Caffrey, supra.*

Additionally, the statute *N.J.S.A.* 18A:20-34 clearly provides that a board of education may permit the use of its schoolhouse and rooms therein and the grounds and other property of the district when not in use for school purposes for:

> "***a. The assembly of persons for the purpose of giving and receiving instruction in any branch of education, learning, or the arts ***;
>
> "c. The holding of such social, civic, and recreational meetings and entertainments *and such other purposes as may be approved by the board;*

You are viewing an archived copy from the New Jersey State Library.

"d. Such meetings, entertainments, and occasions *where admission fees are charged as may be approved by the board****." (*Emphasis supplied.*)

Accordingly, the Commissioner determines that the Board of Education of the Township of Wall may enter into a contract to lease its property for the support and maintenance of a museum facility with the Old Wall Historical Society.

Within the context of the determination, *ante,* the Commissioner finds no merit in petitioners' argument that a lessee of board of education property may not be responsible for the repair and maintenance of the leased premises. *N.J.S.A.* 18A:20-4 provides that boards of education may accept and use gifts as follows:

"The board of education may accept any gift *** of money or other personal property ***."

The Commissioner determines, therefore, that the Board of Education may accept such gifts for the repair, renovations and maintenance of its buildings and property as performed by the Old Wall Historical Society.

Finally, the Commissioner is constrained to observe that the Board's proffered specifications of its lease were indeed defective with regard to its continuation for a "term of ten years." The courts have held that a local board of education is not a continuous body and, unless it is specifically provided by statute, a board may not enter into a contract which would commit a subsequent board. Accordingly, the Board may enter into an annual lease agreement for a period no longer than the life of that board. The Commissioner finds that in all other respects the provisions of the specifications and agreements between the Board of Education of the Township of Wall and the Old Wall Historical Society are valid.

The Petition is dismissed.

COMMISSIONER OF EDUCATION

April 19, 1977

You are viewing an archived copy from the New Jersey State Library.

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, April 19, 1977

For the Petitioners-Appellants, Norton and Kalac (Peter P. Kalac, Esq., of Counsel)

For the Respondent-Appellee, Board of Education, Mirne, Nowels, Tumen, Magee & Kirschner (William C. Nowels, Esq., of Counsel)

For the Respondent-Appellee, Old Wall Historical Society, Parsons, Canzona, Blair & Warren (William R. Blair, Jr., Esq., of Counsel)

The State Board of Education denies the Motion for Stay, and affirms the decision of the Commissioner of Education.

The State Board further retains jurisdiction pending an opinion from the Attorney General on School Board's term for leasing buildings.

July 6, 1977

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, April 19, 1977

For the Petitioners-Appellants, Norton and Kalac (Peter P. Kalac, Esq., of Counsel)

For the Respondent-Appellee, Board of Education, Mirne, Nowels, Tumen, Magee & Kirschner (William C. Nowels, Esq., of Counsel)

For the Respondent-Appellee, Old Wall Historical Society, Parsons, Canzona, Blair & Warren (William Blair, Jr., Esq., of Counsel)

"On July 6, 1977, the State Board affirmed the decision of the Commissioner of Education, retaining jurisdiction pending an opinion from the Attorney General as to whether a board of education may lease property it owns to another party for a term beyond the life of the board. The Commissioner held that a local board could not enter into such a lease unless specifically authorized by statute. We have been advised that the Attorney General believes that the

You are viewing an archived copy from the New Jersey State Library.

Commissioner's decision on that issue is consistent with the settled precedent and therefore affirm for the reasons expressed by the Commissioner in his decision of April 19, 1977."

December 7, 1977
Pending New Jersey Superior Court

Learning Disabilities Association of Scotch Plains-Fanwood, James N. Sabbagh, George F. Cummings and Richard West,

Petitioners,

v.

Board of Education of the Scotch Plains-Fanwood Regional School District, Union County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioners, Buttermore and Mooney (Robert J. T. Mooney, Esq., of Counsel)

For the Respondent, Johnstone and O'Dwyer (Jeremiah D. O'Dwyer, Esq., of Counsel)

Petitioners, the Learning Disabilities Association of the Scotch Plains-Fanwood Regional School District, hereinafter "Association," aver that the Board of Education of Scotch Plains-Fanwood, hereinafter "Board," has failed to properly identify, classify and place handicapped pupils. The Association further avers the Board has improperly failed to appeal reductions in budgetary appropriations established by the municipal governing body subsequent to defeat of the school budget by the voters in the annual referendum. It requests the Commissioner of Education to direct the Board to correct the alleged deficiencies and to further direct the formulation of a guided program to be followed in the future to assure compliance with the statutes that detail the educational program required to be afforded handicapped pupils. *N.J.S.A.* 18A:46

The Board denies any impropriety or illegality in its treatment of handicapped pupils and requests dismissal of the Petition of Appeal.

A hearing was conducted on May 14, 1975, and continued on June 16, 1975, and January 30, 1976 at the office of the Union County Superintendent

You are viewing an archived copy from the New Jersey State Library.

of Schools, Westfield, by a hearing examiner appointed by the Commissioner. The Association has filed a Brief. The report of the hearing examiner is as follows:

The Petition was filed on October 3, 1973, but was held in abeyance for an extended period of time at the request of the parties until such time as the Board's budgetary provisions for handicapped pupils in the 1974-75 academic year were determined. Subsequently, the Board's budget which the Association then deemed adequate was submitted to the voters in the annual referendum in February 1974 and was defeated. Thereafter the governing body reduced it pursuant to law, and an appeal was launched by the Board against the reduction but was then abandoned.

At that juncture, the Petition was reactivated and the hearings began.

The delay in the movement of the Petition and subsequent delay have made many of the specific complaints of the Association moot although a recital of the facts pertinent to the Board's educational program for handicapped pupils in the years 1973-76 is required for an understanding of the complaints which remain viable. Such facts were developed in the testimony at the hearing and will be summarized briefly, *post.* This testimony was elicited primarily from school officials but also from a member of the Association and a teaching staff member of a neighboring school district. The testimony is centered around the issue of whether or not the Board's procedures for identification and classification of school pupils are in compliance with the mandate of the statutes, *N.J.S.A.* 18A:46-1 *et seq.*, and the rules of the State Board of Education, *N.J.A.C.* 6. (Tr. I-14)

The statutes of reference are primarily *N.J.S.A.* 18A:46-6, 8, 11 and 13 which are recited in their entirety as follows:

N.J.S.A. 18A:46-6

"Each board of education shall identify and ascertain, according to rules prescribed by the commissioner with the approval of the state board, what children between the ages of five and 20 in the public schools of the district, if any, cannot be properly accommodated through the school facilities usually provided because of handicaps."

N.J.S.A. 18A:46-8

"Each handicapped child shall be identified, examined and classified according to procedures, prescribed by the commissioner and approved by the state board, under one of the following categories: mentally retarded, visually handicapped, auditorily handicapped, communication handicapped, neurologically or perceptually impaired, orthopedically handicapped, chronically ill, emotionally disturbed, socially maladjusted or multiply handicapped."

N.J.S.A. 18A:46-11

"Each board of education shall separately or jointly with one or more

You are viewing an archived copy from the New Jersey State Library.

boards of education employ a psychological examiner who acting jointly with special education personnel approved by the commissioner shall administer the procedures for diagnosis and classification required in this chapter, or, in lieu of employing a psychological examiner, it or they may contract to use, with or without financial reimbursement, the psychological or other services of any clinic or agency approved by the commissioner."

N.J.S.A. 18A:46-13

"It shall be the duty of each board of education to provide suitable facilities and programs of education for all the children who are classified as handicapped under this chapter except those so mentally retarded as to be eligible for day training pursuant to N.J.S. 18A:46-9. The absence or unavailability of a special class facility in any district shall not be construed as relieving a board of education of the responsibility for providing education for any child who qualifies under this chapter.***"

The rules of the State Board are designed in the context of such statutes.

N.J.A.C. 6:28-2.2 mandates that local boards shall provide "***for such diagnostic examinations as are necessary to determine the need of special education programs for pupils who manifest disabilities***" in one of the ten categories of handicaps listed in *N.J.S.A.* 18A:46-8. Additionally, the rule mandates certain specific examinations: psychological examination, assessment by learning disabilities specialist, case study by a certified school social worker and a physical examination by a physician employed by the board. It further mandates an examination by other "appropriate" specialists as such examinations are deemed necessary.

The rule, *N.J.A.C.* 6:28-2.4(c), provides that pupils new to a district and identified as handicapped may be "***refused admission or removed***" from school for a period not to exceed thirty calendar days. It further provides that subsequent to classification a pupil's record and placement shall be reviewed "***within a period not to exceed three years***." *N.J.A.C.* 6:28-2.4(d)

N.J.A.C. 6:28-3.2 provides that an educational program shall be provided to handicapped pupils which is suitable to their needs. The rule lists eight alternatives which range from supplementary instruction in the school to individual instruction at home.

N.J.A.C. 6:28-3.8 mandates:

"(a) Local school districts shall establish and put to use criteria to evaluate the effectiveness of their program for the education of the handicapped."

This last rule is at the heart of the Association's complaint. The Association admits the Board has properly certified child study teams and that such teams classify pupils. It maintains, however, that the identification of such pupils is unduly delayed and that classification timelines are not in effective compliance with the prescription of the statutes and rules. Petitioners further

You are viewing an archived copy from the New Jersey State Library.

maintain that comparable statistics from other school districts indicate that many pupils who are handicapped are unidentified and unclassified as such and that reasonable standards should be established by the Commissioner. The Board avers that its program for handicapped pupils is an adequate one in the context of law and that there is no standard of "good, better or best" which may be imposed. (Tr. I-17)

Thus the report herein requires a finding based on subjective judgment concerned with whether or not the Board's program for handicapped pupils is an effective one pursuant to law. (See Tr. I-50-51.)

The President of the Association testified with respect to the specificity of the complaint. He said that there was an insufficient training program or effort by the Board to instruct teaching staff members in the identification of handicapped pupils and that many such pupils were not in fact identified and classified. (Tr. I-31, 53) He testified that there was also an insufficient number of child study teams (two) to do the work mandated by law and that a delay in the classification of handicapped pupils was unreasonable. (Tr. I-32, 37, 39) He testified in this regard that pupils identified as handicapped or possibly handicapped in the 1973-74 year had not been classified as of January 1975 (Tr. I-33) and that a delay in excess of 90-120 days for such classification procedures was excessive. (Tr. I-40) He further testified that the district's junior high school had no resource room, that there was no program for handicapped pupils in the high school and that learning prescriptions prepared by learning disabilities specialists were not generally available. (Tr. I-48-49) He testified that supplies and materials were inadequate. (Tr. I-46)

The Director of Special Education testified with respect to the provision of educational programs for the handicapped and indicated he was not satisfied with the overall program in many respects. (Tr. I-60 *et seq.*; Tr. II-122 *et seq.*) He testified that he was not satisfied that training of all teachers was adequate to insure identification of all handicapped pupils (Tr. I-136), and that the amount of time needed to evaluate and classify pupils after identification as possibly handicapped was excessive. (Tr. II-49) He testified that a delay of more than thirty days in instituting evaluation and classification procedures could be serious and said that such a period was reasonable as a guide. (Tr. II-50) In contrast he testified that the delay in instituting evaluation and classification of pupils during the 1974-75 year approximated at least four to six months. (Tr. I-88) The following pertinent details were also set forth either in the testimony of the Director or in documents introduced in evidence through his testimony:

1. There were approximately 7600 pupils in the schools of Scotch Plains-Fanwood in the 1973-74 year and of these 245 were classified as handicapped in November 1973. (Tr. I-60) In April 1974 this number increased to 323. (Tr. I-63)

2. The school system's screening program to identify possibly handicapped pupils was centered around the classroom teacher but also included: medical examination of pupils in grades two, five, and eight; hearing

You are viewing an archived copy from the New Jersey State Library.

tests administered to pupils in grades one, four, seven and eleven; vision tests in grades two, four, six, eight and eleven; standardized tests of mental ability at all levels; and a screening of all new pupils by a speech correctionist. (Tr. I-68 *et seq.*)

3. The school district employed two child study teams in 1973-74 with each team consisting of a psychologist, social worker and learning disabilities specialist. (Tr. I-80) These teams received 412 referrals of possibly handicapped pupils and actually evaluated and classified 324 during the year. A total of 88 pupils were "carried over" for evaluation from June to September 1974 and some of these were not evaluated until January or February 1975. (Tr. I-80-92)

4. The Scotch Plains-Fanwood school district was "serving the needs" of only 41.5 percent of the handicapped pupils of the district in the context of State and national percentages of handicapped pupils who are present in the general population. (P-1, 2; Tr. I-31) The Director testified that he "assumed" the remaining 58.5 percent of pupils likely to be identifiable as handicapped, and required to be evaluated, remained in regular classes without identification. (Tr. I-35)

5. There was a program for classified handicapped pupils in the high school. (Tr. I-137) Such program served the needs of ten pupils in a class for the mentally retarded and of twenty-seven pupils in employment oriented programs. (R-2) There were twenty-four other special education programs for the remaining handicapped pupils in a total of nine schools. (R-2)

The Director of Special Services in a school district adjacent to Scotch Plains-Fanwood was called by the Association as a witness. He testified that statistics developed by the State Department of Education indicate that ten percent of pupils on a nationwide basis are handicapped and that the applicable figure in New Jersey is 8.98 percent. (Tr. I-103 *et seq.*) He testified that a delay of six months in the classification of pupils identified as possibly handicapped could be harmful. (Tr. I-117)

The Board's Assistant Superintendent testified at the second day of hearing on June 16, 1975, and was called to update such testimony on January 30, 1976. He testified that biographical data was required to be submitted for preschool pupils prior to school entrance as a screening device for possible handicaps and that teachers of special education classes had conducted staff meetings concerned with handicap identification. (Tr. II-59, 92) He testified further that:

1. Pilot programs to aid in the identification of handicapped pupils had been instituted in the 1974-75 academic year but had been halted. (Tr. II-64)

2. Budgetary allocation for a third child study team had been included in the budget for the 1974-75 year but had been deleted because of a reduction in the Board's proposed budget by the governing body. (Tr. II-85)

3. In his opinion a third child study team was and is necessary. (Tr. II-83)

You are viewing an archived copy from the New Jersey State Library.

4. The position of Director of Special Education had been eliminated in 1975-76 and the work of the Director had been assumed by others. (Tr. II-112; Tr. III-13)

5. A four or five month "lag" in evaluation of pupils referred as possibly handicapped was typical although in emergency cases the delay was usually a lesser one of two or three weeks. (Tr. II-110)

6. Members of the child study teams had been employed for four weeks in the summer of 1975. (Tr. II-78)

The Assistant Superintendent testified on January 30, 1976, that as of that date 105 case referrals were awaiting evaluation and that of these cases some had been in such status since the previous June, a delay of eight months. (Tr. III-5 *et seq.*) He said that at the end of June 1975 a total of 130 pupils were awaiting evaluation but that 37 were evaluated during the summer. (Tr. III-5) He testified that no programs had been abandoned during the year but that pursuant to new rules the time of present personnel had in some instances been diverted to a newly required appeal process. (Tr. III-28) He listed the total number of classified handicapped pupils in the district as 313. (Tr. III-1) He testified that in his opinion the regular classroom teachers of the district could without further special training identify possibly handicapped pupils for referral. (Tr. II-21)

Finally, it is observed that the Branch of Special Education and Pupil Personnel Services, State Department of Education, evaluated the special education programs and services of the district in 1973 and that this report is part of the record. (R-1) The report contains laudatory comments and also many recommendations for improvement. Among the laudatory comments included are those which indicate the school district has excellent physical facilities for handicapped pupils and that special classes and programs are held in integrated settings. (R-1, at p. 4) The report also commended the district for the employment of teachers who exhibit concerned interest and for providing appropriate equipment and materials. (R-1, at p. 4) The report recommended that the district develop a number of new guidelines in its handicapped pupil program as a whole, and that adequate early identification procedures be instituted. (R-1, at p. 14) The report also found an "***immediate need for the consideration of adding one full-time basic child study team.***" (R-1, at p. 19) The efforts of the school district to implement the recommendations of the State report (R-1) are detailed in the document R-3.

At the conclusion of the Association presentation the Board moved for a dismissal of the Petition on the grounds that there was no evidence that the Board had violated the law with respect to the education of handicapped pupils. In the Board's view the absence of specific mandates concerned with early identification of pupils, the proportion of handicapped pupils, the number of child study teams, etc., means that there is no basis for a finding that the law has been violated either directly or as the result of a subjective judgment. (Tr. III-37 *et seq.*)

You are viewing an archived copy from the New Jersey State Library.

The Association argues that an exercise of subjective judgment will indicate that the Board's procedures to identify and classify pupils is inadequate and not in compliance with the statutes. In particular the Association avers that an eight or nine month delay in the evaluation of pupils referred as possibly handicapped is excessive. It further avers that an in-service program for teachers in the identification of handicapped pupils and a better preschool screening and testing program is required.

The hearing examiner has examined all such evidence and argument in the record and finds herein no clear direct violation of the statutes or rules which govern the education of handicapped pupils. The Board has an adopted program for the identification and classification of such pupils. It employs properly certificated personnel in two child study teams to perform the essential work of classification. There are properly equipped and evidently satisfactory physical facilities for a variety of special educational programs. (See R-1.)

A question remains, however, with respect to whether the program for handicapped pupils is indirectly violative of what might be termed reasonable, albeit unwritten, criteria. Must school districts in assessing the adequacy of such programs be substantially influenced by national or state norms or percentages? Is there a timeline with respect to the classification of pupils beyond which such classification may be adjudged as so seriously tardy as to constitute noncompliance with the statutory mandate? Are local boards of education required to institute more formal procedures than evidenced herein for the identification of handicapped pupils?

The hearing examiner finds with respect to such questions only one seriously disturbing fact in the record; namely, that the delay in the classification of pupils identified as possibly handicapped ranges on occasion from four to eight or more months. Such delay appears unreasonable and a possible cause of serious educational deprivation. It is directly attributable to the lack of a third child study team. While the Commissioner found no reason in 1974 to direct that this third team be employed, the finding was grounded in data which was a small part of a larger budget consideration. The more complete record of the instant matter indicates that the school district has gone beyond the point where two properly constituted child study teams can adequately classify all of the pupils referred to them. A third team is required. The hearing examiner so finds. He recommends that the Commissioner direct the Board to establish such a team at the earliest possible time. Three child study teams should make possible not only a more timely classification procedure but also result in the identification of a greater number of handicapped pupils at an early age as a result of an increased interaction between regular and specialized teaching personnel.

Finally, the hearing examiner recommends consideration of the adoption by the Board of a referral procedure which categorizes referrals in terms of the seriousness or likelihood of possible handicap and assigns priorities for classification which are directly related to such categorization. He further recommends that, barring unusual circumstances such as the need for additional

You are viewing an archived copy from the New Jersey State Library.

data from private consultants, etc., a period of 90 days from the time of referral to the completion of classification be established as a guideline with respect to all pupils identified as possibly handicapped but that thirty days be employed as a bench mark in all high priority cases.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner and the exceptions filed thereto by the Board pursuant to *N.J.A.C.* 6:24-1.17(b). Such exceptions reiterate the view that the hearing examiner should have dismissed the instant Petition at the hearing in the absence of proof of statutory violation. It is further maintained that the hearing examiner misconstrued his authority when, having found no "***clear direct violation***" of law, he then raised the question of whether the Board's program with respect to handicapped pupils "***is indirectly violative of what might be termed reasonable, albeit unwritten, criteria.***" The Board then avers that such a question and the conclusions which followed with respect to it constitute the abandonment of a quasi-judicial function and the assumption of a legislative role which is inappropriate. The Board further avers that:

> "***referral to the State Board of Education is the only proper action that either the Hearing Examiner or the Commissioner can take in the present matter since this dispute can only be resolved by legislative action–after a legislative inquiry conducted by the proper rule-making authority, the State Board which can then resolve the question based upon factual and other input supplied by all of the districts throughout the state that would be affected by such a decision which, of course, must reach far beyond the narrow limits of the present case.***"
>
> (Board's Exceptions, at p. 6)

The Commissioner determines, however, that such a constricted or limiting view of his authority to hear and determine controversies arising under the school law pursuant to the statutory mandate (*N.J.S.A.* 18A:6-9) cannot be sustained. The actions of local boards of education have been traditionally subjected to the test of reasonable compliance with law and the Commissioner has often concluded it was necessary to set forth guiding principles in his decisions. The decision in *Ruch v. Board of Education of the Greater Egg Harbor Regional High School District, Atlantic County,* 1968 *S.L.D.* 7, dismissed State Board of Education 11, aff'd New Jersey Superior Court, Appellate Division, 1969 *S.L.D.* 202, was a case at point. Therein the Commissioner was concerned with the due process rights of a nontenure teacher and was constrained to set forth several principles as a guide to that board of education, and other boards, in similar matters. The authority for just such an elucidation was sanctioned in effect by the New Jersey Supreme Court in *Mary Donaldson v. Board of Education of North Wildwood, Cape May County,* 65 *N.J.* 236 (1974) wherein the Court said:

"The board moved to dismiss his [Ruch's] appeal and its motion was

You are viewing an archived copy from the New Jersey State Library.

> granted in an opinion by the Commissioner which set forth *substantive and procedural principles* which appear to have been well designed towards protecting the teacher's legitimate interests without impairing the board's discretionary authority***." (*Emphasis supplied.*) (at 247)

(See also *Barbara Hicks v. Board of Education of the Township of Pemberton, Burlington County,* 1975 *S.L.D.* 332.)

Similarly herein there is a need for the protection of "legitimate interests" in the context of the law which governs the classification and placement of handicapped pupils. *N.J.S.A.* 18A:46 Is it reasonable or unreasonable to conclude, as the hearing examiner did, that a delay of four to eight or more months in the classification of possibly handicapped pupils is potentially deleterious to such pupils to the point of being in conflict with the spirit, if not the letter, of the law?

The Commissioner determines that such conclusion is reasonable and he concurs with it. He further determines that this Board and other local boards are advised to use the benchmark timelines of 30 and 90 days as reasonable parameters for the completion of classification procedures of pupils identified as possibly handicapped and assigned at the time of identification to high or low priority groups.

Finally, while the Commissioner does not conclude that there is need for a direction to the Board to employ a third child study team at this juncture, he strongly recommends that the Board consider such option as one alternative to a solution of the classification problem and proceed to an ultimate solution of such problem without delay.

COMMISSIONER OF EDUCATION

April 20, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Watchung Hills Regional High School District,

Petitioner,

v.

Mayor and Council of the Borough of Watchung, Township Committee of the Township of Warren, Somerset County, and Township Committee of the Township of Passaic, Morris County,

Respondents.

COMMISSIONER OF EDUCATION

AMENDED ORDER

For the Petitioner, Buttermore & Mooney (Robert J. T. Mooney, Esq., of Counsel)

For the Respondents, Mattson, Madden, Polito & Loprete (LeRoy H. Mattson, Esq., of Counsel)

This matter having been opened before the Commissioner of Education by the filing of a Petition of Appeal by the Board of Education of the Watchung Hills Regional High School District, hereinafter "Board," contesting the reduction of its defeated budget by the respondent municipal governing bodies of the Borough of Watchung and the Townships of Warren and Passaic in the amount of $359,183; and

This matter having been amicably settled by the litigants resulting in the Commissioner's Order of November 1, 1976, which was later superseded, as the result of enactment of *c.*113, *L.*1976 (Senate Bill No. 1503) on November 9, 1976, by the Commissioner's Amended Order dated December 29, 1976; and

The Commissioner's Amended Order having made available to the Board $162,125 of unbudgeted State aid and approved an additional $32,058 from additional local tax levy beyond the amount certified by the municipal governing bodies upon their aforementioned reduction of the Board's budget in March 1976; and

The Board having moved on February 18, 1977 to reopen the controverted matter; and

The litigants after further discussion having again resulted in an amicable settlement and the governing bodies having by resolutions dated March 3, 7 and 10, 1977, certified to the respective county boards of taxation the yet additional amount of $62,909 so that local taxation for current expenses of the Board for the 1976-77 school year shall be $2,825,784; and

The Commissioner having reviewed the aforementioned resolutions and determined that the amicable settlement of the matter is in the best interests of a thorough and efficient educational program in the Watchung Hills Regional

You are viewing an archived copy from the New Jersey State Library.

School District and a proper resolution of the controverted matter; now therefore

IT IS ORDERED that the matter be and is hereby dismissed on this 20th day of April 1977.

COMMISSIONER OF EDUCATION

In the Matter of the Deficient and Overcrowded High School Facilities in the South Amboy School District, Middlesex County.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Susan P. Gifis, Esq., Deputy Attorney General

For the Respondent South Amboy Board, George J. Otlowski, Jr., Esq.

For the Intervenor South Amboy Education Association, Mandel, Wysoker, Sherman, Glassner, Weingartner & Feingold (Jack Wysoker, Esq., of Counsel)

For the Respondent Spotswood Board, Golden, Shore & Paley (Philip H. Shore, Esq., of Counsel)

For the Respondent Woodbridge Board, Hutt, Berkow & Hollander (Stewart M. Hutt, Esq., of Counsel)

For the Respondent South River Board, Wilentz, Goldman & Spitzer (Gordon J. Golum, Esq., of Counsel)

This matter has been opened before the Commissioner of Education by an Order requiring the Board of Education of the Borough of South Amboy, hereinafter "South Amboy Board," to show cause why the Commissioner should not direct certain remedial measures to correct reported deficient and overcrowded conditions existing in the H.G. Hoffman High School.

The genesis of this matter may be summarized as follows: Complaints were filed on behalf of citizens of the South Amboy School District, alleging that the aforesaid high school has been operating on a double session schedule for an extended period of time, thus curtailing and impairing the educational program available to enrolled pupils, and, further, that there exist certain physical

You are viewing an archived copy from the New Jersey State Library.

inadequacies in the schoolhouse. Pursuant to *N.J.S.A.* 18A:4-24, the Commissioner directed the Middlesex County Superintendent of Schools to conduct a thorough investigation into the operation of the South Amboy Board's high school. The report (Exhibit P-1) was submitted on April 29, 1975.

Hearings in this matter were held on July 18 and 28, 1975, August 1 and 4, 1975, September 22, 1975 and March 21, 1977, before the Assistant Commissioner of Education.

The first day of hearing included testimony by the Middlesex County Superintendent of Schools. The County Superintendent testified that the South Amboy School District had completed a self-study evaluation of the high school during the 1974-75 school year as required by Department of Education regulations. At the time such self-evaluations, with monitoring visitations by a team of professional educators from the Department and appropriate county office, were conducted every five years. The County Superintendent testified that the required monitoring visitation, under his direction, coincided with a directive to him from the Commissioner to thoroughly examine the curricular program and physical facilities of the high school. (Tr. I-34-37)

The self-study evaluation report conducted by teaching staff members of the high school was received in evidence (Exhibit R-1), as was the master schedule of course offerings for the 1975-76 academic year. (Exhibit R-2) The report compiled by the County Superintendent and the visiting team, dated April 29, 1975 (Exhibit P-1), which is eleven pages in length, was subjected to cross-examination by the South Amboy Board. (Tr. I-38-68) The County Superintendent transmitted a letter under date of May 27, 1975 (Exhibit P-3) to the principal of the H.G. Hoffman High School which contained an eleven page summary of the visiting team's report, including a list of ten commendations, twenty-three specific deficiencies in the site and schoolhouse, thirty-six separate deficiencies in the area of curriculum and instruction, and eleven other general comments and deficiencies.

The portion of the visiting team's report (Exhibit P-1) dealing with deficiencies in physical facilities of the schoolhouse was based upon a report submitted to the County Superintendent by the Director of the Bureau of Facility Planning Services, Division of Field Services, Department of Education, under date of April 18, 1975. (Exhibit P-2) This report was compiled following an on-site inspection of the high school by both the Director and chief safety consultant of the Bureau, as part of the visiting team. This eleven page report (Exhibit P-2), which was signed by both officials, was subjected to cross-examination at the hearing. (Tr. I-69-115; Tr. II-12-63, 65-66)

The Superintendent of Schools of the South Amboy School District and the principal of the H.G. Hoffman High School testified extensively throughout the entire third and fourth days of hearing, and part of the second day, in regard to the elementary and high school enrollments, curricular offerings, the master schedule, cocurricular activities, intermural and interscholastic athletic programs, school facilities, and the scheduling of the various grades on double sessions. (Tr.

You are viewing an archived copy from the New Jersey State Library.

II-91-140; Tr. III & IV) According to the Superintendent, the elementary grades, kindergarten through six, are on two sessions: 7:50 a.m. to 12:00 noon and 12:10 p.m. until 4:30 p.m. The high school operates a morning session for grades ten, eleven and twelve from 7:55 a.m. until 12:15 p.m., and an afternoon session from 12:25 p.m. until 4:45 p.m. for grades seven, eight and nine. (Tr. II-107) The South Amboy Board submitted documentary evidence including the previously mentioned self-study evaluation report for the 1974-75 academic year (Exhibit R-1), the master schedule of curricular offerings for grades seven through twelve (Exhibit R-2), a proposed pupil testing program for grades seven through twelve (Exhibit R-3), a federal project application for a career resource center for the 1974-75 school year (Exhibit R-4), a listing of maintenance projects expected to be completed by the end of the 1974-75 school year or during the first three months of the 1975-76 school year (Exhibit R-5 and R-5A), and a photograph of a renovated typing and business education room. (Exhibit R-6) Each item of reported deficiency was addressed by testimony of either the Superintendent or the high school principal.

Prior to the first day of hearing in this matter, the South Amboy Board filed a Notice of Motion, with supporting affidavit and Brief, requesting: (1) the joining of the Board of Education of the Township of Woodbridge, the City of South Amboy, a municipal corporation, and the South Amboy Education Association; (2) a bifurcation of the merits of the issue from the consideration of any necessary appropriate remedy; and (3) the permitting of discovery in the form of sworn depositions of all persons who participated in the investigation of the adequacy of the facilities. By Order dated July 15, 1975, the Commissioner denied the South Amboy Board's Motion in all respects.

On the first day of hearing the South Amboy Education Association moved for permission to intervene. By letter order dated July 24, 1975, the Assistant Commissioner granted permission to intervene on the limited issue of the effect which a proposed remedy might have upon the interests of teaching staff members.

In response to a Motion filed by the Office of the Attorney General on behalf of the State, the Commissioner issued an Order dated September 2, 1975, directing the Board of Education of the Township of Woodbridge, hereinafter "Woodbridge Board," to show cause why it should not be joined as a party, in view of the fact that the County Superintendent had recommended that the Woodbridge School District receive certain grades of pupils on a sending-receiving relationship basis, if such a remedy were adopted by the Commissioner.

The South Amboy Board filed a Notice of Motion under date of September 16, 1975, to join twelve school districts, including Woodbridge, as parties in the instant matter. Each of the eleven local boards of education, excluding Woodbridge, was advised by the Assistant Commissioner not to appear at the September 22, 1975 hearing.

The fifth day of hearing in this matter was devoted to testimony by the

You are viewing an archived copy from the New Jersey State Library.

County Superintendent concerning whether the Woodbridge School District could provide a remedy, if found necessary, by receiving the entire seventh, eighth and ninth grades from the South Amboy School District. The County Superintendent testified that his inquiries had led him to conclude that the Woodbridge Board could provide such a remedy, if necessary, by accepting the aforementioned grades of pupils in one of the district's junior high schools. (Tr. V-8)

The Assistant Commissioner heard argument by the Woodbridge Board as to why it should not be joined as a party to these proceedings, and ruled that the Woodbridge Board would be joined as a party, but would not be required to immediately present its proofs why it could not accept pupils from the South Amboy School District. Counsel for the South Amboy Board argued his Motion to join eleven other school districts for the purpose of determining which district or districts could provide a remedy, if such was found necessary. The Motion was granted to the extent that the parties were directed to examine the enrollments and functional capacities of school districts in the vicinity of South Amboy and recommend those districts which could possibly receive pupils, on a sending-receiving basis, from the South Amboy School District.

A conference of counsel was held on April 14, 1976, including the Spotswood School District, at which time specific issues were delineated regarding possible remedies to be considered at the resumption of hearings. As a result of the conference, an Order was issued under date of June 3, 1976, joining the Boards of Education of the Spotswood and South River School Districts. Thereafter, the Boards of Education of Woodbridge and South River filed Motions to be dismissed as parties to the proceedings. The Spotswood Board filed a Motion requesting the Commissioner to direct the South Amboy Board to enter into a lease agreement for the Memorial School owned by the Spotswood Board, as a remedy for the overcrowded conditions in the South Amboy's high school.

A second conference of counsel was held on March 10, 1977. Subsequently, an Order was issued by the Commissioner under date of March 17, 1977, which held, *inter alia,* that the record in this matter contained sufficient *prima facie* evidence to support the conclusion that the H. G. Hoffman High School suffers from overcrowding and inadequate facilities to the degree that it is necessary to determine an appropriate remedy and, further, that a hearing would be held on March 21, 1977 on such issue.

During the sixth day of hearing the Superintendent of the South Amboy School District testified that he had examined the vacant schoolhouse known as the Memorial School, which is owned by the Spotswood School District, and determined that this former middle school could adequately house South Amboy's grades five through eight, totaling 272 pupils. (Tr. VI-45-47; Exhibit P-10) The Superintendent also testified that the leasing of the Memorial School for South Amboy's grades five through eight would result in a return to a normal school day program in the district, which has had double session programs for various grades for sixteen years. At the present time all grades one through

You are viewing an archived copy from the New Jersey State Library.

twelve attend school on double sessions. According to the Superintendent, a normal school day program for grades nine through twelve would permit a substantial increase in curricular offerings in the high school, as well as providing increased instructional time for grades one through four and the pupils enrolled in the four year high school program. (Tr. VI-47-49) The Superintendent's testimony also disclosed that cost estimates for educational program changes which would result from a normal school day schedule had been made and incorporated into the South Amboy Board's proposed 1977-78 school budget. (Tr. VI-35-40)

The Commissioner has reviewed all of the evidence and arguments of the various parties in the matter herein controverted and finds and determines that the reported overcrowding and deficient facilities of the H. G. Hoffman High School are true and continue to seriously impair and curtail the efforts of the South Amboy Board and its administrative and instructional staff to offer an appropriate and satisfactory program of education to the pupils served by both the high school and the elementary school. These deficiencies are sufficiently detailed in the record (Exhibits P-1, P-2, P-3) and require no further repetition. In the judgment of the Commissioner, the efforts made by the South Amboy Board, together with its administrative and instructional staff, to overcome the severe handicaps of both double sessions and inadequate school facilities have been commendable and serve as an excellent example of a combined dedication to provide the best possible system of education for the pupils enrolled in the public schools. Unfortunately, such efforts cannot overcome the existing condition of woefully inadequate school facilities.

The Commissioner finds, and so holds, that the best interests of the pupils, their parents, and the community at large will best be served by a transfer of South Amboy pupils enrolled in grades five through eight to the Memorial School located in the Spotswood School District. Accordingly, the South Amboy Board is hereby directed to forthwith enter into a leasing agreement with the Spotswood Board of Education for the use of its Memorial School, beginning September 1977, and continuing until the South Amboy Board is able to provide adequate school facilities for all of its pupils enrolled in grades kindergarten through twelve on a normal school day basis.

The South Amboy Board is further directed to immediately arrange for adequate transportation and a school lunch program for the pupils who shall be attending the Memorial School beginning September 1977. Additionally, the South Amboy Board shall take all necessary steps to implement a normal school day for all grades one through four in the elementary school and grades nine through twelve in the high school, beginning September 1977.

The Commissioner also directs the South Amboy Board to continue its efforts to provide adequate school facilities, on a normal school day basis, for all resident pupils enrolled in the public schools of the district, as the final solution to its problems of overcrowding and inadequate facilities. All other parties in this matter, with the exception of the Spotswood Board of Education, are hereby dismissed from these proceedings.

You are viewing an archived copy from the New Jersey State Library.

The Commissioner will require the South Amboy Board of Education to submit a progress report no later than June 30, 1977 in response to the hereinbefore stated directives.

COMMISSIONER OF EDUCATION

April 22, 1977

Board of Education of the City of Hoboken,

Petitioner,

v.

Mayor and Council of the City of Hoboken, Hudson County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Robert W. Taylor, Esq.

For the Respondent, Lawrence E. Florio, Esq.

Petitioner, the Board of Education of the City of Hoboken, hereinafter "Board," appeals from an action of the Mayor and Council of the City of Hoboken, hereinafter "Council," taken pursuant to *N.J.S.A.* 18A:22-37 certifying to the Hudson County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget which was rejected by the voters. The facts of the matter were adduced at a hearing conducted on December 27 and 28, 1976 at the office of the Hudson County Superintendent of Schools, Jersey City, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

At the annual school election held March 9, 1976, the Board submitted to the electorate a proposal to raise $4,025,278 by local taxation for the current expense costs of the school district. This proposal was rejected by the voters and, subsequently, the Board submitted its budget to Council for its determination of the amounts necessary for the operation of a thorough and efficient school system in the City of Hoboken for the 1976-77 school year, pursuant to the mandatory obligation imposed on Council by *N.J.S.A.* 18A:22-37.

After consultation with the Board, Council made its determinations and certified to the Hudson County Board of Taxation an amount of $3,345,278 for

You are viewing an archived copy from the New Jersey State Library.

current expenses, a reduction of $680,000. The pertinent amount in dispute is shown as follows:

	Current Expense
Board's Proposal	$4,025,278
Council's Proposal	3,345,278
Amount Reduced	$ 680,000

The Board contends that Council's action was arbitrary, unreasonable, and capricious and documents its need for restoration of the reductions recommended by Council with written testimony and further oral exposition at the time of the hearing. Council maintains that it acted properly and after due deliberation and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system. Council also supports its position with written testimony. As part of its determination, Council suggested specific line items of the budget in which it believed economies could be effected as follows:

CHART I

Account Number	Item	Board's Proposal	Council's Proposal	Amount Reduced
CURRENT EXPENSE:				
J100	Sals., Admin.	$ 98,350.00	$ 83,350.00	$ 15,000.00
J120	Contracted Svcs.	15,000.00	10,000.00	5,000.00
	Architect Fees	15,000.00	10,000.00	5,000.00
J130	Other Expenses	28,000.00	23,000.00	5,000.00
J213	Sals., Instr.	6,555,293.60	6,005,293.60	550,000.00
J300-400	Attendance & Health Svcs.	27,750.00	26,750.00	1,000.00
J500	Transportation	32,000.00	19,000.00	13,000.00
J600	Operations	708,428.55	671,428.55	37,000.00
J810	Tchrs. Pens. Fund	218,828.33	211,828.33	7,000.00
J820	Ins., Judgments	366,000.00	361,000.00	5,000.00
J900	Food Svcs.	731,435.00	701,435.00	30,000.00
	Breakfast	145,153.10	138,153.10	7,000.00
TOTAL CURRENT EXPENSE		$8,941,238.58	$8,261,238.58	$680,000.00

The Board's attorney testified that he is a regular employee in the school district and a certified public accountant. Regular deductions are made from his monthly salary for pension, F.I.C.A., income tax, etc. (Tr. II-115) He testified that he acts, also, as the Board's attorney in legal matters and other transactions, and is responsible for the preparation of the school budget. He testified that he has been the Board attorney for thirteen years and has been associated with the Board more than eighteen years. His title is Administrative Officer/Attorney for the school district. (Tr. I-31-33, 40)

J100 Salaries, Administration

The record shows that these administrative costs have increased rather dramatically in the past two years. The Board's total expenditure in this line item for the 1974-75 school year was $263,943.72. The amounts budgeted in this same line item for the 1975-76 and 1976-77 school years were $278,162

You are viewing an archived copy from the New Jersey State Library.

and $327,315.80. The current increase in this account is $49,153.80 more than that budgeted last year. (P-1: Exhibit B, at p. 26)

Council recommended economies in three salaried administrative positions and proposed eliminating one new clerk for a total reduction of $15,000.

The hearing examiner recommends eliminating the new clerk's position at a saving of $6,615. The remaining $8,385 is for contracted salaries and must be restored. *Board of Education of the City of Newark v. City Council and the Board of School Estimate of the City of Newark, Essex County,* 1970 *S.L.D.* 197, 201

The hearing examiner recommends that $8,385 in this line item be restored.

J120 Contracted Services, Architect Fees

Council recommended that $10,000 be reduced, $5,000 for election costs and $5,000 for architect fees. The record reveals that election costs have averaged approximately $12,760 for the past three years and the Board budgeted $15,000 for this line item. The advertised budget shows an increase in contracted services for the past three years as follows:

1974-75	$21,399.84	(actual)	
1975-76	$30,000.00		
1976-77	$40,000.00		(P-1, at p. 26)

The Board's written testimony adequately supports its need for approximately $13,000 for election costs. A reduction of $5,000 in contracted services is recommended considering a total line item allocation and the increases over the past two years.

The hearing examiner finds $5,000 unnecessary for this line item.

J130 Other Expenses

These expenses have increased in three years as follows:

1974-75	$ 69,686.82	(actual)	
1975-76	$ 71,125.00		
1976-77	$111,400.00		(P-1, at p. 26)

Council recommended that Board expenses be reduced from $12,000 to $10,000 and that dues, fees and memberships be reduced from $16,000 to $13,000 for a total reduction in this line item of $5,000. Although the payment of dues is mandatory, a reduction of $5,000 is also nominal when considering this entire line item.

The hearing examiner notices, also, the expenditure of moneys by the Board for numerous conferences and dinner meetings. These expenditures were approximately $3,101.80. (Tr. I-103) At the very least, the wisdom of these

You are viewing an archived copy from the New Jersey State Library.

expenditures must be questioned if not the Board's authority to so frequently hold dinner meetings at the public expense and incur other questionable expenses, *post.* The evidence shows a total expenditure of $21,027.71 for these meetings, travel, fees for workshops, and negotiations. Although some of these expenditures are adequately justified, the hearing examiner cannot recommend the expenditure of moneys for personnel dinner meetings. In evidence is a record of fourteen dinner meetings showing varied expenditures. In one instance, a dinner meeting cost $45.10. Several other dinner meetings cost more than $100, some more than $200 and others more than $300. Additionally, the Board's records disclose $7,910 for convention expenses, and $339.50 for printing Christmas cards. (P-1, at pp. 38-39; Tr. I-148-149)

In summary, the amount budgeted for this line item is $111,400, an increase of $40,275 over the amount budgeted for last year. A $5,000 reduction can be easily absorbed, especially when considering the other questionable expenditures approved by the Board.

The hearing examiner recommends, therefore, that this line item be reduced by $5,000.

J213 Salaries, Instruction

The largest single reduction suggested in this line item is for a decrease in professional staff. The record discloses that the school district's enrollment figures are relatively the same for 1976-77 as they were for 1975-76. The hearing examiner cannot reconcile the Board's written and oral testimony, which states that ten (10) instructional classes were consolidated and ten(10) vacancies were not filled, with the Assistant Superintendent's testimony that the staff size has increased from four hundred eleven in 1975-76 to four hundred thirty-three in 1976-77. There are also three additional administrators and three additional clerks for the 1976-77 school year. (P-1, at pp. 27, 41; Tr. I-56-58)

Although the Board adequately supports its need and obligation to pay negotiated salaries pursuant to statute (*N.J.S.A.* 18A:29-4.1; *Newark, supra*), there is no convincing testimony that an additional twenty-two (22) teachers are required to operate a thorough and efficient system of schools in the City of Hoboken.

The hearing examiner recommends that one half the cost of ten of these additional teachers be reduced from the budget at $11,196 each, the minimum salary in the school district. This reduction will provide a partial saving which should have been reflected in the consolidation of ten classes, as the board testified. (P-1, at p. 27; Tr. I-56-58)

This recommended reduction is $55,598 (the salary of ten (10) teachers at the beginning salary of $11,196 prorated for five months since more than one half the school year is completed).

J300-400 Attendance and Health Services

The Board testimony is that this service is primarily the cost for summer

You are viewing an archived copy from the New Jersey State Library.

work examinations. There is no showing that the thorough and efficient operation of the schools will be affected by reducing this line item by $1,000 from the budget which provides the amount of $71,234.10, an increase nearly $9,000 more than that provided last year. (P-1, at p. 26)

The hearing examiner recommends that Council's recommended reduction be sustained.

J500 Transportation

The record discloses that the Board has already purchased a school bus and hired a driver, items which were proposed reductions by Council. An increase in the number of handicapped pupils is adequate justification to recommend approval of $6,000 for a bus driver and $5,000 for a school bus. It is not recommended that $2,000 for other expenses be restored.

J600 Operations

The increase in the operations line item is $260,888 beyond the amount budgeted in 1975-76. Council's recommended reduction is $37,000, which represents janitors' salaries. (P-1, at pp. 48-49) The Board testified that eight (8) "janitorial-custodial" persons were added at an increase of more than $72,000. (Tr. II-9) There was also an increase in the number of cleaning personnel from five to ten. (Tr. II-20)

The hearing examiner cannot find that the Board will be unable to operate a thorough and efficient system of schools by adopting the proposed reductions. He recommends that the proposed reduction of $37,000 be sustained.

J800 Fixed Charges

A reduction of $7,000 was proposed for employees' retirement. The reduction of one half the beginning salary for ten teachers in item J213, *ante*, if adopted, should be accompanied by one half the proposed reduction of these retirement moneys.

The hearing examiner recommends that $3,500 be restored in this line item and that a reduction of $3,500 be sustained.

The further proposed reduction of $5,000 is contested by the Board which argues that it anticipates increased costs in Blue Cross-Blue Shield premiums. The Board budgeted $332,000 for this line item, an increase of $34,000 over the amount expended last year. A reduction of $5,000 still provides for an increase of $29,000. Further, one half the school year is complete and the Board concedes that its estimate is slightly higher than the actual increase for the 1976-77 school year. (Tr. II-40)

The hearing examiner recommends that $5,000 be reduced in this line item.

You are viewing an archived copy from the New Jersey State Library.

J900 Food Services

The amount budgeted in this line item for 1975-76 was $475,440. The amount budgeted for 1976-77 is $876,588.10, an increase of $401,148.10 in one year. The Board has failed to sustain its contention that part of this increase is for a State mandated hot lunch program.

The hearing examiner recommends that the reduction of $37,000 be sustained.

A recapitulation follows:

CHART II

Account Number	Item	Amount of Reduction	Amount Restored	Amount Not Restored
CURRENT EXPENSE:				
J100	Sals., Admin.	$ 15,000	$ 8,385	$ 6,615
J120	Contracted Svcs.	10,000	5,000	5,000
J130	Other Expenses	5,000	–0–	5,000
J213	Sals., Instr.	550,000	494,402	55,598
J330-400	Attendance and Health Services	1,000	–0–	1,000
J500	Transportation	13,000	11,000	2,000
J600	Operations	37,000	–0–	37,000
J810	Tchrs. Pens. Fund	7,000	3,500	3,500
J820	Ins., Judgments	5,000	–0–	5,000
J900	Food Svcs.	30,000	–0–	30,000
	Breakfast	7,000	–0–	7,000
TOTALS		$680,000	$522,287	$157,713

In summary, the hearing examiner recommends a total restoration of $522,287.

In addition to these line item considerations, Council questioned certain aspects of the Board's current expense free appropriation balances.

The auditor testified that two reserves were set up from the current expense free appropriation balance. One such reserve was for $125,000. Through his oversight, this amount was not included in the June 30, 1975 audit report; therefore, it went unreported for the 1974-75 fiscal year, and the June 30, 1975 audit report was in error in this specific amount of $125,000. The Board's testimony regarding this specific amount is that it has now been spent for the purpose it was originally appropriated. (Tr. I-124-127; Tr. II-133) It was thereafter reported as a free appropriations balance in the June 30, 1976 audit report. (See: Audit Reports, Exhibits Y, Z.)

The second reserve set up by the Board was accomplished as follows:

Subsequent to the defeat of the capital outlay question in the amount of $222,000 at the election held February 13, 1974, the Board requested, and Council approved, the rejected expenditure. The Board therefore acquired the additional funds it found necessary to complete construction of its new

You are viewing an archived copy from the New Jersey State Library.

mini-school. (Exhibits M, N – Board request and Council's resolution; Tr. I-134-135) This capital outlay amount of $222,000 also does not appear in the June 30, 1975 audit report. (Exhibit Y) It is reported, however, in the June 30, 1976 audit report as a current expense free appropriation balance. (Exhibit Z; Tr. I-128, 130)

It is apparent to the hearing examiner that neither the reserve of $125,000 nor $222,000 was reported in the audit or revealed to the electorate in the City of Hoboken during the 1975-76 school year. Only after the audit report of June 30, 1976, did these reserves appear for public scrutiny. (Tr. I-128)

Regarding the $222,000 reserve specifically, the auditor testified that he required a legal opinion in order to include this amount as a special reserve. Such an opinion was supplied by the Board attorney who prepares the school budgets. (See Exhibit O, letter dated November 1, 1976.) Thereafter, the $222,000 is reported as a current expense free appropriation balance. (Exhibit Z) It was initially approved by Council as a capital outlay expenditure. (Exhibit N – Council resolution)

It is not clear to the hearing examiner how these two reserve items were accounted for during the year they were not included in the annual audit. The audit report regarding these balances should be subject to a special audit by representatives of the Commissioner from the Division of Administration and Finance of the State Department of Education. The record does not disclose whether or not the auditor reported these errors of omission of the two reserves to the Board as required by *N.J.S.A.* 18A:23-9. If he did not, the hearing examiner recommends that the Board demand a complete public review of this matter with the auditor forthwith. *N.J.S.A.* 18A:23-5

Notwithstanding the written opinion of the Administrative Officer/ Attorney (Exhibit O) the hearing examiner can find no authorization in the statutes for a transfer of capital outlay moneys to the current expense account except by placing that question on the ballot for approval by the electorate. Once funds are appropriated as current or capital expenditures, they must be expended in the categories in which the moneys were approved by the voters, or Council in the instant matter. *N.J.S.A.* 18A:22-8 (See also *Mayor and Council et al. v. Board of Education of the City of Pleasantville et al.,* 1938 *S.L.D.* 223, 226 (1931)):

> "***It is evidently the legislative intent that definite amounts for specific purposes in the capital outlay account are not to be used for any other than the specific purpose and the small balances which remain after the purpose is accomplished are to go to an annual appropriation account to decrease the amount to be raised in succeeding annual appropriations.***"

Therefore, such a transfer of $222,000 in the audit is improper in the opinion of the hearing examiner, and he recommends that the Commissioner direct the Board to place that $222,000 reserve in the capital outlay account for which it was originally appropriated until a transfer is approved by the electorate.

You are viewing an archived copy from the New Jersey State Library.

An additional request to have the sum of $1,500,000 added to its budget was accepted by the hearing examiner as an amendment to the Board's Petition of Appeal. (See letters dated July 15 and 27, and September 3, 1976.) The history which brought about the request for the additional amount of $1,500,000 follows:

The Board's witnesses testified that it had not been paying its teachers according to the statutory scheme for those teachers who selected the summer payment plan, and that the Board has, in effect, been in violation of *N.J.S.A.* 18A:29-3 for the past thirty or forty years. (Tr. II-166, 168) The practice of the Board has been to pay its teachers nine-tenths of their salaries earned between the period September 1 through June 30 in each school year, and place such deductions from their salaries in the Board's general unencumbered balance. (See Attorney General's Opinion, July 9, 1976; Tr. II-169.) Teachers were paid the remaining salary due them after July 1 at the higher rate of pay for teachers in the district in this new fiscal year and not at the lower rate of pay they actually earned in the preceding fiscal year. (Tr. II-171) Accordingly, the Board has been paying to teachers who elected the summer payment plan a larger sum than was deducted.

By order of the New Jersey Supreme Court in *Robinson v. Cahill,* May 13, 1976, the Board found that it was unable to pay its teachers after July 1, 1976, because, although it had deducted ten percent of each teacher's salary during the academic year, it had not deposited those accumulated deductions in a special interest bearing account as required by law. *N.J.S.A.* 18A:29-3; *N.J.A.C.* 6:20-2.11; *N.J.A.C.* 6:3-1.6

The Board sought the aforementioned Attorney General's Opinion which clearly states that the practice the Board has been following regarding the payment of salaries to its teachers during the summer months is illegal. By letter of July 12, 1976, the Assistant Commissioner of Education in charge of Controversies and Disputes directed the Board to adopt a new summer payment plan "strictly in accordance with statutory and administrative code requirements."

The hearing examiner finds that the Board now has a shortage of money caused by paying its teachers their payroll deductions for summer salaries for the 1975-76 school year from moneys budgeted for the 1976-77 school year. Further, the current budget contains no provision for paying teachers in the summer of 1977 with moneys contained in the 1976-77 school budget unless the Board is now complying with its obligation to deduct ten percent of each teacher's salary per month and depositing those accumulated deductions in a special interest bearing account.

The hearing examiner can find no authority by which the Commissioner can add money to a budget *after* it has been submitted to the electorate at the annual school election. The hearing examiner recommends that the Board's request for this supplemental appropriation be denied and that the Board be directed to include in all future budgets those amounts necessary to pay all its

You are viewing an archived copy from the New Jersey State Library.

obligations. In *Newark, supra,* the Commissioner commented as follows:

> "***Petitioner requests the Commissioner to order respondent to certify an additional amount of $4,300,000 to provide the funds necessary to implement a contract it negotiated with its employees. From the testimony it appears that the entire cost of the agreement runs to $4,800,000, but petitioner states that it can apply $500,000 from its budgeted salary account to reduce the sum needed to $4,300,000. This amount was not included in petitioner's annual budget for the reason that the budget was prepared, delivered to the Board of School Estimate and acted upon in early February as required by law, and the negotiations which resulted in the agreement for which petitioner now seeks funds were not concluded until sometime thereafter. Petitioner seeks a supplementary appropriation therefore over and above its annual budget estimates.
>
> "Such a request is beyond the scope of the Commissioner's authority. While the Courts have clearly established the power of the Commissioner to hear and decide appeals from alleged excessive reductions made by municipal governing bodies of annual school budgets, he finds no such authority with respect to supplemental appropriations. The law on the question of supplemental appropriations has been clearly set forth in *Newark Teachers' Association v. Newark Board of Education,* 108 *N.J. Super.* 34 *(Law Div.* 1969). In that case the Board of Education completed a salary agreement with its teachers in August and certified the amount needed to the Board of School Estimate. That body refused to endorse the appropriation, whereupon the Teachers' Association filed suit. In deciding the issue the Court observed that there is no statutory provision permitting a board of education to amend its annual budget after it has been approved. It noted that additional funds may be requested and appropriated only under *N.J.S.A.* 18A:22-21 to 23.***" (at 201)

Similarly, in *Board of Education of East Brunswick v. Township Council of East Brunswick,* 48 *N.J.* 94 (1966), cited with approval in *Robinson v. Cahill* (Robinson V), 69 *N.J.* 449, 461 (1976), the Supreme Court of New Jersey iterated this principle as follows:

> "***[T]he function of the Commissioner under *R.S.* 18:3-14 is not to sit as an original budget making body***." (48 *N.J.* at 106)

And,

> "***[T]he Commissioner in deciding the budget dispute here before him *** will direct appropriate corrective action by the governing body or fix the budget on his own *within the limits originally proposed by the board of education.****" (*Emphasis supplied.*) (48 *N.J.* at 107)

A summary follows:

The hearing examiner recommends that $522,287 be restored to the

You are viewing an archived copy from the New Jersey State Library.

Board's budget as shown in Chart II, *ante,* and that this amount be raised by an additional tax certification to the Hudson County Board of Taxation. There is no unbudgeted State aid for which the Board is eligible since the Board anticipated full State funding and in fact received its full State aid. The hearing examiner also recommends that the Commissioner direct the Division of Administration and Finance to conduct a complete audit of the business practices of the Board and that the Board be directed to administer a summer payment plan for its teachers in accordance with the appropriate statutes. (See Attorney General's Opinion, *ante.*)

Finally, if the Board has in fact been deducting ten percent of each teacher's salary each month and placing those accumulated deductions in its current expense balance, as the Administrative Officer/Attorney testified, then that accumulated balance should be sufficient to pay all its teachers who elected the summer payment plan. (Tr. II-170) Apparently, the moneys are not now available because deductions from teacher salaries have been utilized for other school district expenses for many years. The hearing examiner recommends that the Commissioner consider additional appropriate directives to the Board, if required, subsequent to the findings and the report of the Division of Administration and Finance.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner and the exceptions filed thereto by the litigants pursuant to *N.J.A.C.* 6:24-1.17(b). The Board seeks further restoration of moneys beyond those recommended for restoration by the hearing examiner; conversely the governing body seeks additional reductions.

In *Contracted Services, Architect Fees,* J120, the record shows the amounts recommended for restoration are reasonable and in accordance with the previous years' expenditures. The Commissioner will not limit his review of the budget to only those specific items recommended for reduction by Council as the Board requests. In *East Brunswick Board of Education v. Township Council of East Brunswick,* 48 *N.J.* 94 (1966), the Court commented as follows:

> "***[I]f [the Commissioner] finds that the governing body's budget is not so inadequate, even though significantly below what the Board of Education had fixed or what he would fix if he were acting as the original budget-making body under *R.S.* 18:7-83, then he will sustain it, absent any independent showing of procedural or substantive arbitrariness.***" (at 107)

The Commissioner cannot conclude that the reductions in this budget, after the recommended restorations, are so significant that the educational process will be impaired. Accordingly, no further restoration will be made to this line item.

You are viewing an archived copy from the New Jersey State Library.

The Commissioner does not agree that Title I teachers are not included in the Board's budget as suggested in its exceptions regarding *Salaries-Instruction,* J213. The Commissioner has previously ruled that, regardless of the source of funding for their salaries, all teaching staff members enjoy the same legal status once employed by a local board of education. *Jack Noorigian v. Board of Education of Jersey City, Hudson County,* 1972 *S.L.D.* 266, aff'd in part/rev'd in part, State Board of Education 1973 *S.L.D.* 77; *Henry Butler et al. v. Board of Education of the City of Jersey City, Hudson County,* 1974 *S.L.D.* 890, aff'd State Board of Education 1975 *S.L.D.* 1074, aff'd in part/rev'd in part Docket No. A-2803-74 New Jersey Superior Court, Appellate Division, July 9, 1976 (1976 *S.L.D.* 1124); *Ruth Nearier et al. v. Board of Education of the City of Passaic, Passaic County,* 1975 *S.L.D.* 604 Accordingly, this recommended reduction and those recommended reductions in line items J600 *Operations* and J900 *Food Services* will be sustained as recommended in the hearing examiner report. *East Brunswick, supra*

The Board's exception regarding the auditor's responsibilities erroneously cites the wrong statutes. The hearing examiner's report is correct, citing *N.J.S.A.* 18A:23-5 and 23-9. The Board is directed, therefore, to conduct a review of the June 30, 1975 and June 30, 1976 audit reports at a public meeting specifically regarding the contested reserve balances of $125,000 and $222,000.

The remaining exceptions filed by the Board are in reference to free appropriations balances and the Board's request to have its budget increased by $1,500,000. This latter request for funding is to replace moneys which were not properly accounted for in past years. In this regard, the Commissioner will adopt the report of the hearing examiner. There will be no further restorations.

Likewise, Council's exceptions to the hearing examiner's report are not persuasive. The record shows that the budget recommended by the hearing examiner is minimal in meeting the requirements of *East Brunswick, supra.* This budget is now in accord with the words of the Commissioner in *Board of Education of the City of Plainfield v. City Council of the City of Plainfield et al., Union County,* 1974 *S.L.D.* 913, wherein he stated that:

> "***[T]he constitutional requirement which imposes on local school districts the obligation to conduct 'thorough and efficient' programs of education *** must be interpreted to mean that *as a minimum such programs are entitled to a continuing sustenance of support, one marked by constancy and not by vascillation of effort.****" (*Emphasis supplied.*) (at 920-921)

The Commissioner adopts the report and recommendations of the hearing examiner and sets forth the following directives:

1. The Division of Administration and Finance will conduct an audit of the business practices of the Board.

2. The Board is directed to prepare for that audit a list giving the name of

You are viewing an archived copy from the New Jersey State Library.

each employee, his/her position and place of employment (i.e., school, Board office, teacher, bus driver, etc.) and salary. A copy of this list is to be mailed directly to the Commissioner within thirty days of the date of this decision.

3. The Board shall prepare a complete record concerning the mini-school, detailing all contractual obligations, encumbrances, cash disbursements and balances, if any, since the inception of the project.

COMMISSIONER OF EDUCATION

April 26, 1977

Roger Tesi,

Petitioner,

v.

Board of Education of the Township of Union and Thomas Cushane, Ocean County,

Respondents.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Lawrence Silver, Esq.

For the Respondents, Tanner & Tanner (Francis Tanner, Jr., Esq. of Counsel)

Petitioner was an unsuccessful candidate for the position of vice-principal/ curriculum coordinator which was created by the Board of Education of the Township of Union, hereinafter "Board." He alleges that the actions taken by the Board in finally selecting another candidate, Thomas Cushane, for the position were illegal and he avers they should be set aside and the position vacated.

A hearing was conducted on March 11, 1976 in the office of the Ocean County Superintendent of Schools, Toms River, before a hearing examiner appointed by the Commissioner of Education. Several documents were submitted in evidence and Briefs were filed subsequent to the hearing. The report of the hearing examiner follows:

Thomas Cushane was appointed by the Board to serve in the newly created position for the 1975-76 school year, beginning in August 1975. (Board minutes, June 30, 1975) Petitioner has objected in his Reply Brief to the introduction of this document, which was attached to the Board's Brief, on the grounds that it

You are viewing an archived copy from the New Jersey State Library.

was not admitted in evidence at the hearing. The hearing examiner takes cognizance of the fact that Board minutes are public documents and in this instance they will be recognized for the purpose of fully informing the Commissioner of all the facts.

Petitioner's specific contentions are that: (1) all actions taken by the Board at a meeting held on June 17, 1975, were illegal and void in that the meeting was convened in contravention of *N.J.S.A.* 18A:10-6 and *N.J.S.A.* 18A:18-1, and (2) the vote of one Board member was illegal in that it was a breach of his fiduciary duty.

Regarding petitioner's first contention, *N.J.S.A.* 18A:10-6 requires that all Board meetings begin "not later than eight P.M.," and the record shows that the Board meeting of June 17, 1975 began at 10:00 p.m. (R-1) Petitioner specifies further that the Board violated *N.J.S.A.* 18A:18-1 which reads in pertinent part as follows:

> "No board of education shall enter into a contract until the same has been presented and passed upon at a regularly called meeting of the board***."

The record shows that there were twelve applicants for the new position and that six were eliminated from contention after interviews by the administrative principal. The principal testified that all six finalists were qualified for the position. (Tr. 43-46) At 6:30 p.m. on the evening of June 17, 1975, eight of the nine Board members were gathered to interview the six applicants for the new position. The last Board member arrived at 7:30 p.m. after petitioner had already been interviewed. That Board member testified that he missed two interviews and part of a third. (Tr. 84) At 10:00 p.m., the Board convened officially and voted on the applicants. In its initial ballot, three Board members voted for Cushane, three voted for a second applicant, two voted for petitioner, and one voted for another applicant. Petitioner challenges one of the votes for Cushane because that vote was cast by the Board member who missed his interview. The Board then determined that there was a tie vote between Cushane and the second applicant and therefore a tie breaking vote was necessary. Petitioner and all other applicants were not considered. (R-1) In that final vote, the Board voted six-two in favor of Cushane, with an abstention by the Board member who missed the interviews.

Petitioner also raised the question of a conflict of interest in that Cushane resigned his position as a Board Member for the purpose of applying for the new position when it was created. Finally, petitioner asserts that Cushane did not have the required certification at the time he applied. (Conference Agreements)

In the hearing examiner's judgment, a valid challenge is made to the meeting of June 17, 1975 in that it did not begin at 8:00 p.m. as the statute requires. *N.J.S.A.* 18A:10-6 That meeting is of no particular moment, however, since no contract was let for Cushane that evening, nor was any other business transacted. (R-2) The Board held a special meeting on June 30, 1975, and awarded the contract to Cushane for the 1975-76 school year. Petitioner's

You are viewing an archived copy from the New Jersey State Library.

allegation of conflict of interest is groundless. The record shows only that Cushane resigned from the Board so that he could apply for the position. There is no proof offered by petitioner to show evidence of any conflict. (Tr. 40)

The record shows, also, that Cushane was to become eligible for his certificate on July 31, 1975 (P-B), and the Commissioner's records in the Bureau of Teacher Certification and Academic Credentials reveal that Thomas Cushane was eligible for a principal's certificate in August 1975 and was awarded that certificate and a supervisor's certificate in October 1975. *N.J.A.C.* 6:11-10.8; *N.J.A.C.* 6:11-10.9

The hearing examiner finds with respect to these arguments that there has been no showing of any wrongdoing by the Board. There is no established procedure which boards of education must follow when they fill a position. The hearing examiner finds that petitioner has not proved his allegations of conflict of interest, breach of a fiduciary duty by a Board member, or that the Board has acted in an arbitrary or illegal manner. For these reasons, the hearing examiner recommends that the Petition of Appeal be dismissed.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record of the instant matter, including the report of the hearing examiner, and notices that no exceptions have been filed thereto pursuant to *N.J.A.C.* 6:24-1.17(b).

The Commissioner adopts the findings and recommendation of the hearing examiner as his own. The Commissioner commented in *Leroy Lynch et al. v. Board of Education of Essex County Vocational School District, Essex County,* 1974 *S.L.D.* 1308, aff'd State Board of Education 1975 *S.L.D.* 1098 as follows:

> "***The action of the Board in the instant matter, appointing individuals as teaching staff members, specifically in the positions of supervisor and apprentice coordinator, was clearly an exercise of the discretionary authority vested in local boards of education by the Legislature. *N.J.S.A.* 18A:11-1, 18A:27-1, 4 As the court pointed out in *Thomas v. Morris Township Board of Education,* 89 *N.J. Super.* 327, 332 (*App. Div.* 1965), [aff'd 46 *N.J.* 581 (1966)] a determination made by an administrative agency, such as a local board of education under clear statutory authority, is entitled to a presumption of correctness and will not be overturned unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable. The burden of proof required of petitioners to show that the Board's action was unreasonable, discriminatory or otherwise improper is not met in this case, and the Commissioner so holds. The record before the Commissioner discloses that the Board followed its policy with respect to promotions of teaching staff members, and exercised its judgment by recommending several candidates from whom the Superintendent chose one as his recommendation to the Board. The

You are viewing an archived copy from the New Jersey State Library.

> record discloses that the Board did consider the factors of certification, the nature of the position to be filled, the experience of the applicants in regard to the type of position being applied for, seniority, and the potential for success of each individual applicant. Although in most school districts the screening process is usually performed by experienced school administrators, it is not a fatal defect in this instance that the initial screening and interviewing process was performed by a committee of Board members.***" (at 1314-15)

In the matter herein controverted, there is no showing that the Board violated its statutory or discretionary authority in appointing Thomas Cushane as an administrator in its school district. Nor is there any showing that the Board acted in bad faith.

The Commissioner has previously stated in *Boult and Harris v. Board of Education of Passaic,* 1939-49 *S.L.D.* 7, aff'd State Board of Education 15, aff'd 135 *N.J.L.* 329 (*Sup. Ct.* 1947), 136 *N.J.L.* 521 (*E.&A.* 1948) that:

> "***[I]t is not a proper exercise of a judicial function for the Commissioner to interfere with local boards in the management of their schools unless they violate the law, act in bad faith (meaning acting dishonestly), or abuse their discretion in a shocking manner. Furthermore, it is not the function of the Commissioner in a judicial decision to substitute his judgment for that of the board members on matters which are by statute delegated to the local boards.***" (1939-49 *S.L.D.* at 13)

The Commissioner finds and determines that petitioner's allegations are without merit regarding the Board's appointment of a school administrator. Accordingly, the Petition of Appeal is dismissed.

COMMISSIONER OF EDUCATION

April 26, 1977

You are viewing an archived copy from the New Jersey State Library.

Joanne Johnson,

Petitioner-Appellant,

v.

Board of Education of the Township of Monroe and Benjamin W. Timberman, Acting Superintendent of Schools, Gloucester County,

Respondent-Appellee.

STATE BOARD OF EDUCATION

DECISION

Determination by the Commissioner of Education, December 18, 1975

For the Petitioner-Appellant, Samuel Adler, Esq.

For the Respondent-Appellee, Hannold, Caulfield, Zamal (Martin F. Caulfield, Esq., of Counsel)

We reverse the Commissioner's determination of December 18, 1975, which dismissed Petitioner-Appellant's cause of action. We find there is a question as to whether timely and proper notification was given to Petitioner-Appellant; and, therefore, remand this matter to the Commissioner for further proceedings to determine this factual issue.

May 5, 1976

You are viewing an archived copy from the New Jersey State Library.

Joanne Johnson,

Petitioner,

v.

Board of Education of the Township of Monroe and Benjamin W. Timberman, Acting Superintendent of Schools, Gloucester County,

Respondents.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Samuel Adler, Esq.

For the Respondents, Hannold, Caulfield & Zamal (Martin F. Caulfield, Esq., of Counsel)

Petitioner is a nontenure teacher who was not reemployed by the Board of Education of the Township of Monroe, hereinafter "Board," for the 1975-76 academic year. She alleges that she was not advised, prior to a hearing on the issue of her non-reemployment, that she was entitled to a written statement of reasons supplied by the Board, nor was she advised of her right to be represented by counsel. At a conference between counsel and a hearing examiner on September 16, 1975, it was agreed, *inter alia,* that the Board would furnish petitioner a written statement of reasons as to why she was not reemployed, and that petitioner would thereafter file an Amended Petition of Appeal. Subsequent to the filing of the Amended Petition of Appeal, the hearing examiner reviewed that document, the Board's Answer, several exhibits and thereafter notified petitioner that he would recommend to the Commissioner of Education that the Amended Petition of Appeal be dismissed. Counsel were given ten days in which to respond and petitioner replied by letter, again requesting a hearing regarding the circumstances surrounding her non-reemployment. Petitioner was thereafter notified by letter from the Assistant Commissioner of Education in Charge of Controversies and Disputes that her Amended Petition of Appeal was being dismissed. *N.J.A.C.* 6:24-1.1 and 1.9 Petitioner appealed that determination to the State Board of Education and the State Board remanded the matter to the Commissioner for a further factual determination as to whether or not timely and proper notification was given to petitioner concerning her non-reemployment by the Board. A hearing was held on July 9, 1976 in the office of the Gloucester County Superintendent of Schools, Sewell, before a hearing examiner appointed by the Commissioner. Additional exhibits were admitted in evidence and several witnesses testified. The report of the hearing examiner follows:

The education statutes require that nontenure teachers be notified by April 30 if they will not be reemployed for the coming school year. In that regard, the relevant statutes read as follows:

You are viewing an archived copy from the New Jersey State Library.

N.J.S.A. 18A:27-10

"On or before April 30 in each year, every board of education in this State shall give to each nontenure teaching staff member continuously employed by it since the preceding September 30 either

"a. A written offer of a contract for employment for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary as may be required by law or policies of the board of education, or

"b. A written notice that such employment will not be offered."

N.J.S.A. 18A:27-11

"Should any board of education fail to give to any nontenure teaching staff member either an offer of contract for employment for the next succeeding year or a notice that such employment will not be offered, all within the time and in the manner provided by this act, then said board of education shall be deemed to have offered to that teaching staff member continued employment for the next succeeding school year upon the same terms and conditions but with such increases in salary as may be required by law or policies of the board of education."

N.J.S.A. 18A:27-12

"If the teaching staff member desires to accept such employment he shall notify the board of education of such acceptance, in writing, on or before June 1, in which event such employment shall continue as provided for herein. In the absence of such notice of acceptance the provisions of this article shall no longer be applicable."

The effect of these statutes on a teacher's employment status has been the subject of many determinations by the Commissioner.

See *Barbara Hicks v. Board of Education of the Township of Pemberton, Burlington County,* 1975 *S.L.D.* 332; *Phebe Baker v. Board of Education of the Lenape Regional High School District et al., Burlington County,* 1975 *S.L.D.* 471; *Patricia Bolger and Frances Feller v. Board of Education of the Township of Ridgefield Park, Bergen County,* 1975 *S.L.D.* 93, aff'd State Board of Education 98, aff'd Docket No. A-3214 New Jersey Superior Court, Appellate Division, April 21, 1976 (1976 *S.L.D.* 1122).

In *Bolger, supra,* the Commissioner commented that the primary purpose of *N.J.S.A.* 18A:27-10, 11 and 12 is to provide teachers with timely notice when they are not going to be reemployed so that they may seek employment elsewhere. When local boards of education waited until the months of May or June, or later, to notify teaching staff members that they would not be reemployed, such late action created a hardship for those employees. These statutes remedied that situation by providing for notice by April 30 of each

You are viewing an archived copy from the New Jersey State Library.

academic year, sixty days prior to the expiration of standard teacher contracts on June 30.

In the instant matter, the record reveals the following:

1. At the Board meeting on April 15, 1975, a motion to award petitioner a new contract was defeated. (Exhibit G; Tr. 21)

2. By letter dated April 18, 1975, the Superintendent of Schools notified petitioner in writing that she would not be reemployed and advised her of her right to a hearing before the Board. (Exhibit A)

Petitioner's contention is that the Board has never made a final decision regarding her reemployment and she bases that contention on a letter she received from the Superintendent subsequent to her appearance before the Board on April 23, 1975. That letter is reproduced here in its entirety as follows:

> "Following the hearing granted you by the Board of Education at your request, last evening, there was considerable discussion regarding your contract renewal and tenure as a teacher in the Monroe Township Public Schools. At this time there has not been any further decision by the Board in your case, however, another meeting has been scheduled for the Board of Education to continue their deliberations. As soon as there is a final decision I will communicate with you further." (Exhibit B)

At a Board meeting on April 28, 1975, a motion to grant petitioner a new contract was again defeated. (Exhibit H; Tr. 24) Petitioner concluded from Exhibit B, *ante,* that the Board had not reached a final decision regarding her employment status and she accepted its "offer of employment for the coming school year." (Exhibit E)

The hearing examiner cannot agree with petitioner's interpretation of the Board's actions. She was clearly notified in writing pursuant to the relevant statutes that she would not be reemployed for the 1975-76 academic year. (Exhibit A) It is also clear that the Board reconsidered her employment status and again determined not to offer her employment on April 28, 1975. (Exhibit H) Petitioner testified that the Board met on April 23, 1975, and that a Board member told her that the Board voted five to two to award her a contract. (Tr. 12-15) The Board Secretary testified that that meeting was not an official meeting of the Board, that she was not present as she is for all official meetings of the Board and that there is no record of the actions of the Board at such unofficial meetings. (Tr. 21-23)

There is no evidence in the record that the Board ever determined by majority vote of its full membership to award petitioner a contract for the coming school year. Such an affirmative vote is required by *N.J.S.A.* 18A:27-1 which reads as follows:

"No teaching staff member shall be appointed, except by a recorded roll

You are viewing an archived copy from the New Jersey State Library.

call majority vote of the full membership of the board of education appointing him."

In the instant matter, the Board made its determination and notified petitioner that she would not be reemployed. It thereafter deliberated further on its earlier determination and never reversed its position. Unfortunately, what the Board failed to do, was to notify petitioner that it had not changed its earlier determination. (Exhibit B) This failure to so notify petitioner cannot set aside its affirmative, deliberate actions taken in a public meeting in which it determined not to reemploy her. The Board notified petitioner in writing of its determination not to employ her and she was never offered an employment contract for the 1975-76 academic year. (Exhibits G, H) In fact, Exhibit B states in pertinent part that following petitioner's hearing before the Board, "***there has not been any further decision by the Board***."

The hearing examiner finds, therefore, that the Board has met the requirements of the relevant statutes to notify petitioner in writing of its determination not to reemploy her, and she was given an opportunity to appear before the Board. Petitioner's allegations that she was never notified of her right to a statement of reasons, nor was she informed of her right to be represented by counsel are not supported by any evidence that the Board has such a duty.

The hearing examiner recommends, therefore, that the Petition of Appeal be dismissed. This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner, and notices that no exceptions have been filed thereto pursuant to *N.J.A.C.* 6:24-1.17(b).

Petitioner has not shown that any of her procedural or statutory rights have been violated. Nor has it been shown that the Board has acted in bad faith or abused its discretionary authority.

It was said by the Court in *Thomas v. Board of Education of Morris Township,* 89 *N.J. Super.* 327 (*App. Div.* 1965), aff'd 46 *N.J.* 581 (1966) that:

> "***We are here concerned with a determination made by an administrative agency duly created and empowered by legislative fiat. When such a body acts within its authority, its decision is entitled to a presumption of correctness and will not be upset unless there is an affirmative showing that such decision was arbitrary, capricious or unreasonable. The agency's factual determinations must be accepted if supported by substantial credible evidence.***" [cases cited] (at 332)

The Commissioner finds no reason in the matter controverted herein to substitute his judgment for that of the Board in respect to the non-reemployment of petitioner. Respondent Board has met its obligations to petitioner pursuant to *N.J.S.A.* 18A:27-10 *et seq.*

You are viewing an archived copy from the New Jersey State Library.

Additional statutory requirements for teacher evaluation were enacted into law and became effective on July 1, 1975, after petitioner's contract was terminated. *N.J.S.A.* 18A:27-3.1, 27-3.2, 27-3.3 More specific requirements were set forth thereafter in *N.J.A.C.* 6:3-1.19 and 3-1.20 delineating the scope, frequency, and method of teacher evaluation for the purpose of considering teacher reemployment. None of these statutory or administrative code requirements are applicable in the instant matter since petitioner's contract terminated before they became effective. In *Donaldson v. Board of Education of North Wildwood,* 65 *N.J.* 236 (1974), the Court mandated for the first time that nontenure teachers be provided with a statement of reasons for non-reemployment. The record discloses that petitioner met with the Board in this regard and that the procedural guidelines as set forth in *Hicks, supra,* and *Donaldson, supra,* have been afforded petitioner.

The Commissioner will not substitute his judgment for that of a local board absent a showing of abuse of its discretionary powers. *Quinlan v. Board of Education of North Bergen Township,* 73 *N.J. Super.* 40 (*App. Div.* 1962) There is no such showing in the instant matter. The Commissioner adopts the findings and recommendation of the hearing examiner as his own. Accordingly, the Petition of Appeal is dismissed.

COMMISSIONER OF EDUCATION

April 27, 1977

**In the Matter of the Tenure Hearing of Emil J. Guasconi,
School District of the Town of West New York, Hudson County.**

COMMISSIONER OF EDUCATION

DECISION

For the Complainant Board, Richard D. De La Roche, Esq.

For the Respondent, Victor P. Mullica, Esq.

The Board of Education of the Town of West New York, hereinafter "Board," filed nine charges against respondent, a business manager with a tenure status, certifying to the Commissioner of Education that the charges would be sufficient if true in fact to warrant dismissal of respondent or other penalty deemed appropriate by the Commissioner. The charges are not denied. Respondent asserts that the charges, based on a Court decision and sentence, are taken out of context, are inadmissible in evidence, are not supported by a residuum of competent evidence, encompass facts which should not legally be

You are viewing an archived copy from the New Jersey State Library.

considered by the Board, in some instances belie the truth, and contain impermissible legal conclusions based on alleged evidence. Respondent asserts, further, that the statute of limitations and laches are invocable against the charges and that the true facts and circumstances, when revealed, will show that dismissal is too harsh a penalty for his alleged offenses. Respondent requests a hearing.

The Board filed a Motion for Summary Judgment and a Memorandum of Law in support thereof, stating that respondent does not deny the charges, and since there is no genuine issue as to a material fact the Board is entitled to a judgment as a matter of law. Respondent asserts that the charges have been improperly certified by a Board President, not by the Board as the pertinent statute demands, and are consequently jurisdictionally defective. Further, he asserts that a tenure employee cannot be discharged or reduced in salary except for inefficiency, incapacity, unbecoming conduct, or other just cause and then only after a hearing. (Respondent's Memorandum of Law; *N.J.S.A.* 18A:6-10)

Respondent filed a supplement to his Memorandum containing many recommendatory statements on his behalf. The Board thereafter filed a Motion to Strike the Defenses raised by respondent, supported by a Reply Brief. Oral argument on this Motion was conducted at the State Department of Education, Trenton, on December 21, 1976. The Commissioner finds that the nine charges need not be set forth in detail; rather, they may be summarized setting forth the fundamental issues herein controverted.

On or about December 21, 1975, respondent entered a plea of guilty to Count #1 of a three Count criminal indictment, before the Honorable H. Curtis Meanor, U.S.D.J. (Complainant's Statement of Facts) Count #1 is set forth in its entirety as follows:

> "That on or about the 15th day of April, 1969, in the District of New Jersey,
>
> "EMIL GUASCONI,
>
> "a resident of West New York, New Jersey, did wilfully and knowingly make and subscribe a United States Income Tax Return, Form 1040, for the calendar year 1968, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter in that the said income tax return reported at line 9, 'adjusted gross income' in the amount of $14,317.92, whereas, as he then and there well knew and believed, he received substantial income in addition to that heretofore stated.
>
> "In violation of Section 7206(1), Internal Revenue Code; Title 26, United States Code, Section 7206(1)."

United States District Court, District of New Jersey, United States of America v. Emil Guasconi, Defendant, Indictment, Criminal Number 75-161, 26 U.S.C.

You are viewing an archived copy from the New Jersey State Library.

§ *7206 (1)* Counts #2 and #3 were dismissed. Respondent was sentenced on February 23, 1976 to one year imprisonment, which sentence was suspended, placed on probation for five years, and fined the sum of five thousand dollars. (See transcript of proceedings.)

The Complainant Board asserts that respondent's guilty plea and his resultant sentence "***was such as to reflect discredit upon his office and exhibit such misbehavior and constitute such other offense and/or unbecoming conduct or other just cause as required under [*N.J.S.A.*] 18A:17-1 and [*N.J.S.A.*] 18A:17-2 and/or [*N.J.S.A.*] 18A:6-10***." (See Board's certified charges, Charge III.) In further support of its charges, the Board submitted an opinion authored by the Deputy Attorney General of the State of New Jersey, dated July 6, 1976, which reads as follows:

> "This Office has been advised by the Hudson County Prosecutor's Office that one Emil Guasconi, presently the Business Manager of the West New York Board of Education, entered a plea of guilty in the United States District Court for the District of New Jersey for failing to report income. This Office has been further advised that Mr. Guasconi was sentenced to a 5 year term of probation and fined $5,000.00.
>
> "*N.J.S.A.* 2A:135-9 provides that
>
> > 'Any person holding an office or position, elective or appointive, under the government of this State or of any agency or political sub-division thereof, who is convicted upon or pleads guilty . . . to an indictment, accusation or complaint charging him with the commission of a misdemeanor or high misdemeanor touching the administration of his office or position, or which involves moral turpitude, shall forfeit his office or position and cease to hold it from the date of his conviction or plea.'
>
> "It is the position of this Office that the offense to which Mr. Guasconi entered a plea, based upon his own statements, is one touching upon the administration of his public office and one which involved moral turpitude as well. *DeMoura v. City of Newark,* 90 *N.J. Super.* 225 (App. Div. 1966).
>
> "This letter is written to advise the Board of Education of the Town of West New York that, pursuant to *N.J.S.A.* 2A:135-9, Mr. Guasconi's position is to be forfeited, and that no discretion to disregard the mandate of the statutory provision exists. Prior to initiation of litigation in lieu of prerogative writ by this Office to effect the removal of Mr. Guasconi, I would appreciate your advising me of the intention of the Board of Education with respect to his continued employment." (Exhibit A)

The Commissioner finds in the instant matter, that respondent is not entitled to a hearing pursuant to *N.J.S.A.* 18A:6-10 which states that employees with a tenure status may be dismissed for just cause "***only after a hearing***." In reaching this determination, it is necessary to review *N.J.S.A.*

You are viewing an archived copy from the New Jersey State Library.

18A:6-11 which provides in pertinent part that tenure employees are entitled to a hearing pursuant to *N.J.S.A.* 18A:6-16 which reads as follows:

> "Upon receipt of such a charge and certification, or of a charge lawfully made to him, the commissioner or the person appointed to act in his behalf in the proceedings shall examine the charges and certification and if he is of the opinion that they are not sufficient to warrant dismissal or reduction in salary of the person charged, he shall dismiss the same and notify said person accordingly. If, however, he shall determine that such charge is sufficient to warrant dismissal or reduction in salary of the person charged, he shall conduct a hearing thereon within a 60-day period after the receipt thereof upon reasonable notice to all parties in interest."

The purpose of a hearing is to convince the Commissioner that the charges are sufficient, and true in fact, to warrant respondent's dismissal or a reduction in his salary. *N.J.S.A.* 18A:6-11 The record discloses in the instant matter, that respondent does not deny the Board's charges and he has in fact entered a guilty plea to a criminal offense before a United States District Court. There is no evidence considered in this matter except respondent's guilty plea to Count #1 of his criminal indictment. The only issue is, therefore, whether or not his plea is sufficient to warrant a finding of unbecoming conduct or other just cause, and if so, what penalty, if any, is appropriate. There is no fact to be determined through a plenary hearing. As respondent states in his Brief, testimony would be adduced at a hearing to support the many commendatory statements filed on his behalf. (Respondent's Brief, at p. 11) A hearing for that limited purpose goes beyond the intent of the Tenure Employees Hearing Act. *N.J.S.A.* 18A:6-10 *et seq.* The Commissioner determines that there is no genuine issue of material fact; therefore, no hearing will be granted in this matter.

Respondent's Answer which states, *inter alia,* that the charges contain impermissible legal conclusions based on alleged evidence, is not supported by the record. Nor does the Commissioner find laches, or that the Board is in violation of a statute of limitations as respondent avers. The Board certified its charges with the Commissioner on April 9, 1976, less than sixty days after respondent's sentence on February 23, 1976. Neither does the Commissioner find that the charges are jurisdictionally defective because they were certified by the Board President. The record discloses that all nine members of the Board adopted the charges and had them served on respondent. Thereafter, the resolution certifying the charges to the Commissioner was signed by eight of the nine Board members. Having reached these determinations, the Commissioner finds no need to strike the defenses raised by respondent as the Board demands in its second Motion.

The Commissioner determines that respondent's guilty plea to the criminal offense as set forth fully, *ante,* is sufficient to warrant a finding of conduct unbecoming a business manager. *N.J.S.A.* 18A:17-2; *N.J.S.A.* 18A:6-10; *In the Matter of the Tenure Hearing of Ernest Tordo, School District of the Township of Jackson, Ocean County,* 1974 *S.L.D.* 97 (See also: Deputy Attorney General's opinion Exhibit A, and *N.J.S.A.* 2A:135-9.) Accordingly, respondent

You are viewing an archived copy from the New Jersey State Library.

must forfeit his tenure position as a business manager as the Attorney General's opinion clearly states. Respondent is hereby removed from his position as an employee of the Board of Education of the School District of the Town of West New York.

COMMISSIONER OF EDUCATION

April 27, 1977

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, April 27, 1977

For the Petitioner-Appellee, Richard DeLaRoche, Esq.

For the Respondent-Appellant, Victor P. Mullica, Esq.

The State Board of Education affirms the Commissioner's decision for the reasons expressed therein.

October 12, 1977

You are viewing an archived copy from the New Jersey State Library.

Joseph Barnarr,

Petitioner,

v.

Board of Education of the Borough of West Long Branch, Monmouth County

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Chamlin, Schottland, Rosen & Cavanagh, (Michael D. Schottland, Esq., of Counsel)

For the Respondent, Mirne, Nowels, Tumen, Magee & Kirschner (Michael B. Kirschner, Esq., of Counsel)

Petitioner, a tenured teacher employed by the Board of Education of West Long Branch, hereinafter "Board," avers that the Board has improperly deducted sixty-eight of his accumulated sick leave days. He requests immediate reimbursement for sixty-eight sick leave days plus payment of his full salary from January 15, 1976 until the benefits provided under *N.J.S.A.* 18A:30-2.1 are exhausted. The Board admits the absence of petitioner from January 15, 1976, that his absence has been charged against his accumulated sick leave days, and that all salary payments to petitioner terminated upon the exhaustion of those sick leave days.

A conference in this matter was conducted on December 13, 1976 at the State Department of Education, Trenton, by a hearing examiner appointed by the Commissioner of Education. The parties agreed at that time to submit the matter for Summary Judgment by the Commissioner on a Stipulation of Facts, supporting affidavit, exhibit and memoranda of law.

A brief recitation of the relevant material facts is essential for an understanding of the instant matter.

Petitioner, on October 21, 1975, had a severe chest pain while carrying a projector to his classroom in the course of his employment by the Board. (Exhibit P-1) Following that incident petitioner lost various days from his employment until January 15, 1976. From that date through the balance of the 1975-76 school year petitioner was totally disabled. This disability continues to the present time. (Petition, at p. 2) From January 16 through May 16, 1976, the Board charged the lost time against petitioner's accumulated sick leave days and thereafter ceased all payments to petitioner.

The Board contends that the problem arises out of the Board's disability insurance coverage. The insurance carrier states that if petitioner does not receive a workmen's compensation award it will not pay under the policy and it

You are viewing an archived copy from the New Jersey State Library.

therefore awaits a determination of the matter presently before Workmen's Compensation Court. (Board Letter of December 23, 1976, at p. 1)

Further, the Board states "***we cannot settle this because to do so could jeopardize our insurance coverage. We have nothing to offer in opposition to [petitioner's] Motion but we must allow the issue to be *decided* by the Commissioner***." (*Emphasis in text.*) (Board Letter of December 23, 1976, at p. 2)

Petitioner relies on the provisions of *N.J.S.A.* 18A:30-2.1, asserting that the action of the Board in charging against accumulated sick leave absences which are causally related to a work-connected accident are illegal. (Petition, at p. 2)

The Commissioner agrees. *N.J.S.A.* 18A:30-2.1 provides:

> "Whenever any employee, entitled to sick leave under this chapter, is absent from his post of duty as a result of a personal injury *caused by an accident arising out of and in the course of his employment,* his employer shall pay to such employee the full salary or wages for the period of such absence for up to one calendar year *without having such absence charged to the annual sick leave or the accumulated sick leave* provided in sections 18A:30-2 and 18A:30-3. Salary or wage payments provided in this section shall be made for absence during the waiting period and during the period the employee received or was eligible to receive a temporary disability benefit under chapter 15 of Title 34, Labor and Workmen's Compensation, of the Revised Statutes. Any amount of salary or wages paid or payable to the employee pursuant to this section shall be reduced by the amount of any workmen's compensation award made for temporary disability." (*Emphasis added.*)

The affidavit of the physician who treated petitioner and who for many years has served as the school physician for the Board states in pertinent part the following:

> ***
>
> "2. Since August 22, 1955, I have been the family physician for Joseph Barnarr and for many years I have served as the school physician for the West Long Branch Board of Education. Over the past 10 or 11 years, I am aware of the fact that Mr. Barnarr has had at least three heart attacks and he has remained almost constantly under my care. His first heart attack was on June 11, 1965, and was held to be a compensable accident under Workmen's Compensation law in New Jersey. Since that time, I have treated him on several occasions on a regular and recurring basis for his condition.
>
> "3. On October 21, 1975, Mr. Barnarr had a cardiac incident while in school carrying a projector. He related that he sustained severe chest pain as a result of this effort. Subsequent to that date, I saw him on November

You are viewing an archived copy from the New Jersey State Library.

18, 1975, & December 12, 1975. In addition, I arranged for and supervised a stress test at Monmouth Medical Center on November 20, 1975. The stress test results indicated that Mr. Barnarr was not a good candidate for any type of physical or other stress. I arranged for his hospitalization at Monmouth Medical Center on January 18, 1976. Since his release from the hospital, he was seen at the Deborah Heart & Lung Center, Browns Mills, New Jersey, and has been followed by me on a monthly basis.

"4. It is my considered medical opinion that Mr. Barnarr is presently and will remain totally disabled as a working unit and is obviously not able to function as a school teacher. In addition, it is my opinion that the incident of October 21, 1975 where he suffered chest pains while carrying a projector represented a severe aggravation of his on-going cardio-vascular condition. It is also my opinion that the October 21, 1975 incident was a precipitating cause of his hospitalization on November 20, 1975 and January 18, 1976."

The Commissioner observes that petitioner has applied for total disability in Workmen's Compensation Court. Dr. Rowland D. Goodman, an internist who does cardiac evaluations for purposes of Workmen's Compensation states, "***His cardiac disability is 100% of total.***" (Exhibit 1) The Commissioner observes further that petitioner's first heart attack was held to be a compensable accident under Workmen's Compensation law, with regular recurring treatment for his condition. (School Physician's Statement, *ante*)

The affidavit stands uncontested and uncontroverted by any evidence from the Board. The Commissioner therefore directs the West Long Branch Board of Education to add sixty-eight days to petitioner's credit of unused leave for personal illness. He further directs the Board to pay full salary to petitioner in accordance with the provisions of *N.J.S.A.* 18A:30-2.1.

COMMISSIONER OF EDUCATION

April 27, 1977

You are viewing an archived copy from the New Jersey State Library.

Lewis Jacobus,

Petitioner,

v.

Board of Education of Ramsey, Bergen County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

For the Petitioner, Saul R. Alexander, Esq.

For the Respondent, John J. Sullivan, Esq.

This matter having been opened before the Commissioner of Education on or about December 14, 1976 by the filing of a verified Petition of Appeal relative to the adoption of a resolution by the Board of Education of the Borough of Ramsey, hereinafter "Board," on November 22, 1976, which resolution transferred Petitioner from his position as principal to the position of "Administrative Assistant in the office of the Superintendent" effective January 3, 1977; and

An Answer having been filed on or about January 21, 1977; and

The matter having been amicably adjusted by a resolution of the Board on March 28, 1977 restoring petitioner to the position of a principalship in the elementary school effective at the opening of the September term of the school year 1977-1978 with salary increase in accordance with the salary scale of a principal, but continuing his present employment until the termination of the current academic school year; and

A Stipulation of Dismissal having been duly executed by the respective parties; and

The Commissioner having reviewed the pleadings, the resolutions hereinbefore detailed and the Stipulation of Dismissal, and having determined that the matter may be withdrawn from litigation before him; now therefore

IT IS ORDERED that this matter be and is dismissed.

Entered this 27th day of April 1977.

COMMISSIONER OF EDUCATION

You are viewing an archived copy from the New Jersey State Library.

Katherine Selfridge,

Petitioner,

v.

Board of Education of the Township of Kinnelon, Morris County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

This matter having been opened before the Commissioner of Education through the filing of a Petition of Appeal by Katherine Selfridge, hereinafter "petitioner," by the Education Law Center, Inc., (W. William Hodes, Esq., appearing) which seeks interim relief in the form of a restraint against the Board of Education of the Township of Kinnelon, Morris County (Michael Hubner, Esq., appearing), hereinafter "Board," from assessing a three dollar and seventy-five cent fee against its pupils for a field trip to the Lincoln Center for Performing Arts scheduled for May 3, 1977, and

Oral argument of the parties having been heard on April 28, 1977 at the State Department of Education by a representative of the Commissioner, the facts of the matter are these:

The proposed field trip is scheduled to consume an entire regular school day. The Board asserts pupil attendance on the trip is optional. If the pupil elects to attend, the Board expects the pupil to pay the cost of admission to Lincoln Center. The Board asserts that if a pupil elects to attend but cannot pay the cost of admission, it will absorb that pupil's fee.

The Commissioner has reviewed the arguments of the parties and finds that the Board's proposed field trip controverted herein must be considered part of the school curriculum. Consequently, the Board must absorb the cost for the program and may not assign a fee of any kind to the pupils or their parents. *N.J. State Constitution, Art.* VIII, *Sec.* IV; *Melvin C. Willett v. Board of Education of the Township of Colts Neck, Monmouth County,* 1966 *S.L.D.* 202, aff'd State Board of Education 1968 *S.L.D.* 276

The relief granted herein is a restraint against the Board from collecting fees for the proposed trip. The Board is not restrained from having the field trip carried out as scheduled so long as it absorbs the total cost.

COMMISSIONER OF EDUCATION

May 2, 1977

You are viewing an archived copy from the New Jersey State Library.

COMMISSIONER OF EDUCATION

CONSENT ORDER

The matter having being presented to the Commissioner of Education for consent order by the parties jointly, and the hearing examiner appointed by the Commissioner of Education having recommended that such order be entered,

The Commissioner of Education makes the following findings and orders:

1. The petition in this matter was filed on January 21, 1977. Petitioner is a resident of Kinnelon and a parent of children in the Kinnelon public schools.

2. Petitioner alleged that respondent had "a policy and practice of permitting its employees in its various schools to schedule school field trips, and to charge parents a fee therefor." This allegation was true as of the date the petition was filed.

3. Respondent's then policy and practice was in violation of the "free public education" clause of the New Jersey Constitution (Article VIII, Section IV), as previously construed by the Commissioner of Education in *Willett v. Board of Education of Colts Neck,* 1966 *S.L.D.* 202, *aff'd.,* 1968 *S.L.D.* 276.

4. At an open public meeting, held on July 18, 1977, the respondent Board adopted a new policy on school field trips. The new policy is in all respects valid and appropriate and reads as follows:

> "The Board of Education of the Borough of Kinnelon believes the educational curriculum for its students should include out of classroom field studies which are developed and proposed by teaching staff members.
>
> "Plans for field studies or trips to various locations for the purpose of field studies shall be submitted to the administration for approval and if the administration approves the field trip, the Board of Education shall pay for the cost of the field trip.
>
> "The Board of Education recognizes the practice of having its students participate in fund raising activities, either individually or as a group, and further recognizes the practice of using the funds raised by the students to help defray the cost of the field trips. The Board of Education believes that the fund raising programs are useful as an educational tool, and foster and encourage an esprit de corps among the students.
>
> "No student shall be compelled to participate in either group or individual fund raising activities, and participation shall not be a prerequisite for his or her attendance at a field study or field trip."

5. The Board of Education of Kinnelon is directed to adhere to the above policy, and to apply it to all field trips held during the school day as part of the curriculum.

You are viewing an archived copy from the New Jersey State Library.

6. This consent order is the final disposition of this matter, and the petitioner is entitled to no further relief.

COMMISSIONER OF EDUCATION

October 11, 1977

**In the Matter of the Tenure Hearing of John I. Gavlick,
School District of the City of Burlington, Burlington County.**

COMMISSIONER OF EDUCATION

DECISION ON MOTION

For the Complainant Board, John E. Queenan, Jr., Esq.

For the Respondent, Tomar, Parks, Seliger, Simonoff & Adourian (Howard S. Simonoff, Esq., of Counsel)

On September 23, 1975, the Superintendent of Schools of the Burlington City Public Schools suspended respondent, without pay, from his position as a tenured teacher in the employ of the Burlington City Board of Education, hereinafter "Board." Subsequently, on October 13, 1975, the Board certified six charges of misuse of family illness and personal business days, willfully lying when certifying reasons for absence, and conduct unbecoming a teacher and forwarded such charges to the Commissioner of Education pursuant to the statutory authority in the Tenure Employees Hearing Law, *N.J.S.A.* 18A:6-9 *et seq.*

Respondent denied the charges against him and a conference of counsel was held on December 12, 1975 at which time it was agreed that the Board would file an amendment to the certification of charges to the Commissioner regarding the suspension of respondent. It was further agreed that respondent would submit a Motion and Memorandum of Law with respect to the period of time respondent was suspended without pay by the Superintendent and the subsequent date the Board took official action to certify charges to the Commissioner.

The Board's amended certification of charges added the following:

> "***The Board of Education of the City of Burlington at an adjourned meeting on September 22, 1975 interviewed William Rush, Principal, of the Wilbur Watts Middle School and Robert F. Dotti, Superintendent, who presented to the Board the aforesaid information as to John I. Gavlick's

You are viewing an archived copy from the New Jersey State Library.

conduct, along with the documentation of said charges. The Board after hearing said information directed that the charges be certified to the Commissioner of Education for conduct unbecoming to a teacher and that John I. Gavlick be suspended without pay ***.

"The Board of Education of the City of Burlington at a regular meeting on October 13, 1975, upon being presented with the formal certification of charges prepared by the solicitor for said Board, did examine said written charges and did unanimously vote to certify the written charges to the Commissioner of Education and a copy of said certification of six charges were made a part of the minutes of the Resolution.***"

It is respondent's claim, expressed in a letter Memorandum of Law and Motion dated December 18, 1975, that his suspension without pay by the Superintendent on September 23, 1975, was premature, untimely and contrary to *N.J.S.A.* 18A:6-10 *et seq.* and specifically *N.J.S.A.* 18A:6-14. Respondent therefore moves that his salary be restored for the period of improper suspension from September 23, 1975 through October 17, 1975.

At the hearing of February 6, 1976, respondent's Motion for the restoration of his pay for the controverted period between September 23, 1975 through October 17, 1975 was read into the record and held in abeyance by the hearing examiner. (Tr. 9) Respondent also invoked *N.J.S.A.* 18A:6-14, which requires payment to the tenured teacher on the 121st calendar day of suspension subsequent to the Board certifying its charges against a tenured employee. The Board stipulated that, in the event the 121st day had passed, respondent had not been paid any salary from September 23, 1975, the date of his suspension by the Superintendent.

Subsequently, on February 9, 1976, respondent submitted a Motion for Compliance by the School Board with respect to *N.J.S.A.* 18A:6-14, accompanied by a Memorandum of Law. *N.J.S.A.* 18A:6-14 provides:

"Upon certification of any charge to the Commissioner, the board may suspend the person against whom such charge is made, with or without pay, but, if the determination of the charge by the Commissioner of Education is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made. Should the charge be dismissed, the person shall be reinstated immediately with full pay from the first day of such suspension. Should the charge be dismissed and the suspension be continued during an appeal therefrom, then the full pay or salary of such person shall continue until the determination of the appeal. However, the board of education shall deduct from said full pay or salary any sums received by such employee or officers by way of pay or salary, from any substituted employment assumed during such period of suspension. Should the charge be sustained on the original hearing or an appeal therefrom, and should

You are viewing an archived copy from the New Jersey State Library.

such person appeal from the same, then the suspension may be continued unless and until such determination is reversed, in which event he shall be reinstated immediately with full pay as of the time of such suspension."

The hearing examiner reviewed the facts pertinent to the instant matter and on February 18, 1976, addressed the following letter to the parties:

"This will acknowledge receipt of Mr. Simonoff's letter dated February 9, 1976, enclosing Motion for Compliance by the School Board with *N.J.S.A.* 18A:6-14 and also Memorandum of Law regarding the above-entitled matter.

"At this juncture, I see no need for an Oral Argument with the Memorandum of Law on the Motion and an Answer to the Motion.

"The Commissioner will make a determination on the Motion and subsequently submit an Order."

The Commissioner has considered the facts, arguments and the documents which are a part of this record. He observes that *N.J.S.A.* 18A:6-14 controls with respect to the two Motions propounded by respondent.

In regard to the Motion to restore respondent's back pay for the controverted period of time beginning with respondent's suspension by the Superintendent and ending with the Board's resolution to certify charges, the Commissioner has ruled that back pay must be restored to suspended employees in similar instances where the Board has acted contrary to *N.J.S.A.* 18A:6-14. See *In the Matter of the Tenure Hearing of Raymond Winter, Board of Education of North Bergen, Hudson County,* 1975 *S.L.D.* 236; *Joseph Banick v. Board of Education of the Township of Riverside, Burlington County,* 1975 *S.L.D.* 518; *In the Matter of the Tenure Hearing of Emma Matecki, School District of the City of New Brunswick, Middlesex County,* 1971 *S.L.D.* 566, aff'd State Board of Education 1973 *S.L.D.* 773, aff'd New Jersey Superior Court, Appellate Division, 1973 *S.L.D.* 773; *In the Matter of the Tenure Hearing of Russell A. Fairfax, School District of the Village of Ringwood, Bergen County,* 1974 *S.L.D.* 1126; *In the Matter of the Tenure Hearing of Joseph McDougall, School District of the Borough of Northvale, Bergen County,* 1974 *S.L.D.* 170.

A local board of education has the authority to suspend a tenured employee, without pay, only upon the certification of a formal charge against the employee and then by forwarding the charge to the Commissioner. *N.J.S.A.* 18A:6-14 Respondent's suspension without pay prior to the Board's certification of charges on October 13, 1975, was improper. The Commissioner therefore orders the Board of Education of the City of Burlington to restore in full to respondent the amount of salary withheld from September 23, 1975 through October 13, 1975.

With respect to respondent's Motion for Compliance by the School Board to restore respondent to full salary payment commencing on the 121st day

You are viewing an archived copy from the New Jersey State Library.

following the certification of charges by the Board (*N.J.S.A.* 18A:6-14), the Commissioner determines that the tolling of the 120 day provision began on October 13, 1975 with the 121st day falling on February 10, 1976.

There is no finding that respondent caused any delay in the pursuit of a timely hearing in the instant matter. All days of delay in the hearing procedure caused by respondent shall be excluded from the 120 day provision. *In the Matter of the Tenure Hearing of Anthony Polito, School District of the Township of Livingston, Essex County,* decision on Motion, 1974 *S.L.D.* 662; *In the Matter of the Tenure Hearing of Walter Kizer, School District of the Borough of Haledon, Passaic County,* decision on Motion, 1974 *S.L.D.* 501

The Commissioner observes that the statutory language is clear wherein the Board is obligated to pay respondent on the 121st day following its certification of charges to the Commissioner. The enforcement of *N.J.S.A.* 18A:6-14 is clearly enunciated in *Kathleen Pietrunti v. Board of Education of Brick Township,* 128 *N.J. Super.* 149 (*App. Div.* 1974), *cert.* den. 65 *N.J.* 573 (*Sup. Ct.* 1974), *cert.* den. 419 *U.S.* 1057 (1975) and *In the Matter of the Tenure Hearing of Paula M. Grossman, a/k/a Paul M. Grossman, School District of the Township of Bernards,* 127 *N.J. Super.* 13 (*App. Div.* 1974), *cert.* den. 65 *N.J.* 292 (1974), wherein the Court stated:

> "***It seems clear that in enacting it [*N.J.S.A.* 18A:6-14] the Legislature must have had in mind the economic hardship endured by teachers and other Board of Education employees suspended without pay pending the outcome of charges filed against them and certified for hearing to the Commissioner of Education. We are certain, moreover, of the Legislature's awareness that in many instances, because of the volume of matters awaiting hearing, a prompt disposition of charges is not feasible. Thus, the obvious intent and purpose of the amendment was to alleviate the financial plight of those affected by providing for the payment of their full salary (less sums received from other employment during suspension) from the 121st day following the certification of charges until the determination thereof by the Commissioner, or in the case of an appeal, by a Board from a decision adverse to it, until the determination of the appeal.***" (127 *N.J. Super.* at 35-36)

Accordingly, the Commissioner determines that in the instant matter the 121st day following the certification of charges commenced on February 10, 1976, and therefore orders the Board of Education of the City of Burlington to compensate respondent at his regular salary effective from February 10, 1976, in response to respondent's Motion of February 9, 1976.

COMMISSIONER OF EDUCATION

April 29, 1976

You are viewing an archived copy from the New Jersey State Library.

COMMISSIONER OF EDUCATION

DECISION

For the Complainant Board, John E. Queenan, Jr., Esq.

For the Respondent, Tomar, Parks, Seliger, Simonoff & Adourian (Howard S. Simonoff, Esq., of Counsel)

The Board of Education of the School District of the City of Burlington, hereinafter "Board," has certified a series of six charges against John I. Gavlick, hereinafter "respondent," a tenured teaching staff member in its employ. These charges allege that respondent willfully lied when he certified that his reasons for absence on two occasions were family illness and death of members of his family. The charges also allege that on four separate occasions respondent used physical force to discipline pupils. The Board certified that the charges would be sufficient, if true in fact, to warrant dismissal or reduction in salary.

Respondent admits that he knowingly and falsely misrepresented to the Board the reasons for his absence on two separate occasions. He avers, however, that there were mitigating circumstances with respect to the reported absences and, therefore, he had proper grounds for taking such leave. He denies that he used physical force to discipline pupils and asserts that his disciplinary action against pupils was in accordance with *N.J.S.A.* 18A:6-1 and Article VIII(A) of the Board's policies.

Respondent alleges that his suspension without pay and without written charges, which was imposed by the Superintendent on September 23, 1975, was *ultra vires.* It was agreed at a conference of counsel that the Board would file an Amended Petition with regard to respondent's suspension by the Board at the time it certified its charges against respondent on October 13, 1975. Subsequently, respondent filed a Motion before the Commissioner of Education and a Memorandum of Law claiming that his suspension without pay by the Superintendent on September 23, 1975, was premature, untimely and contrary to *N.J.S.A.* 18A:6-10 *et seq.* The Motion requested that the Commissioner order the Board to comply with *N.J.S.A.* 18A:6-14 and restore respondent to his full salary on the 121st day following the certification of charges by the Board on October 13, 1975. The Commissioner determined that the Board's action was improper on both counts and ordered the Board to restore respondent to his full salary from September 23 through October 13, 1975, and to further compensate respondent at his regular salary commencing on the 121st day after the certification of charges by the Board on October 13, 1975.

It was agreed at a conference of counsel that depositions would be taken of respondent, the school's vice-principal, principal and Superintendent prior to the scheduled hearing date. The depositions were taken on January 7, 1976, and a hearing was conducted on February 6, 1976 at the office of the Burlington County Superintendent of Schools, Mount Holly, by a hearing examiner appointed by the Commissioner. The Board presented documents which were

You are viewing an archived copy from the New Jersey State Library.

marked into evidence and rested its case on the evidence and the depositions of witnesses. (Tr. 34) Respondent subsequently rested his case on the depositions and the documentary evidence submitted in his defense to the charges with the additional submission into evidence of the 1975-76 negotiated agreement between the Board and the Association. (Tr. 35)

It was stipulated that the contract settlement between the Board and the Association for the 1975-76 school year was dated the second day of November 1975 and was not in effect at the time the charges were certified by the Board. (Tr. 36) The document was marked and accepted into evidence. (R-1)

The report of the hearing examiner is as follows:

The hearing examiner herewith proceeds to set forth the charges certified by the Board and the findings of fact with recommendations to the Commissioner. Certain charges are considered *in pari materia* in the following recital:

CHARGE NO. 1

"On September 11, 1975, John I. Gavlick, a teacher in the School District of the City of Burlington, Burlington County, requested by phone from his building principal a family emergency day in that he stated his father-in-law had a heart attack and that he must travel to Wilkes Barre, Pennsylvania, to take his wife to visit said father-in-law, and on September 12, 1975, he completed and signed a Request for Absence for Personal Business dated September 12, 1975, stating in writing these reasons. Upon examination of his file, it was determined that John I. Gavlick had applied for 4 1/2 days absence due to death of his father-in-law, said days being one-half day on May 13, 1974, full days on May 14, 1974, May 15, 1974, May 16, 1974, and May 17, 1974. When confronted about inconsistent statements, John I. Gavlick admitted to building principal, 'You got me, Bill.' 'You know my philosophy, C.Y.A.' 'I'm from the old school; if you get caught in the cookie jar, then you get slapped.' John I. Gavlick absented himself from school on September 12, 1975, without justifiable reason and did absent himself from his performance of his contractual duties and responsibilities as a teacher in the school district of the City of Burlington on the day abovementioned and lied on his application for said leave and admitted same and has failed to give a justifiable reason for said absence. Thus, he is guilty of misuse of family illness and personal business days."

CHARGE NO. 2

"On May 13, 1974, John I. Gavlick applied to his building principal for time off for family death in that his father-in-law died. He left school in the middle of the day on May 13, 1974, because of said death and absented himself on May 14, 15, 16, and 17 due to the death of a member of his family, namely, his father-in-law. Said request was reduced to writing and signed by John I. Gavlick certifying the aforesaid when, in fact, his said father-in-law did not die. Thus, he abused the absent days due to

You are viewing an archived copy from the New Jersey State Library.

death of members of the family in that he willfully lied when certifying his reasons for absence."

The Board asserts that respondent admits to the allegations as set forth in Charge No. 1. The record reveals that such an admission was stated in respondent's Answer to Charges before the Commissioner as follows:

"*Charge No. 1*

"Although the Request for Absence for Personal Business, dated September 12, 1975, was for a reason other than the reason stated for his absence, John I. Gavlick had proper grounds for taking the leave in that he went to attend his sister's wedding."

(Respondent's Answer to Charges, at p. 1)

Respondent testified that he called the school principal at his home on the evening of September 11, 1975, and informed the principal that he had to travel to Pennsylvania due to family illness. The following morning respondent appeared at the office of the principal for his salary check. The building principal informed respondent that he would have to get the check in the office of the Superintendent. Before leaving the principal's office, respondent completed and signed his name to the form "Request for Absence for Personal Business" (P-6) dated September 12, 1975, wherein the stated reason for the requested absence was as follows:

"Called Mr. Rush Last nite --
Emergency F. in L. Heart attack. Family illness*** "Father in Law - had heart attack - must travel to Wilkes Barre (his home)" (P-6)

Respondent completed and signed a second document entitled, "Absence On Account of Personal Illness or Business, Teachers and Office Employees," on September 15, 1975. Respondent filled in the line, "Family Illness," indicating father-in-law, heart attack (Emergency Personal). (P-7)

The deposed testimony of respondent revealed that he spent the day of September 12, 1975, paying bills and shopping in order to have sufficient time to travel to Wilkes Barre, Pennsylvania, to attend his sister's wedding scheduled for 9 p.m. the same evening. (P-1, at pp. 104-106) Respondent testified that subsequent to the completion of his errands on September 12, 1975, he waited until his wife had returned home from her teaching duties at Bordentown Regional High School and they both left for Wilkes Barre at approximately 3 p.m. to attend the wedding. (P-1, at pp. 104-105)

When respondent was asked why he had made an application to the Board for an emergency leave for family illness rather than an application for leave without pay he responded: "***I couldn't afford to *** [lose] the money." (P-1, at p. 101)

Subsequent to respondent's return to duty, it was his testimony that the Superintendent afforded him an opportunity to present an explanation for his

You are viewing an archived copy from the New Jersey State Library.

absence. He testified that he did not come forward with an explanation at that time. (P-1, at p. 100)

The Board further asserts that respondent admits the allegations as set forth in Charge No. 2 in his Answer to Charges before the Commissioner. The Board relies upon respondent's statement as follows:

> *"Charge No. 2*
>
> "Although the excuse in May 1974 for the leave of absence was fictitious, John I. Gavlick submitted such excuse for leave as a result of serious personal domestic problems concerning his marriage, which he wanted to keep away from general public knowledge and attention."
>
> (Respondent's Answer to Charges, at p. 2)

The Board alleges that respondent was provided ample opportunity to explain his problem with regard to the four and one-half days' absence in May 1974, allegedly due to the death of his father-in-law. The Board asserts that respondent did not come forward with reasons for his absence until the Board certified charges against him. The Board also alleges that respondent had exhausted his maximum leave time and rather than take four and one-half days' absence without pay, he willfully lied on his application for absence in order to obtain full payment for the days in question. (P-8) The Board declares that it paid respondent's full salary and, additionally, employed a substitute teacher for the absence. The Board asserts that it was therefore defrauded of moneys.

With regard to Charge No. 2, the Board avers that respondent was also in violation of its negotiated policies. It cites Article XIII, Temporary and Extended Leaves of Absence, which states, *inter alia,* as follows:

> "A. DEATH IN THE IMMEDIATE FAMILY: In case of death of member of the immediate family (immediate family as here used means husband or wife, children, parents, grandparents and close in-law relatives, brothers, sisters, or the death of any relative who has lived in the home of the employee for some time preceding the death), such employee shall be excused without loss of pay for a period not to exceed seven calendar days if the need is approved by the Superintendent of Schools. In the case of death of first aunts, uncles, first cousins, nieces, and nephews, one day shall be allowed for funeral." (C-3, at p. 9)

The Board asserts that the above policy was in effect at the time respondent made his fraudulent application for absence for death in the immediate family and the said Article also applied to Charge No. 1, inasmuch as a new policy had not been negotiated between the Board and the Association on September 12, 1975. *In the Matter of Piscataway Township Board of Education v. Piscataway Township Education Association,* 1 *NJPER* 49 #91 (1975)

With regard to absence and leave policies, *N.J.S.A.* 18A:30-7 authorizes boards of education to grant such leaves as follows:

You are viewing an archived copy from the New Jersey State Library.

> "Nothing in this chapter shall affect the right of the board of education to fix either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave, or to grant sick leave over and above the minimum sick leave as defined in this chapter or allowing days to accumulate over and above those provided for in section 18A:30-2, except that no person shall be allowed to increase his total accumulation by more than 15 days in any one year."

The Board cites *In the Matter of the Tenure Hearing of Wardlaw Hall, School District of the Township of Cinnaminson, Burlington County,* 1972 *S.L.D.* 485, 491, aff'd State Board of Education 1973 *S.L.D.* 770, wherein it was held that unauthorized absences would deprive numerous pupils of their regular teachers which would be wholly inconsistent with the State's policy of requiring the operation of a thorough and efficient system of public schools.

The Board declares that it was the burden of respondent to provide sufficient reasons or extenuating circumstances to the school administration to receive a leave of absence, with or without pay, when he had exhausted his personal days for absence. Even if the reasons justified the granting of leave time, the Board declares that respondent could not have been paid under the then existing policy. *In the Matter of the Tenure Hearing of Florence M. Sahner, School District of the Borough of Keyport, Monmouth County,* 1972 *S.L.D.* 494, 505

In its Brief, the Board asserts, "Mr. Gavlick admits to two specific incidents of lying for personal gain in little over a year's time***." (Board's Brief, at p. 6) With respect to these assertions, the Board declares that the misuse of leave could be grounds for dismissal. *In the Matter of the Tenure Hearing of William G. Ford, School District of the Township of West Deptford, Gloucester County,* 1971 *S.L.D.* 26, 29 The Board continues to cite *Sahner, supra,* which quoted *Smith et al. v. Board of Education of the Borough of Paramus et al.,* 1968 *S.L.D.* 62, 67:

> "***'The public schools were not created, nor are they supported, for the benefit of the teachers therein *** but for the benefit of the pupils and the resulting benefit to their parents and the community at large.'***"

Sahner, supra, at p. 502 quotes from *In the Matter of the Tenure Hearing of John H. Stokes,* 1971 *S.L.D.* 623, 643:

> "***'[D]ismissal from a tenured post cannot cure the wrong, but it can prevent the exhibition of a subsequent repeat performance, and it must be adjudged to be a proper and positive step.'***"

The Board further alleges with regard to respondent's interrogation in his deposition concerning other leaves of absence as follows:

> "It is obvious from the testimony of Mr. Gavlick that he had taken other days off for reasons that were not accurate when he represented [his

You are viewing an archived copy from the New Jersey State Library.

absences] to his immediate supervisors and could not recall the details thereof because he had not told the truth."

(Board's Brief, at p. 6; P-1, at pp. 121-129)

Respondent states that in his Answer to the first category of charges he did, in fact, misrepresent the reasons for leave time. He argues that his reasons for doing so mitigate against severe disciplinary action. Respondent avers that Charges Nos. 1 and 2, dealing with the taking of leave time for reasons other than those given, do not provide grounds for his dismissal.

With regard to Charge No. 1, respondent obtained a paid leave of absence based upon his statement that his father-in-law had suffered a heart attack. Respondent's father-in-law had not, in fact, suffered such an illness. But rather, respondent testified, he took the day of absence to pay his bills and shop for his children before he attended the wedding of his sister on September 12, 1975. (P-1, at pp. 103-112)

Respondent contends that he misrepresented the reasons for his absence because he was uncertain as to how he might obtain the needed time off with pay. Respondent noted that the Superintendent had made it quite clear at the outset of the school year that the administration would strictly adhere to the Board's policies with regard to personal leave. With this in mind, respondent asserts he advanced the fictitious reason for his leave, because he did not want to miss his sister's wedding.

Respondent argues that the new policy negotiated by the Board and Association for the 1975-76 school year mitigated in favor of respondent with regard to his leave on September 12, 1975. It was stipulated that the policy dated November 2, 1975, was not in effect at the time the charges were certified. (Tr. 36) Respondent contends that it was retroactive to July 1, 1975. The policy provided that a teacher was no longer required to state the reason for taking personal business days. Article XI, Absence on Account of Personal Business, reads, *inter alia,* as follows:

"A. Personal Business Days

"1. In the event an employee has business that can be transacted only during the school hours, three (3) days absence shall be granted with pay.

"2. The nature of the personal business need not be stated.

"3. Requests for personal days shall be granted upon five (5) calendar days' notice to the Superintendent of Schools or, his designee.***" (R-1, at p. 9)

Respondent contends that the policy change vitiates the basis for the charges against him. Retroactive to July 1, 1975, respondent argues he was not obligated to give any reason at all for his paid absence on September 12, 1975. Respondent asserts that the Board could not ignore its policy. Respondent avers,

You are viewing an archived copy from the New Jersey State Library.

therefore, that he must be exonerated in accordance with the terms of the policy language subsequently adopted by the Board on November 2, 1975.

With regard to Charge No. 2, respondent admitted that he misrepresented the reasons for the four and one-half days' absence in May 1974. (P-8) He testified that his wife had left him on May 11, 1974, and that he needed the time from his teaching duties to care for his children at home. (P-1, at pp. 116-121) Respondent testified further that, "I just didn't want anybody to know. That was my problem." (P-1, at p. 157) Respondent asserts that his domestic life was deteriorating and he needed time to sort things out. He was a man in a crisis. When he asked for time off he did not want anyone, including the Superintendent, to know why he required the time. (Respondent's Brief, at pp. 4-5)

Respondent asserts that it was only because the Board discovered the fictitious reason in September 1975 that the 1974 misrepresentation was also uncovered.

Respondent strongly objected to the Board's assertion that he had taken "other days off for reasons that were not accurate***." (Board's Brief, at p. 6) Respondent declares that there is not a scintilla of evidence to support the allegation. Further, the fact that respondent was uncertain as to the precise situation when he was conferring with an attorney in June 1974, was not proof of false reasons for requesting time off. Inasmuch as the Board had not amended its charges to include such allegations, respondent argues that the statement exceeds fair argument and should be ignored by the Commissioner.

Respondent argues that, considering all the facts in this matter, discharge would be improper, excessive and unwarranted. He states that an examination of prior school law decisions, including those cited in the Board's Brief, supports his position. In *Hall, supra,* the Commissioner reversed the Board's action to dismiss a tenured teacher although the teacher took a leave of absence to attend a religious retreat in direct violation of the Board's refusal to grant permission for such leave. In *Ford, supra,* charges of conduct unbecoming a teacher and absence without just cause were filed. Therein, the teacher had been away for four days, falsely notifying the school each day that he had had an attack of angina pectoris when, in fact, he had been working for the United States Census Bureau on those days. While the hearing officer found a clear misrepresentation of fact, the Commissioner focused on the misuse of sick leave rather than on the misrepresentation. The Commissioner ruled that the dismissal constituted too harsh a penalty and ordered reinstatement. In *Sahner, supra,* the Commissioner stated:

> "***The lack of candor on respondent's part while in the privacy of the school office, regarding the purpose of her requested leave *** which she fully described during a public hearing, has played a large role *** in the instant controversy.***" (at 505)

Dismissal of Sahner was held to constitute too severe a penalty.

You are viewing an archived copy from the New Jersey State Library.

Respondent contends that the Commissioner is faced with the question of an appropriate penalty in tenure cases. While each case must be resolved on its individual set of facts, citing *In the Matter of the Tenure Hearing of Dominic Parisi, School District of the City of Elizabeth, Union County,* 1974 *S.L.D.* 631, the Commissioner appeared to consider a variety of factors to determine whether dismissal, or some lesser penalty, was appropriate. Those factors included (1) whether the charge involved a single isolated incident or whether a series of incidents indicated an unacceptable pattern of conduct (*In the Matter of the Tenure Hearing of Robert H. Beam, School District of the Borough of Sayreville, Middlesex County,* 1973 *S.L.D.* 157); (2) prior record and length of service within the school district (*In the Matter of the Tenure Hearing of Jacque L. Sammons, School District of Black Horse Pike Regional, Camden County,* 1972 *S.L.D.* 302; *In the Matter of the Tenure Hearing of Louis A. Garibaldi, Jr.,* 1972 *S.L.D.* 611; *In the Matter of the Tenure Hearing of Thomas Williams, School District of Pascack Valley Regional High School District, Bergen County,* 1974 *S.L.D.* 820); (3) the expectations of acceptable future conduct (*In the Matter of the Tenure Hearing of John Kane, School District of the City of Bayonne, Hudson County,* 1975 *S.L.D.* 188); (4) the context, particularly the mitigating circumstances (*In the Matter of the Tenure Hearing of Ronald Puorro, School District of the Township of Hillside, Union County,* 1974 *S.L.D.* 755, aff'd State Board of Education March 5, 1975); (5) whether the alleged conduct involved pupils (*Kane, supra*); (6) whether criminal activity was involved or an issue of moral turpitude (*In the Matter of the Tenure Hearing of Patrick Hill, School District of the Township of Pemberton, Burlington County,* 1974 *S.L.D.* 522); and (7) whether the respondent had sufficiently paid through mental anguish, damage to reputation, or monetary loss.

Respondent asserts that, while none of the above factors were determinative, all appeared to be weighed in varying degrees to assess an appropriate penalty in each instance. He argues that, in the vast majority of the tenure cases decided by the Commissioner over the past six years, dismissal of a tenured teacher was an extraordinary remedy, rarely applied. Respondent argues that an evaluation of the evidence in the instant matter weighed against the above indicated standards requires that the Board's charges be dismissed and that he be reinstated to his position as a tenured teacher. Respondent avers that he has been punished enough for his misrepresentation concerning the requested leave time; there is no likelihood that this will ever be repeated again; the matter did not involve criminal activity or moral turpitude; there were mitigating circumstances and contractual defenses that should lead to reduction of any disciplinary action against him.

The hearing examiner finds that the credible evidence supports Charges Nos. 1 and 2 as set forth by the Board. With respect to Charge No. 1, respondent avers that the policy adopted by the Board on November 2, 1975, retroactive to July 1, 1975, provided mitigating circumstances with regard to his falsification of reasons for absence on September 12, 1975. The facts in the instant matter show otherwise. Article XI, Absence on Account of Personal Business, of the policy for the 1975-76 school year does indeed provide that: "2. The nature of the personal business need not be stated." (R-1, at p. 9) The antecedent to the above provision states as follows:

You are viewing an archived copy from the New Jersey State Library.

"1. In the event an employee has business that can be transacted only during the school hours, three (3) days absence shall be granted with pay." (R-1, at p. 9)

Subsequent sections of Article XI provide for an employee to be granted a personal business day under the following conditions:

"3. Request for personal days shall be granted upon five (5) calendar days' notice to the Superintendent of Schools or, his designee.

"4. The notice requirement may be waived by the Superintendent in case of emergency." (R-1, at p. 9)

The evidence shows that respondent did not exercise the option of not stating the nature of the personal business. On the contrary, respondent reported to the Board, orally and in writing, that his father-in-law had suffered a heart attack. Nor did respondent request a personal business day on five calendar days' notice as provided by Article XI of the negotiated agreement between the Board and the Association. The evidence shows that respondent called the principal during the evening before he absented himself from his teaching duties to report the alleged heart attack of his father-in-law. Respondent's subsequent signature affixed to two documents (P-6, P-7) for absence for personal business, wherein it is stated that the reason was due to his father-in-law's heart attack, vitiates his claim that the policy adopted November 2, 1975, controlled in the instant matter with respect to Charge No. 1.

Respondent admits that he misrepresented the reasons for his absence on May 14, 15, 16 and 17, 1974, as alleged by the Board in its Charge No. 2. (Respondent's Brief, at p. 5)

The hearing examiner, therefore, finds that the allegations as set forth in Charges Nos. 1 and 2, are true in fact.

CHARGE NO. 3

"On November 18, 1974, the said John I. Gavlick grabbed K.G., a student, by the arm in the halls and pulled him into his classroom. After closing his door, John I. Gavlick pushed K.G. into a chair and told him to remain there. Both parents were in for a conference with the principal and made a complaint that Mr. Gavlick had used physical force when disciplining their son. When confronted by K.G.'s parents on the same day, the said John I. Gavlick admitted that he physically escorted K.G. into the room and helped him sit in the chair. The above-described actions by John I. Gavlick is conduct unbecoming a teacher in the public schools."

CHARGE NO. 4

"On April 14, 1975, John I. Gavlick directed J.L., a student to sit down after he had presented some minor discipline problems. J.L. apparently did not move fast enough for Mr. Gavlick and as a result thereof, John I. Gavlick punched him for moving too slow. J.L.'s brother was in for a

You are viewing an archived copy from the New Jersey State Library.

conference with the principal and made a complaint that Mr. Gavlick had used physical force when disciplining his brother. When confronted by the principal, John I. Gavlick admitted he gave J.L. a light tap on the arm to encourage him to sit down. The above described actions by John I. Gavlick is conduct unbecoming a teacher in the public schools."

CHARGE NO. 5

"On April 18, 1975, John I. Gavlick attempted to discipline G.C., a student by grabbing him by the arm. G.C.'s parents were in for a conference with the principal and made a complaint that Mr. Gavlick had used physical force when disciplining their son. John I Gavlick admitted that he did use physical force in disciplining G.C., stating that he was only escorting G.C. by the arm. The above described actions by John I. Gavlick is conduct unbecoming a teacher in the public schools."

CHARGE NO. 6

"On June 6, 1975, when J.M., a student created a general disturbance, John I. Gavlick instructed him to stand in the corner. When J.M. refused, John I. Gavlick physically placed J.M. in the corner and placed his hands around J.M.'s throat, holding him and choking him in order that the said J.M. would remain in the corner. The situation worsened, and J.M. ran out of the room. Both parents were in for a conference and made a complaint that Mr. Gavlick had used physical force when disciplining their son. John I. Gavlick denied that he choked J.M. but said that he physically assisted him to the corner. The above-described actions by John I. Gavlick is conduct unbecoming a teacher in the public schools."

Charges Nos. 3, 4, 5 and 6 are similar and will be considered together. In his Answer to the above charges, respondent indicates that the incidents concerned his efforts to physically restrain disruptive pupils in accordance with *N.J.S.A.* 18A:6-1 which provides:

"No person employed or engaged in a school or educational institution, whether public or private shall inflict or cause to be inflicted corporal punishment upon a pupil attending such school or institution; but any such person may, within the scope of his employment, use and apply such amounts of force as is reasonable and necessary:

(1) to quell a disturbance, threatening physical injury to others;

(2) to obtain possession of weapons or other dangerous objects upon the person or within the control of a pupil;

(3) for the purpose of self-defense; and

(4) for the protection of persons or property;

and such acts, or any of them, shall not be construed to constitute corporal punishment within the meaning and intendment of this section.

You are viewing an archived copy from the New Jersey State Library.

> Every resolution, by law, rule, ordinance, or other act or authority permitting or authorizing corporal punishment to be inflicted upon a pupil attending a school or educational institution shall be void."

The Board asserts that respondent's testimony with regard to the charges did not meet the statutory provisions, *ante*. The The Board declares that there was no testimony by respondent that he used physical force to quell a disturbance which threatened physical injury to others; nor did his endeavors require that he obtain possession of weapons or other dangerous objects upon the person or within the control of a pupil; nor for the purpose of self-defense; nor was there any testimony with regard to his acts being for the protection of persons or property.

Respondent argues that the allegations embodied in Charges Nos. 3 through 6 were not before the Board at the time of its initial action against him on September 22, 1975. Respondent avers that the first time the alleged four incidents relating to pupils who were physically restrained by him came to the Board's attention was after respondent's request for personal business leave. (P-1, at p. 53) It was further asserted that none of these incidents found their way into respondent's personnel file, nor was he reprimanded about his conduct with respect to them.

The Board's evidence with regard to Charges Nos. 3 through 6 relies upon informally kept discipline cards which indicate the times when the pupils were disciplined and, in brief form, a synopsis of the incidents and the discipline administered by the school administration. (P-2, P-3, P-4, P-5) Respondent alleged that representatives of the Board made entries on the pupil discipline cards subsequent to disciplinary action being taken by the school authorities and at the same time the charges were in the process of preparation for the Board in September 1975. The principal admitted that he had, in fact, made after-the-fact entries on the pupil discipline cards in September 1975. (P-1, at pp. 48-49)

Respondent contends that an examination of the record shows that the four pupils in question were disruptive and created classroom disturbances time and again. Respondent submits that the events alleged in Charges Nos. 3 through 6 did not constitute corporal punishment within the statutory definition in *N.J.S.A.* 18A:6-1. (Respondent cites *Evangeline Craze v. Allendale Board of Education,* 1938 *S.L.D.* 585 (1930), reversed State Board of Education 587, wherein it was indicated that corporal punishment incorporated the notion that there had to be intent to cause bodily pain or suffering.) Respondent avers that there was no showing by the Board that he had, in fact, inflicted corporal punishment on any of the four pupils.

Respondent further asserts that his record is clear with respect to these incidents and that his personnel file does not contain any sort of reprimand with regard to his conduct concerning the events which led to Charges Nos. 3 through 6. Respondent respectfully requests that Charges Nos. 3 through 6 be dismissed.

The hearing examiner finds that respondent, by his own admission, did, in

You are viewing an archived copy from the New Jersey State Library.

fact, make physical contact with the four pupils as cited in Charges Nos. 3 through 6. Those admissions are recited in his deposition of January 7, 1976, as follows:

Regarding Charge No. 3, which involved pupil K.G. respondent stated, "***I grabbed him by the shoulders and pushed him down.***" (P-1, at p. 139)

With regard to Charge No. 4 and pupil J.L. respondent testified that,

A. "I hit him in the arm—
Q. "With what?
A. "My hand.
Q. "With your fist?
A. "Yes, but it was no slam, no hard punch." (P-1, at p. 131)

Of Charge No. 5 and pupil G.C. respondent stated, "***I believe I called him back, and he didn't come, and I grabbed him by the arm and brought him back.***" (P-1, at p. 136)

Respondent testified with respect to Charge No. 6 which involved pupil J.M. that,

> "***He wouldn't sit down. So I went to put my hands on his shoulders and he took a swing at me. Now, this part about me choking him, I don't know who ever got that, but my hand went up over his, underneath on his chest, and held him up against the blackboard. That's after he took a swing at me.***" (P-1, at p. 144)

Notwithstanding respondent's contention that there was no notation in his personnel file with respect to the alleged physical contact with pupils, it was the testimony of the school administration and of respondent himself that he had been cautioned with regard to his use of physical force. *In the Matter of the Tenure Hearing of Thomas Appleby, School District of Vineland, Cumberland County,* 1969 *S.L.D.* 159, aff'd State Board of Education 1970 *S.L.D.* 448, aff'd New Jersey Superior Court (1972 *S.L.D.* 662), the Commissioner said:

> "***While the Commissioner understands the exasperations and frustrations that often accompany the teacher's functions, he cannot condone resort to force and fear as appropriate procedures in dealing with pupils, even those whose recalcitrance appears to be open defiance. The Commissioner finds in the century-old statute prohibiting corporal punishment (*N.J.S.A.* 18A:6-1) an underlying philosophy that an individual has a right not only to freedom from bodily harm but also to freedom from offensive bodily touching even though there be no actual physical harm. *In the Matter of the Tenure Hearing of Frederick L. Ostergren,* 1966 *S.L.D.* 185, 186***" (at 172-173)

And,

> "***Thus, when teachers resort 'to unnecessary and inappropriate

You are viewing an archived copy from the New Jersey State Library.

physical contact with those in their charge (they) must expect to face dismissal or other severe penalty.' *In the Matter of the Tenure Hearing of Frederick L. Ostergren, supra.* ***" (at 173)

The hearing examiner finds, therefore, that respondent engaged in physical contact with the four pupils as charged, in violation of the corporal punishment statute *N.J.S.A.* 18A:6-1.

In summary, the hearing examiner finds:

1. that Charges Nos. 1 and 2 are true in fact and constitute conduct unbecoming a teacher.

2. that Charges Nos. 3, 4, 5 and 6 are true as alleged and constitute conduct unbecoming a teacher.

The hearing examiner leaves to the Commissioner to determine what penalty, if any, may properly be ordered.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner and the exceptions thereto filed by respondent pursuant to *N.J.A.C.* 6:24-1.17(b).

The Commissioner is in agreement with the findings set forth in the report of the hearing examiner and herewith proceeds to determine the penalty that may justly be imposed for the violations herein admitted or otherwise found to be true in fact.

On September 11, 1975, respondent absented himself from his place of employment in a manner and at a time contrary to the then established policies of the Board. Such premeditated contravention of policy is reprehensible. Yet this act, standing alone within the context of a long period of satisfactory service to the public schools, would be insufficient reason for dismissal. *In the Matter of the Tenure Hearing of William Megnin, School District of the Township of Wayne, Passaic County,* 1973 *S.L.D.* 641

The Commissioner holds, however, that this infraction is raised to a higher magnitude of seriousness by the events of May 13, 1974 through May 17, 1974, and that the two events must be joined to reach a final determination.

Respondent's falsification of his reasons for absence on official Board records constitutes gross misconduct sufficient to substantiate the Board's charge of conduct unbecoming a teacher. Respondent's reporting of his father-in-law's death on May 13, 1974, and subsequently his heart attack on September 11, 1975, demonstrated irresponsible behavior which cannot be

You are viewing an archived copy from the New Jersey State Library.

condoned. The Commissioner finds respondent guilty of conduct unbecoming a teaching staff member in regard to Charges Nos. 1 and 2.

The Commissioner is aware that teachers differ in their abilities to secure and maintain the obedience and respect of their pupils, but it is essential that every teacher conduct himself with dignity at all times. In this specific case, respondent's actions and reactions were wrong and improper in every instance and constituted irresponsible professional behavior which cannot be condoned.

The use of corporal punishment and physical force in the public schools in this State has been prohibited by statute since 1867. *N.J.S.A.* 18A:6-1 In a previous decision, *In re Fulcomer,* 1961-62 *S.L.D.* 160, rem. State Board of Education 1963 *S.L.D.* 251, decision on remand 1964 *S.L.D.* 142, aff'd State Board 1966 *S.L.D.* 225, rem. 93 *N.J. Super.* 404 (*App. Div.* 1967), decision on remand 1967 *S.L.D.* 215, aff'd New Jersey Superior Court, Appellate Division, December 26, 1967 (1967 *S.L.D.* 220) the Commissioner stated:

> "***that such a philosophy with its prohibition of the use of corporal punishment or physical enforcement does not leave a teacher helpless to control his pupils. Competent teachers never find it necessary to resort to physical force or violence to maintain discipline or compel obedience. If all other means fail, there is always a resort to removal from the classroom or school through suspension or expulsion. *** While teachers are sensitive to the same emotional stresses as all other persons, their particular relationship to children imposes upon them a special responsibility for exemplary restraint and mature self-control.***" (1961-62 *S.L.D.* , at 162)

See also *In the Matter of the Tenure Hearing of Pauline Nickerson, Peapack-Gladstone, Somerset County,* 1965 *S.L.D.* 130; *In the Matter of the Tenure Hearing of Frederick L. Ostergren, School District of Franklin Township, Somerset County,* 1966 *S.L.D.* 185; *In the Matter of the Tenure Hearing of Thomas Appleby, School District of Vineland, Cumberland County,* 1969 *S.L.D.* 159, aff'd State Board of Education 1970 *S.L.D.* 448, aff'd Docket No. A-539-70 New Jersey Superior Court, Appellate Division, March 14, 1972 (1972 *S.L.D.* 662).

The Commissioner clearly stated his judgment in *Nickerson, supra,* that:

> "***Parents have a right to be assured that their children will not suffer physical indignities at the hands of teachers, and teachers who resort to unnecessary and inappropriate physical contact with those in their charge must expect to face dismissal or other severe penalty.***"
>
> (1965 *S.L.D.*, at 132)

The Commissioner has concluded, in the instant matter, that respondent has been found guilty of Charges Nos. 3 through 6 of inflicting corporal punishment upon pupils and this constitutes gross misconduct sufficient to substantiate the Board's charge of conduct unbecoming a teacher.

The Commissioner repeats his position with respect to the protection of

You are viewing an archived copy from the New Jersey State Library.

tenure as previously articulated *In the Matter of the Tenure Hearing of Joseph A. Maratea, Township of Riverside, Burlington County,* 1966 *S.L.D.* 77, aff'd State Board of Education 106, aff'd Docket No. A-515-66 New Jersey Superior Court, Appellate Division, December 1, 1967 (1967 *S.L.D.* 351):

> "***The Commissioner is assiduous to protect school personnel in their employment when they are subjected to unfair or improper attacks or when they are unable to perform effectively because of conditions not of their own making or beyond their control. An employee is not entitled to the protection of tenure, however, when, by his own acts or failures, he creates conditions under which the proper operation of the schools is adversely affected. When the responsibility for the conditions unfavorable to the effective operation of the schools rests with the employee then, the Commissioner holds, the protection of tenure is forfeit.***"
>
> (1966 *S.L.D.*, at 106)

Similarly, the Commissioner has said *In the Matter of the Tenure Hearing of Ernest Tordo, School District of the Township of Jackson, Ocean County,* 1974 *S.L.D.* 97 that:

> "***Teachers are public employees who hold positions demanding public trust, and in such positions they teach, inform, and mold habits and attitudes, and influence the opinions of their pupils. Pupils learn, therefore, not only what they are taught by the teacher, but what they see, hear, experience, and learn about the teacher. When a teacher deliberately and willfully violates the law, as in this matter, and consequently violates the public trust placed in him, he must expect dismissal or other severe penalty as set by the Commissioner.***"
>
> (at 98-99)

Having found the charges against respondent to be true in fact and of such moment as to constitute gross conduct unbecoming a teacher, the Commissioner determines that John I. Gavlick has forfeited his rights to tenure in the School District of the City of Burlington. Accordingly, respondent is dismissed from his employment by the Board of Education of the School District of the City of Burlington as of the date of his suspension.

COMMISSIONER OF EDUCATION

May 6, 1977

You are viewing an archived copy from the New Jersey State Library.

Central Regional Education Association; Ronald Villano; Peter H. Smith and Peter Pillman, individually on behalf of their children and on behalf of all other parents with children in the Central Regional School District,

Petitioners,

v.

Board of Education of the Central Regional High School District, Ocean County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioners, Starkey, Turnbach, White & Kelly (Charles Starkey, Esq., of Counsel)

For the Respondent, Russo & Courtney (James P. Courtney, Esq., of Counsel)

Petitioners, teaching staff members of the Central Regional Education Association, hereinafter "Association," and other citizens of the Regional School District, aver that the Central Regional High School facility designed for 1250-1350 pupils cannot provide a thorough and efficient educational program for the more than 2900 pupils who are housed therein in double sessions and that all reasonable efforts to secure additional facilities have met with failure. They further aver that there is no other solution they can offer for remediation of the problem and, therefore, the Commissioner of Education must intervene to impose one. The Board of Education of the Central Regional High School District, hereinafter "Board," joins with the Association in requesting intervention by the Commissioner.

A hearing was conducted on June 17, 1976 by a hearing examiner appointed by the Commissioner at the office of the Ocean County Superintendent of Schools, Toms River.

Subsequently, the Association filed a Brief. The report of the hearing examiner is as follows:

The original Petition in this matter averred that there was a controversy between the Association and the Board concerned with the provision for an adequate educational program in the Central Regional High School District. This avowal was abandoned at the hearing, however, and the Association now asserts that the Board has in fact done all it could do to obtain approval by the voters of new school facilities. Thus the hearing was not truly an adversary procedure and the parties are, in effect, joined for purposes of a request to the Commissioner for intervention and an imposed solution to their problems. The record of the hearing serves as the foundation for the request.

You are viewing an archived copy from the New Jersey State Library.

The principal facts with respect to the present educational program in the Central Regional High School District are a matter of public record and were recited at the hearing by the Board's President, its Superintendent of Schools and the County Superintendent. In important respects such recital was concerned with developments in the district during the years 1970-76.

The Superintendent testified that the Board, in recognition of a need for additional school facilities, first offered a referendum to the voters for approval in 1970. Such referendum proposed the expenditure of $4,800,000, but it was defeated. (Tr. 78) Two other referenda proposals for the expenditure of $3,500,000 and $3,900,000 were similarly defeated by the electorate in 1970 and 1971 while at the same time pupil enrollment continued to increase. (Tr. 78) Such enrollment totaled 1864 in the 1970-71 academic year but increased rapidly thereafter as follows:

PUPIL POPULATION*

Year	Pupils
1970-71	1864
1971-72	2130
1972-73	2433
1973-74	2636

*From P-12 and P-14

The district was, during all of this time and to the present day, forced into double session scheduling since the present Junior-Senior High School has a functional pupil capacity of only 1250-1350 pupils. (Tr. 82; P-16) The school is organized on a grade 7-12 basis with a Junior High grouping of grades 7-9 in attendance in one session and the Senior High, grades 10-12, in another.

In 1973 the increasing severity of the problem was brought to the attention of the Commissioner and on July 2, 1973, he directed the Board to take "immediate steps" to provide suitable educational facilities for the pupils of the district. He also directed the Ocean County Superintendent to provide monthly reports of the Board's progress in conformity with the directive. (Tr. 11)

Subsequently, the Board did submit schematic plans to the Building Services Division, State Department of Education, which proposed erection of a second school on the site of the present high school. Such site exceeds 100 acres in size, but was deemed inadequate by the Division and approval was denied. The Board appealed to the Commissioner and subsequently the Commissioner did grant permission to proceed with plans to erect a second schoolhouse on the site. *In the Matter of the Request of the Board of Education of the Central Regional High School District, Ocean County, to Utilize a School Site,* 1974 *S.L.D.* 1059 Pursuant to this permission, the Board did offer a fourth proposal to the voters on December 16, 1975. (Tr. 19) This proposal was to expend $11,500,000 for a new school and, by separate proposal, to expend $350,000 for the purchase of a second parcel of land for a future school. Both proposals

You are viewing an archived copy from the New Jersey State Library.

were defeated but were resubmitted by the Board on February 28, 1976. (Tr. 21) On that second occasion the proposals were again defeated and the present Petition ensued.

In the interim between the Commissioner's direction to the Board in 1973 and 1976 the pupil population continued to increase as follows:

PUPIL POPULATION*

Year	Pupils
1973-74	2636
1974-75	2770
1975-76	2906

*From P-12

Thus, in summary, in the six-year period 1970-76 the pupil population of the district has increased from 1864 pupils to 2906 pupils while at the same time there have been five referenda defeats of proposals by the Board to provide new facilities. Indeed, during this period of time it has been possible to gain only two additional classrooms for an increase of more than a thousand pupils. These rooms, the Superintendent testified, were made available by moving the central office staff to another small building. (Tr. 80) Interior design and rearrangement has also been of some assistance, but the situation continues to worsen and it is now estimated that even *without* a projection for immigration the pupil population will increase to approximately 3100 pupils by 1981. (P-13) Other projections indicate that as many as 4700 pupils may, in fact, have to be housed and provided an educational program by that date. (P-14) The present more conservative projections include recognition of the fact that approximately 150-175 pupils from the Lakehurst district, now a sending district to the Regional, will attend another high school in 1976. (P-13; Tr. 74) There is also recognition that alternative options for housing any future pupil population increase are extremely limited. The Superintendent testified that there were only the possibilities of an extension of the present double-session day, or triple sessions. (Tr. 87-88)

The Superintendent, Board President and County Superintendent all testified with respect to the consequences of even the present conditions on the educational program afforded pupils. The Superintendent listed the following expediencies or deficiencies as severe handicaps in this respect: (Tr. 84 *et seq.*)

(a) The science program has been severely restricted and lab science has been reduced from ten periods to five.

(b) There is only one music room and a severely limited program. The art program is similarly limited.

(c) All pupils are completely scheduled during their school attendance and have no time for supervised study activities or to use the library.

You are viewing an archived copy from the New Jersey State Library.

(d) Vocational offerings in the County Program are made less attractive by the double session necessity and the district's quota of pupils to attend is not met.

(e) Transportation is afforded 99 percent of the pupils but problems concerned with it are "quadrupled" by the scheduling.

(f) There is no extracurricular program of substance except inter-scholastic athletics, which are difficult to schedule.

(g) There is no lunch program for all intents and purposes and no Federal assistance to insure good nutrition.

(h) English classes contain an average of 35-40 pupils. (Tr. 98)

(i) Truck trailers have to be used to store supplies.

(j) School administrators are in some instances housed in converted closets and all auxiliary personnel have been housed in cramped makeshift quarters.

(k) The auditorium is used for classes so that its use for other purposes is made difficult, if not impossible.

(l) Maintenance of the school suffers as the result of the extended use by 2900 pupils. The condition of school grounds in particular is listed by the Superintendent as "deplorable." (Tr. 89)

(m) The ratio of guidance counselors to pupils is approximately 1 to 450-500 in the Junior High School. (Tr. 97)

In general, the facts show a severely overcrowded, restricted and marginal school operation; one that is not thorough and that is efficient only in the sense that every available nook and cranny is somehow utilized. An analogy of 2900 pupils plus scores of faculty members to sardines in a can would not in the circumstances appear to be inappropriate but instead descriptive of the physical school situation as it actually exists. Additionally, it appears the can is bulging at the seams.

In summation, the Superintendent testified that the school was not affording its thousands of pupils the education to which they are entitled (Tr. 89) and he further testified that he believed that everyone concerned had "***done as much as they can do***" to alleviate the situation. (Tr. 100) The Superintendent was joined in this expression of opinion by the County Superintendent and the Board President. The County Superintendent testified:

> "***There is no doubt in my mind that they are not able, at the present time, to conduct a thorough and efficient system of education, and unless they have additional facilities, they will not be able to carry out the mandate under the thorough and efficient code***." (Tr. 13)

You are viewing an archived copy from the New Jersey State Library.

The Board President testified he concurred with the County Superintendent and indicated he believed new facilities were "***absolutely necessary three years ago." (Tr. 69)

All three officials testified that in the context of referenda defeats they despaired of any approval of a future referendum by the electorate. (Tr. 16, 55, 100) Such testimony received elaboration from the Board President who provided an analysis of the votes cast in recent elections. He testified that all constituent districts but one had approved the most recent propositions, and the vote from two senior citizen complexes had caused their defeat. (Tr. 42 *et seq.*) For the February 28, 1976 referendum he recited this vote count:

Proposition Number One

(to build a new school)

Tally in Favor	**Tally Opposed**
4755	5809

Proposition Number Two

(to purchase land)

4039	6331	(P-8)

He listed the voting results in the two senior citizen polling places as:

Proposition Number One

Tally in Favor	**Tally Opposed**
137 (Holiday City)	2729
127 (Silver Ridge)	518
Total 264	Total 3247

Proposition Number Two

108 (Holiday City)	2734	
93 (Silver Ridge)	524	
Total 201	Total 3258	(P-8)

Thus, in summary Proposition Number One was defeated 4755-5809 with the senior citizen villages tally added but otherwise approved, with a subtraction of such tally, by a vote of 4491 to 2562. The results of the tally for Proposition Number Two were directly parallel. A total of 53 percent of the district's eligible voters were said to have voted in the referendum. (P-8)

The Board President testified that the total vote in the senior citizen villages approximated 84 percent of the total registered voters but that only approximately 30 percent of the registered voters cast ballots in the remainder of the regional district. (Tr. 24, 43) He testified that the disparity in the favorable and unfavorable tallies was attributable to a "***diversity of interests,

You are viewing an archived copy from the New Jersey State Library.

not the least of which is the senior citizens interest***" and that future approval of a referendum is improbable, if not impossible. (Tr. 67)

Such testimony was based upon the results of a recent questionnaire which the Board sent to all voters of the district which indicated that the "***overwhelming majority of senior citizens responding, prefer to see a junior school at a cost of ***under six million dollars***" while voters who have previously approved a senior high school would not approve a new junior high. (Tr. 57) (See also P-2(b), (c), (d), and P-9, P-11.)

This dichotomy of opinion exists, the Board President testified, despite extensive efforts to harmonize views and inform the voters of the choices available to them. He said members of the Board had, prior to the most recent referendum of February 1976, spent three or four nights every week for two or three months "***disseminating as much factual information, and as much logic and thought as was humanly possible. We could not, from a time point of view, have expended any greater amount of time toward that end." (Tr. 68) (See also P-4, P-5, P-6, P-7.)

Finally, there are certain documents introduced in evidence at the hearing which are pertinent to the instant matter. They include a study of "School Building Needs" commissioned by the Board and made by the firm of Engelhardt and Engelhardt, Inc. in November 1972 (P-14), and a six page study by the Facility Planning Division, State Department of Education, in April 1971. (P-16) These documents may be summarized briefly.

The Engelhardt report (P-14) contains complete enrollment projections, with supporting data, through the 1982-83 academic year. Its margin of error with respect to pupil population in the year 1975-76 was less than 10 percent. (actual 2906 pupils, projected 3174) (See P-14, at p. 18; P-12.) The report estimated 3859 pupils will be enrolled by 1978-79 and 4741 pupils by 1982-83 and sets forth five alternative proposals for remediation of the problem. Most importantly the report recommends for priority consideration the construction of a new 2200 pupil school or schools on another site and discusses the alternatives: additions to the present school building, a new school for 800 pupils on the present site, extended "Year-Round School Year" and continuance of double sessions. (P-12, at pp. 40, 41)

The Facility Planning Division Report (P-16) lists the functional capacity of the present six year high school as 1354 pupils and specifically states that the high school facilities for grades 10-12 "are inadequate." (at p. 4) It lists existing substandard areas as art room, mechanical drawing room, wood, electronics and metal shops, home economics rooms, science laboratories, business education facilities and the library. (at p. 4) The report recommended the construction of a second high school on another site for grades 9-12, the enlargement and conversion of the present school to a grade 9-12 organization and the construction of a new middle school, for grades 7-8. (at p. 5) Phased construction of such facilities is also listed as an alternative.

The Association and the Board aver that all of these reports and a review

You are viewing an archived copy from the New Jersey State Library.

of their own efforts lead to the conclusion that the present educational program, already inadequate, will deteriorate further unless the Commissioner and/or the State Board of Education intervene to mandate a new direction. Specifically, they cite the recent enactment of Chapter 212, Laws of 1975, "Public School Education Act of 1975," (*N.J.S.A.* 18A:7A-1 *et seq.*) and court decisions in support of an assertion that there is adequate authority for such intervention. *Robinson et al. v. Cahill et al.*, 62 *N.J.* 473 (1973); *Board of Education of Elizabeth v. City Council of Elizabeth,* 55 *N.J.* 501 (1970); *Board of Education of East Brunswick v. Township Council of East Brunswick,* 48 *N.J.* 94 (1966)

Finally, there is the letter of a Central Regional High School senior who wrote to the State Department of Education in May 1976 and a letter from an officer in one of the senior citizen villages to the Commissioner in July 1976. The high school senior labeled the school situation as "critical" at Central Regional and said, *inter alia*:

> "***Many of our students and teachers have been working desperately to stop an increasingly unbearable situation, but we are continually frustrated. We live with this problem every day, and to us it is just not an appeal for more money or a bigger school, but the chance to learn and educate ourselves fully. This is the crucial foundation upon which our future lives and personal characters are based, and it is the most precious thing a society can give to its children.***
>
> "We are pushed through our four years as quickly and efficiently as possible. This means that we are often denied afterschool help and time for the clubs and organizations that other high school students are happily engaged in.
>
> "The students have worked hard to remove apathy and inform voters of the situation, but we are losing our faith in this system which denies us a voice when our educational system is being destroyed. We are voteless and defenseless and I am urging you to help us.***" (PR-1)

The Ocean County Superintendent testified that the letter presents the pupils' point of view as well as he has seen it presented. (Tr. 17)

The letter from the senior citizen is also apparently representative of a point of view not adequately set forth at the hearing. The letter supports testimony reported, *ante,* that senior citizens have rejected the proposed school as too costly but that there is or may be an indication of support for a school costing "under six million dollars." (Tr. 57) The letter specifically avers that:

> "***[R]ecent studies by the Board of Education and the Community Council Advisory to the Board of Education, of which I am a member, have shown that a school of the size defeated in the referendum could be built for substantially less money. A figure of $8. million has been used.***" (Letter of Mr. Emanuel I. Mohl, at p. 2)

You are viewing an archived copy from the New Jersey State Library.

The letter also suggests "***that should the Commissioner decide that he has the authority to order construction of school facilities, that he should set a limit of the overall cost and require that a fixed price contract be obtained.***" (*Id.*, at p. 2)

The hearing examiner has reproduced such expressed opinions in order that the record herein might be a broad one and in recognition of the fact that the hearing was not truly adversary in nature. Additionally, the hearing examiner visited the Central Regional High School while it was in session to observe the problems alleged to exist.

He has now examined all such evidence in the total context of the district of over 134 square miles and will set forth the principal facts, findings and recommendations in summary form as follows:

1. The Central Regional District has since 1970 been housing an increasing number of pupils in overcrowded conditions with a minimal educational program. At the present time the situation may be termed critical and unique in the State in that even the expedient of double sessions is now inadequate as a basic palliative. The best evidence of this evaluation is one overwhelming and significant fact, 2906 pupils are now housed in double sessions in a schoolhouse with a functional capacity of 1250-1350 pupils.

2. There is no opportunity for absorption of future pupil population increases. Even allowing for a 20 percent error in the Engelhardt projections (P-14), the pupil population will rise to approximately 3800 pupils in the 1982-83 academic year. (As noted *ante,* however, the margin of error was less than 10 percent in the three year period 1970-73.)

3. The only alternative to housing these pupils without new facilities is an extension of an already long day (7:30 a.m. – 5:00 p.m.) and further educational program deterioration.

4. The program and facilities of the school are already below minimal acceptable levels in the opinion of the County Superintendent, officials of the State Department of Education (P-16) and the Superintendent of the district. The hearing examiner has examined all of the evidence and concurs with their views. He so finds.

5. Although it is recognized by all community segments that new facilities of some kind are needed, five bond issues have been rejected by the voters of the district.

6. There is, at this juncture, a need and obligation to provide additional school facilities. The needs of 1970 were not met, and the neglect of all subsequent years to 1976 have been added thereto. While a high school costing $11,500,000 may be viewed as expensive, it appears from the record that the junior high school advocated as an alternative would not be adequate. (See P-16.)

You are viewing an archived copy from the New Jersey State Library.

7. There is little likelihood that future referenda to solve the problem will be any more successful than those of the past. Views have polarized and a middle ground seems difficult to find.

8. The recent proposal rejected by the voters was an attempt, over initial objections by the State Department of Education, to save expense by intensive site utilization while at the same time planning, by purchase of another site, for the future. Thus, it was consistent with the Board's expert advice (P-14, P-16) and an attempt at economy which was unsuccessful.

Such facts lead to the conclusion that the democratic process embodied in the statutes which mandate a favorable vote on a public question to authorize the issuance of bonds before a schoolhouse may be built has failed a total of more than 2900 pupils in this regional district in Ocean County. In particular it is clear that the educational program and opportunity afforded them does not comport with the prescription for a thorough and efficient system of free public schools set forth in the Public School Education Act of 1975 and that a remedy must be found and implemented with dispatch if further deterioration is to be avoided. The Association and the Board suggest intervention by the Commissioner and the State Board. The hearing examiner finds it would be justifiable to the extent possible within the parameters of existing law.

Finally, there are pending requests for withdrawal from the Central Regional District from four of the constituent districts. Such requests must be submitted to a referendum process which has been notably unsuccessful in this district in the past but must be considered in *pari materia* with the instant matter in terms of priority.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner and observes that no objections to it have been filed. Such report is a compelling itemization of past frustration and of the present need to secure adequate physical facilities for the education of approximately 2900 pupils of the Central Regional District. There seems to be a unanimity of opinion by all responsible persons who have examined the situation in depth that the need is present and growing, although there has been no unanimity with respect to solutions to the problems presented. A pupil has detailed her own appraisal grounded in experience. A leader of the senior citizens group concurs with the necessity for school expansion but questions the scope of that proposed by the Board. The County Superintendent, joined by the hearing examiner, finds that the one regional school building as presently constituted cannot provide a thorough and efficient educational program for the pupils of the school district. The hearing examiner finds that intervention by the Commissioner and the State Board would be justifiable to the extent possible within the parameters of existing law. Is such intervention possible where the question for determination is concerned with a necessity for capital expenditures? If it is, what form may it take? What are the parameters which

You are viewing an archived copy from the New Jersey State Library.

impose strictures on such possible intervention? Does jurisdiction to authorize capital expenditures lie solely with the electorate? Is the constitutionality of the laws which govern capital expenditures at the crux of the problem and, if it is, is there an authority in the office of the Commissioner for intervention? Such questions must be explored at this juncture.

The Constitution of the United States is silent with respect to the provision of educational facilities and programs of education in the respective States of the Union and this silence imposes the prime responsibility for such facilities and programs on the States. In New Jersey the State Constitution mandates that the Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools and, pursuant to such authority, the Legislature has so provided. (New Jersey Constitution, Article VIII, Sect. IV, par. 1; Title 18A, Education)

The Legislature's statutory plan for the authorization of a school district's capital projects is clear and unambiguous. It has rested for a century or more either on a broad consensus of the electorate as expressed by the officials of two legislative bodies, the local board of education and board of school estimate in Type I districts, or in such consensus as expressed in a direct vote of the people. In the Central Regional District it is this latter consensus which is required. The applicable statutes provide:

N.J.S.A. 18A:21-1

"The capital projects which may be undertaken by a board of education, for any lawful purposes, the cost whereof may be provided for from taxes, or by the issuance of bonds, as provided by this chapter, are as follows:

1. The acquisition by purchase or condemnation of lands;

2. The grading, draining and landscaping of lands owned or to be acquired by the board and the improvement thereof in any like manner;

3. The acquisition, *construction,* reconstruction, remodeling, alteration, *enlargement* or major repair *of buildings*; and

4. The purchase of the original furniture, equipment and apparatus, or of major renewals of furniture, equipment and apparatus, for any building used or to be used for such purposes."

N.J.S.A. 18A:22-40

"Whenever a board of education shall determine that it is necessary to raise additional sums of money, over and above the amount fixed and determined in the last annual school budget, by special district taxes, for:

a. Current expenses of schools;

You are viewing an archived copy from the New Jersey State Library.

b. Vocational evening schools or classes;

c. Evening schools or classes for foreign-born residents;

d. Appropriations to capital reserve fund; or

e. *Any capital project,* the cost whereof is to be paid directly from such taxes;

it shall estimate the amounts so deemed necessary to be raised, levied and collected and, if the board shall desire to borrow upon its promissory note in anticipation of taxes to be raised, levied and collected to provide for said expenditures, it shall estimate also the amount of interest to be paid upon said notes."

N.J.S.A. 18A:22-41

"In any district in which the amounts, with any interest to be paid thereon, to be raised, levied and collected by taxes for *school purposes* are determined by the voters of the district, the *board shall cause the question,* whether or not the amounts so estimated shall be so raised, *to be submitted to the legal voters of the district at a special school election,* to be held on such date as shall be determined upon by the board, and if at said election the *question shall be adopted,* the secretary shall certify that the amount so determined upon has been authorized to be raised in said manner to the county board of taxation within five days after the date of the holding of such election."

N.J.S.A. 18A:22-42

"The board of education of any such district may borrow in anticipation of taxes to be raised, levied and collected to provide for said expenditures, or any part thereof, the sums or sums so authorized, upon its promissory notes bearing interest at a rate or rates not to exceed 6% per annum, maturing not later than December 31 of the year in which such taxes shall be raised, levied and collected, and the principal and interest of the notes shall be paid out of the sum so raised not later than the date of maturity of said notes." (*Emphasis supplied.*)

Thus, it is the local board of education in each of the State's school districts which has the responsibility to initiate proposals for the construction of school facilities and to submit the question of funding such costs to the legal voters. The statutory plan further provides that if the question is adopted the local board may borrow to temporarily finance the costs of implementing its proposals and that the amount certified by the board shall be "raised, levied and collected" by local taxes. *N.J.S.A.* 18A:22-43

It is noted here that there is no alternative method of approval for capital expenditures in Type II districts. There is no statutory designation of the State Board of Education or the Commissioner as an intervenor or intervenors in the event that numerous referenda fail of approval. There is an absence of statutory

You are viewing an archived copy from the New Jersey State Library.

recognition of the fact that repeated defeats of proposals to construct school facilities may well result, as herein and in many other school districts, in a clear denial of the constitutional entitlement to a thorough and efficient school experience. The Commissioner must presume, however, that the statutory plan is constitutional and that the vote of the electorate is supreme. As the State Board of Education said *In the Matter of George B. Thorp v. Board of Trustees of Schools of Industrial Education, Newark College of Engineering,* 1949-50 *S.L.D.* 61, aff'd State Board of Education 1950-51 *S.L.D.* 70, aff'd 6 *N.J.* 498 (1951) when faced with a constitutional challenge:

> "***The appeal is, in effect, a demand that we pass upon the constitutionality of a statute which, of course, we have no authority to do. Justice Colie in the matter of *Schwartz vs. Essex County Board of Taxation,* 129 N.J.L. 129, stated 'the final responsibility to pass upon the constitutionality of a given piece of legislation rests in the courts and it is the duty of the various State agencies and administrative bodies to accept a legislative act as constitutional until such time as it has been declared to be unconstitutional by a qualified judicial body.***'***"
>
> (1950-51 *S.L.D.* at 70)

The statutes that mandate a favorable vote of the people for an expenditure of public funds for capital expenditures have never been declared unconstitutional. It must therefore be presumed that they are constitutional and that even in the context of the instant factual setting there is no way to build a school facility in the Central Regional school district without an affirmative vote of the electorate. As the State Board of Education said in its affirmance of the Commissioner's decision in *Stephen Little v. Board of Education of Morristown,* 1938 *S.L.D.* 10 (1928), aff'd State Board of Education 12, aff'd New Jersey Superior Court 13 when faced with a question concerned with the efficacy of referendum questions:

> "***No limitation on the powers of the voters is to be found in the statute and we can find no authority for interfering with the action taken at the Morristown election. In our opinion the voters of that city were the *sole judges of the question presented to them by the Board of Education* acting as we find it did, according to law.***"(*Emphasis supplied.*)
>
> (1938 *S.L.D.* at 12-13)

While the narrow question in *Little* differed from that of the instant matter there can be no question that the determination is equally applicable herein. The Commissioner so holds.

Nor is this holding tempered substantively by recent court decisions which state that the Commissioner has broad authority to ensure compliance with the constitutional mandate that all pupils shall be given a thorough and efficient educational program. *Robinson, supra; East Brunswick, supra* Such decisions were concerned with a constitutional entitlement but were grounded in a different factual setting and did not embrace the very practical problem of assuring that long-term debt is legally incurred. Such assurance could not be

You are viewing an archived copy from the New Jersey State Library.

given if a determination of an administrative officer, the Commissioner, or the State Board were to assume an authority not clearly and precisely defined by the Legislature or the courts.

Accordingly, the Commissioner determines that he must, within the confines of his own authority, direct the Board to again attempt to find common ground with a majority of the electorate of the Central Regional District through the submission of yet another building referendum proposal pursuant to law. The Commissioner further determines that the facts of this case deserve attention by the Legislature in order that the entitlement to secure adequate school facilities, so recently enunciated as part of the Public School Education Act of 1975, might be obtained. A lack of such facilities, as demonstrated herein, is clearly not consonant with such enunciation.

For the reasons hereinbefore set forth, this Petition is dismissed.

COMMISSIONER OF EDUCATION

May 6, 1977
Dismissed New Jersey Superior Court August 10, 1977
Dismissed State Board of Education May 3, 1978

Walter Wilson,

Petitioner,

v.

Board of Education of the City of New Brunswick, Middlesex County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Rosenhouse, Cutler & Zuckerman (Elaine Ballai, Attorney at Law)

For the Respondent, Murray & Pachman (James R. Granello, Esq., of Counsel)

Petitioner, a teaching staff member who has acquired a tenure status in the employ of the Board of Education of the City of New Brunswick, hereinafter "Board," alleges that the Board improperly and illegally removed him from the position of department chairman to which he claims tenure. Petitioner seeks reinstatement to the position of department chairman, as well as the additional

You are viewing an archived copy from the New Jersey State Library.

compensation he would have received had he not been removed. The Board denies the allegations and asserts that its action with respect to the transfer of petitioner to the position of classroom teacher is in all respects proper and legally correct. The Board moved to dismiss the matter and filed a Brief in support thereof.

Two days of hearing were conducted in the matter on September 18 and October 15, 1975 at the State Department of Education, Trenton, by a hearing examiner appointed by the Commissioner of Education. Petitioner subsequently filed a Brief in opposition to the Board's Motion to Dismiss and in support of his claims hereinbefore set forth. The report of the hearing examiner is as follows:

Petitioner has been employed as a teaching staff member by the Board since the 1961-62 academic year when he was assigned to teach social studies. Petitioner continued as a teacher of social studies thereafter. On August 4, 1969, the Board determined that petitioner "***be appointed Acting Head of the Social Studies Department for the 1969-70 school year at a salary stipend of 15% above his teacher's salary.***" (C-20, Exhibit C)

Petitioner testified that subsequent to this initial appointment as acting department chairman he applied for and was issued his supervisor's certificate. (Tr. I-89; C-2) The hearing examiner notices that petitioner also possesses certification as a principal. (C-3) Petitioner's testimony is clear that he was not directed by the Board to secure his supervisor's certificate to function as a department chairman. Petitioner explained that the then Superintendent of Schools suggested that he acquire the certificate. (Tr. I-114)

Thereafter, petitioner continued in the position of acting department chairman until the 1973-74 academic year. On September 20, 1973, the Superintendent informed petitioner (C-14) that the Board had adopted the following resolution at its meeting held on September 18, 1973, as set forth in its minutes (C-26) of that meeting:

> "***That Mr. Walter Wilson [petitioner] be named Head of the Department for Social Studies at the Senior High School. Mr. Wilson has been serving as Acting Head for the Social Studies Department.***"

The record establishes that the above-cited resolution was caused by petitioner's request that his title be changed to department chairman. The request was contained in a memorandum (C-18) to the principal dated August 22, 1973. The principal agreed to petitioner's request and so informed the Superintendent by letter (C-19) dated August 22, 1973. Upon receipt of the principal's letter, the Superintendent, by memorandum (C-17) dated August 27, 1973, asked the Assistant Superintendent for Personnel whether petitioner's title was inadvertently listed as "acting." The Assistant Superintendent advised the Superintendent by memorandum (C-16) dated September 11, 1973, that the word "acting" was erroneously included in petitioner's title. The Assistant Superintendent recommended that the error be corrected and that petitioner be made a department chairman. An informal memorandum (C-15) from the

You are viewing an archived copy from the New Jersey State Library.

Superintendent establishes that he agreed with the suggested corrective action. Subsequently, the above-cited resolution (C-26) was adopted by the Board.

Petitioner continued in the position of social studies department chairman for the 1973-74 and 1974-75 academic years. The Board Secretary, however, advised petitioner by letter (C-7) dated April 29, 1975, that the Board had adopted the following resolution on April 28, 1975:

> "That Mr. Walter Wilson [petitioner] be transferred from Department Head of the Social Studies Department to teacher effective July 1, 1975."

The hearing examiner finds that the Board originally established petitioner's salary as acting department chairman for 1969-70 at a "***salary stipend of 15% above his teacher's salary.***" (C-20, Exhibit C) The record is void thereafter with respect to the method employed by the Board to establish petitioner's yearly salary. In fact, the Assistant Superintendent for Personnel attests in his filed affidavit (C-20) that there is no recorded action of the Board with respect to the appointment of petitioner as department chairman or acting department chairman for the school years 1970-71, 1971-72 or 1972-73. The hearing examiner finds that petitioner was assigned as acting department chairman during those years. The position of department chairman is incorporated in Article XV, Salary Ratio Guides, of the existing agreement (C-21) between the Board and the New Brunswick Leadership Association, and association of principals, directors, supervisors, and department chairmen. Therein, the salary for department chairman ranges from a ratio of 1.07 to 1.17 of the teachers' salary guide, depending upon an experience factor.

Petitioner testified that between the time of his original appointment as acting department chairman in 1969 through June 30, 1973, he had been assigned one class to teach. (Tr. I-35) The remainder of the time, petitioner explained, he devoted to administrative and supervisory duties.

The hearing examiner notices that the Commissioner's official records of the State Department of Education's Bureau of Teacher Certification and Academic Credentials establish that petitioner had applied for a school administrator's certificate during the fall of 1972. In response to a written request from the Bureau in regard to petitioner's responsibilities, the Assistant Superintendent for Personnel advised the Bureau by letter (C-9) dated January 2, 1973, that petitioner "***spends all but one period of the school day in supervisory duties***." The Assistant Superintendent also advised that petitioner had eighteen staff members under his supervision.

Notwithstanding his earlier testimony and the Assistant Superintendent's assertions (C-9), petitioner subsequently testified that his duties throughout his assignment as acting department chairman or department chairman were similar. (Tr. I-133) Petitioner testified that he assisted the principal in the formal evaluation of six nontenure teachers during 1974-75 (Tr. I-123-124); that he handled pupil discipline problems at the department level (Tr. I-128); that he spent much of his time in meetings with the Superintendent and other administrative staff (Tr. I-138); that his supervision of instruction was limited to

You are viewing an archived copy from the New Jersey State Library.

communication at grade level meetings (Tr. I-140); and, finally, that he performed other kinds of duties. Petitioner testified in this latter respect that he filled in as a substitute teacher when necessary (Tr. I-41); that he recommended changes in curricula to the principal (Tr. I-44-45); that he devised teacher's schedules (Tr. I-51); and that he participated in recruiting, interviewing and the selection process of teachers new to the system. (Tr. I-82)

The hearing examiner has reviewed what purports to be a job description (C-1) of department chairman. There is no evidence, however, that such job description has ever been adopted by the Board. The hearing examiner also notices that a proposed job description (C-25) was submitted to the Board on June 6, 1939, although there is no proof that the Board had adopted the Superintendent's recommendation of such job description.

In his Brief filed in support of his argument that he has acquired tenure as a department chairman, petitioner relies on a job description of department chairman set forth in a proposed administrative reorganization (C-22) which requires the possession of a master's degree. The hearing examiner finds, however, that the Board has not adopted that proposal to date.

Petitioner argues in his pleadings that had he not been improperly removed from the position of department chairman, he would have received the ratio of 1.17 or $2.890 more that he received as a classroom teacher. (Petition of Appeal, Count One, paragraph 9(B))

Petitioner asserts that by virtue of his experience as department chairman between 1969-70 and 1974-75, and by virtue of his possession of a supervisor's certificate, he has acquired tenure in that position. Petitioner further asserts that his removal from the position of department chairman violated his tenure rights, and that the withholding of compensation from him as department chairman constitutes a reduction in his salary contrary to the provisions of *N.J.S.A.* 18A:28-5.

Petitioner argues that to establish whether he has acquired a tenure status as department chairman the Commissioner must look not to the title of the position, but to the duties he performed and cites: *Nicoletta Biancardi v. Board of Education of the Borough of Waldwick,* 1974 *S.L.D.* 360, aff'd State Board of Education 368, rev'd 139 *N.J. Super.* 175 (*App. Div.* 1976), aff'd 73 *N.J.* 37 (1977); *Elizabeth Boeshore v. Board of Education of the Township of North Bergen,* 1974 *S.L.D.* 805; *Juanita Zielenski v. Board of Education of the Town of Guttenberg,* 1970 *S.L.D.* 202, rev'd State Board of Education 1971 *S.L.D.* 664, aff'd New Jersey Superior Court 1972 *S.L.D.* 692; *Ann A. Quinlan v. Board of Education of the Township of North Bergen,* 1959-60 *S.L.D.* 113. Petitioner contends that while his title was that of department chairman his duties were supervisory. As such, petitioner maintains, the responsibilities may not be characterized as extracurricular for which an honorarium may be paid as in *Henry Boney v. Board of Education of the City of Pleasantville, Atlantic County,* 1971 *S.L.D.* 579.

Petitioner further asserts that he is entitled to tenure as department

You are viewing an archived copy from the New Jersey State Library.

chairman by virtue of the fact that he had no regular classroom teaching duties for the last two years he served in that position, but was employed as a full-time department chairman. *Herbert Buehler v. Board of Education of the Township of Ocean, Monmouth County,* 1970 *S.L.D.* 436, 437, aff'd State Board of Education 1971 *S.L.D.* 660, aff'd Superior Court of New Jersey, Appellate Division, 1972 *S.L.D.* 664.

Petitioner argues that as department chairman he has served the requisite period of time for the acquisition of tenure and that it is immaterial whether the Board intended the position of department chairman to acquire a tenure status and cites: *Weehawken Education Association v. Board of Education of the Town of Weehawken,* 1975 *S.L.D.* 505; *Robert F. X. Van Wagner v. Board of Education of the Borough of Roselle,* 1973 *S.L.D.* 488; *Ruth Nearier v. Board of Education of the City of Passaic,* 1975 *S.L.D.* 604; *Zimmerman v. Board of Education of the City of Newark,* 38 *N.J.* 65 (1962), *cert.* den. 371 *U.S.* 956 (1963); *Ahrensfield v. State Board of Education,* 126 *N.J.L.* 543 (*E.&A.* 1941).

Petitioner maintains that, by virtue of his responsibilities as a department chairman, such position demanded an appropriate supervisor's certificate. Petitioner asserts that it is immaterial whether the Board required him, as a department chairman, to possess the supervisor's certificate and cites *Samuel Appel v. Board of Education of the City of Camden et al., Camden County,* 1975 *S.L.D.* 562 and *Arthur Page v. Board of Education of the City of Trenton,* 1975 *S.L.D.* 644, aff'd State Board of Education 1976 *S.L.D.* 1159. Petitioner maintains that the Board may not alone set certification requirements below those mandated by law and cites *Board of Education of Englewood v. Englewood Teachers Association,* 64 *N.J.* 1 (1973).

The Board asserts that the position of department chairman is not a category of employment for which a tenure status accrues pursuant to *N.J.S.A.* 18A:28-5. Consequently, the Board avers that petitioner was assigned to extra supervisory duties for which he received an extra stipend. The Board also asserts that it required no special certificate for the position of department chairman, nor is one required by the State Board of Examiners. Thus, the Board maintains that petitioner has no tenure claim to the position of department chairman.

The Board asserts that petitioner was removed from the position of department chairman for reasons of economy. Petitioner, however, argues to the contrary and asserts that if he were removed from the position of department chairman for reasons of economy, such removal should have been on the basis of seniority. The affidavit (C-20) of the Assistant Superintendent for Personnel establishes that the Board presently has seven persons employed as department chairman, three of whom do not possess supervisory certificates. Petitioner argues that he served a longer period of time as department chairman than the other seven so employed.

The hearing examiner observes that *N.J.S.A.* 18A:28-5 provides *in toto*:

"The services of all teaching staff members including all teachers,

You are viewing an archived copy from the New Jersey State Library.

principals, assistant principals, vice principals, superintendents, assistant superintendents, and all school nurses including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect, shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this title, *** after employment in such district or by such board for:

(a) three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or

(b) three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or

(c) the equivalent of more than three academic years within a period of any four consecutive academic years;

provided that the time in which such teaching staff member has been employed as such in the district in which he was employed at the end of the academic year immediately preceding July 1, 1962, shall be counted in determining such period or periods of employment in that district or under that board but no such teaching staff member shall obtain tenure prior to July 1, 1964 in any position in any district or under any board of education other than as a teacher, principal, assistant superintendent or superintendent, or as a school nurse, school nurse supervisor, head school nurse, chief school nurse, school nurse coordinator, or as the holder of any position under which nursing services are performed in the public schools."

The title of department chairman is not a title set forth in the tenure statute or in the relevant provisions of the New Jersey Administrative Code, Title 6, Education. The hearing examiner notices that the Board at no time directed petitioner to perform supervisory duties. In fact, it appears that petitioner was appointed department chairman without any determination by the Board with respect to specific duties for the position. It is clear that the Board did not require a supervisor's certificate to be possessed by petitioner as department chairman.

On prior occasions, the Commissioner has addressed the issue of whether a tenure status accrues to the position of department chairman. In *Buehler v. Ocean, supra*, Buehler had first been employed as a teacher by the Ocean Township Board of Education for thirteen years. The Superintendent of Schools had then requested Buehler to assume the duties of department chairman of

You are viewing an archived copy from the New Jersey State Library.

social studies. Buehler applied for and received a certificate then entitled "Supervisor of Social Studies" [now entitled "Supervisor" *N.J.A.C.* 6:11]. Subsequent to his service in the position of department chairman for four academic years, upon the recommendation of the Superintendent of Schools, he was not reappointed. Buehler pressed the claim that he had acquired a tenure status in the position of department chairman.

The Commissioner held that Buehler had, in fact, performed supervisory duties within the scope of the certificate. He then held, however, that the primary conditions requisite for the acquisition of a tenure status in the position of department chairman were absent. The Commissioner specified those conditions to be:

> "***[the] appointment of petitioner [Buehler] by the Ocean Township Board of Education to a position as a supervisor of instruction *with Board-approved duties established as a job description.* Such an appointment by the Board *and such recognition of the nature of the position* are necessary prerequisites of a tenure right, and such power may not be delegated to school officials or usurped by them.***" (*Emphasis supplied.*) (at 441)

In the instant matter, petitioner was appointed by the Board to the position of department chairman. The Board, however, had adopted no clear statement of the duties of the position. Petitioner, of his own volition, secured a supervisor's certificate, although it was not mandated that such certificate be secured. Thus, the hearing examiner finds that the principles articulated in *Buehler, supra,* are equally applicable herein. (See also *Henry R. Boney v. Board of Education of the City of Pleasantville et al., Atlantic County,* 1971 *S.L.D.* 579.)

Here, as in *Buehler, supra,* petitioner performed supervisory duties but at the direction of school administrators and not by mandate of his true employer, the Board. Such performance of duty, without clear Board delegation of supervisory authority, confers no tenure entitlement. The Commissioner so holds.

The Commissioner also said in *Buehler, supra,* that:

> "***[T]eachers should not be given such duties, basically supervisory in nature, unless the assignment is made by the employing board of education and defined succinctly within the framework of a job description or table of organization.***" (at 442)

Petitioner inquired about his status as department chairman through correspondence with the Middlesex and Somerset County Superintendents of Schools. (C-24; C-25) These responses were conflicting with respect to the review of the unofficial job description presented for review. The hearing examiner knows of no authority for such opinions to be binding upon the Board, particularly in view of the fact that such request was never initiated by the Board. The Commissioner has previously held that "***[w]hat cannot be

You are viewing an archived copy from the New Jersey State Library.

done directly cannot be accomplished by indirection.***" *Marie Rinaldi v. Board of Education of the Township of North Bergen, Hudson County,* 1959-60 *S.L.D.* 109, 111; *Sastokas v. Freehold,* 134 *N.J.L.* 305 (*Sup. Ct.* 1946), cited in *Viemeister v. Board of Education of the Borough of Prospect Park, Passaic County,* 1939-49 *S.L.D.* 115

Additionally, the hearing examiner finds that petitioner's claim that his salary was improperly reduced by the Board upon his transfer from department chairman to social studies teacher is without merit. The agreement (C-21, at p. 15) between the New Brunswick Leadership Association and the Board clearly reflects that petitioner was paid a stipend for the services he rendered as department chairman and that such remuneration was properly terminated by the Board upon petitioner's reassignment to the position of social studies teacher.

Accordingly, the hearing examiner finds that petitioner has no claim to a tenure status in the position of department chairman. The hearing examiner recommends that the Board's Motion to Dismiss be granted.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the entire record in the instant matter, including the report of the hearing examiner and the exceptions and objections filed thereto.

Petitioner asserts that notwithstanding his assigned title as department chairman, he did in fact acquire a tenure status as a supervisor of instruction by virtue of his possession of a supervisor's certificate issued by the State Board of Examiners pursuant to *N.J.A.C.* 6:11-10.4(c).

Petitioner takes exception to the alleged failure of the hearing examiner to set forth a specific finding of fact with respect to whether the duties performed were supervisory in nature and whether the State Board of Examiners would have required him to possess a supervisor's certificate for the duties he performed regardless of the title assigned to the position by the Board.

Petitioner argues that, in effect, it is immaterial whether the Board ever specifically assigned him to supervisory duties. Petitioner contends that he did perform supervisory duties in the employ of the Board as department chairman, and it was incumbent upon the Board to be aware of the duties he was performing. Consequently petitioner concludes that the Board did have knowledge that he was performing supervisory duties and, through its Superintendent of Schools, did approve the assignment of such duties to him.

The Commissioner cannot agree that petitioner has acquired a tenure status as a supervisor of instruction. A review of the record in the instant matter fails to disclose a preponderance of evidence to support a finding that the Board had knowledge of the specific duties performed by petitioner other than those

You are viewing an archived copy from the New Jersey State Library.

of department chairman which it correctly assumed required no other certification than that of a teacher of social studies. In this regard the Board supports its position by relying on the Commissioner's decision in *Henry R. Boney v. Board of Education of Pleasantville, Atlantic County,* 1971 *S.L.D.* 579, wherein the Commissioner held that Boney possessed no special status as department chairman, but rather his tenure and seniority rights were protected under the certificate he held as a regular teacher in the school district. *Boney,* at 582.

The Board relies on *Herbert J. Buehler v. Board of Education of Ocean Township, Monmouth County,* 1970 *S.L.D.* 436, aff'd State Board of Education 1971 *S.L.D.* 660, aff'd Docket No. A-2297-70 New Jersey Superior Court, Appellate Division, November 2, 1972 (1972 *S.L.D.* 664) in support of its contention that while petitioner may have performed certain supervisory duties as department chairman, those duties were assigned to him without the Board's knowledge or prior official approval.

The pertinent language in *Buehler, supra,* which supports this contention is as follows:

> "***[P]etitioner clearly performed supervisory duties with the requisite supervisor's certificate for a significant portion of each day. However, the primary precise condition necessary for the accrual of tenure in this work is notably absent; namely, appointment of petitioner by the Ocean Township Board of Education to a position as a supervisor of instruction with Board-approved duties established as a job description. Such an appointment by the Board and such recognition of the nature of the position are necessary prerequisites of a tenure right, and such power may not be delegated to school officials or usurped by them.***" (at 441)

The record shows that the Superintendent instructed his staff of administrators and supervisors not to permit uncertified personnel to perform supervisory functions. In the Commissioner's judgment, such action by the Superintendent, to the extent that it allowed petitioner to perform certain supervisory duties as department chairman, was in error. The Superintendent knew, or should have known, that the Board had not assigned petitioner to a supervisor's position.

The Commissioner finds that the Superintendent and his administrative staff exceeded their authority in assigning petitioner supervisory duties, notwithstanding the fact that he had acquired a supervisor's certificate issued by the State Board of Examiners. The Commissioner, since *Buehler, supra,* has found no good cause to reverse his holding in such matters. More specifically, the Commissioner holds that his determination in *Buehler* is equally applicable to the matter controverted herein.

The Commissioner is constrained to point out that the statutes, *N.J.S.A.* 18A:27-3.1 *et seq.*, as well as the regulations promulgated by the State Board of Education, *N.J.A.C.* 6:3-1.19, require that all nontenured teaching staff

You are viewing an archived copy from the New Jersey State Library.

members must be observed and evaluated "***by a member of the administrative and supervisory staff of the local school district, who holds an appropriate certificate for the supervision of instruction***." *N.J.A.C.* 6:3-1.19

For the reasons stated, the Commissioner finds and determines that petitioner did not acquire a tenure status as a supervisor of instruction. Accordingly, the Board's Motion to Dismiss the instant Petition of Appeal is granted.

COMMISSIONER OF EDUCATION

May 6, 1977

Board of Education of the School District of South Orange-Maplewood,

Petitioner,

v.

Board of School Estimate of South Orange-Maplewood, Essex County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Kimmelman, Lieb, Wolff, & Samson (Ronald E. Wiss, Esq., of Counsel)

For the Respondent Village of South Orange, Fox, Schackner, Mastrangelo & Clarken (Donald C. Fox, Esq. of Counsel)

For the Respondent Township of Maplewood, Mortimer Katz, Esq.

Petitioner, the Board of Education of the South Orange-Maplewood School District, hereinafter "Board," appeals from an action of the Board of School Estimate of the School District of South Orange-Maplewood taken pursuant to *N.J.S.A.* 18A:22-37 certifying to the Essex County Board of Taxation a lesser amount of appropriations for school purposes for the 1976-77 school year than the amount proposed by the Board in its budget. The facts of the matter were adduced at a hearing conducted on December 7 and December 22, 1976 at the State Department of Education, Trenton, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner is as follows:

You are viewing an archived copy from the New Jersey State Library.

Prior to March 1, 1976, the Board prepared and delivered to the Board of School Estimate a budget for the school district of South Orange-Maplewood for the school year 1976-77 for its determination of the amounts necessary for the operation of a thorough and efficient school system.

On March 16, 1976, the Board of School Estimate, pursuant to *N.J.S.A.* 18A:22-26 delivered to the Board a certificate of the amount of money appropriated by the Board of School Estimate to fix and determine the amount of money deemed necessary in said school district for the school year 1976-77 as follows:

	Current Expense	Capital Outlay
Board's Proposal	$13,304,496	$35,737
Board of School Estimate's Proposal	11,086,964	35,340
Amount Reduced	$ 2,217,532	$ 397

A conference of counsel was held at the State Department of Education on September 29, 1976 at which time it was agreed that the appeal of the Board was for an amount of $681,670 based on the assumption that an estimated $1,536,000 would be forthcoming as unbudgeted State aid to be applied to the current expense account. Subsequently, *c.*113, *L.*1976, amending *c.* 212, *L.* 1975, established unbudgeted State aid for current expense the amount of $1,580,111 of which $43,852 is designated for compensatory bilingual aid, leaving an amount of $1,536,259 for application to general current expense aid, with an adjusted balance of $681,300 under appeal.

The Board contends that the Board of School Estimate's action was arbitrary, unreasonable, and capricious and documents its need for restoration of the reductions recommended by the Board of School Estimate with written testimony and a further oral exposition at the time of the hearing. The Board of School Estimate maintains that it acted properly and after due deliberation and that the items reduced by its action are only those which are not necessary for a thorough and efficient educational system and also supports its position with written and oral testimony. As part of its determination, the Board of School Estimate suggested certain areas of the budget in which it believed economies could be effected. With two noted exceptions these recommended decreases occur in the area of staff reduction because of alleged decrease in enrollments and suggested changes in administrative structure as follows:

Area of Reduction	Staff Reduction	Amount Reduced
1. High school class size increase and higher pupil-teacher ratio	Unspecified	$166,000
2. Art education	2 teachers	30,000
3. Audiovisual staff	1 clerk 1 technician	22,500
4. Guidance counselors	3 counselors	85,800

You are viewing an archived copy from the New Jersey State Library.

5.	Physical education	Unspecified	100,000
6.	Special services	2 positions	50,000
7.	Central office positions:		
	Elementary science consultant	1 position	35,000
	Elementary math consultant	1 position	
	Clerical employees	Unspecified	20,000
8.	High school house plan terminated	Unspecified	100,000
9.	Elimination of use of First Street School	Unspecified	25,000
10.	Elimination of 30% fringe costs	Unspecified	47,000
	TOTAL CURRENT EXPENSE		$681,300

There appears to be no necessity to deal *seriatim* with each of the areas in which the Board of School Estimate recommended reduced expenditures. As the Commissioner said in *Board of Education of the Township of Madison v. Mayor and Council of the Township of Madison, Middlesex County,* 1968 *S.L.D.* 139:

> "***The problem is one of total revenues available to meet the demands of a school system***. The Commissioner will indicate, however, the areas where he believes all or part of Council's reductions should be reinstated. It must be emphasized, however, that the Board is not bound to effect its economies in the indicated items but may adjust its expenditures in the exercise of its discretion as needs develop and circumstances alter.***"
>
> (at 142)

The hearing examiner, based on his review of the record including the testimony elicited by the parties and the documentary evidence submitted, will set forth in chart form his recommendations with respect to each item reduced by the Board of School Estimate. The hearing examiner recommends that $397 be restored to the capital outlay account from unbudgeted State aid.

Area of Reduction	Amount of Reduction	Amount Restored	Amount Not Restored
1. High school class size increase and higher pupil-teacher ratio	$166,000	$136,000	$ 30,000
2. Art education	30,000	25,000	5,000
3. Audiovisual staff	22,500	15,500	7,000
4. Guidance counselors	85,800	57,800	28,000
5. Physical education	100,000	70,000	30,000
6. Special services	50,000	50,000	–0–
7. Central office positions	35,000	29,000	6,000
	20,000	18,000	2,000
8. High school house plan terminated	100,000	78,000	22,000
9 Elimination of use of First Street School	25,000	16,000	9,000
10. Elimination of 30% fringe costs	47,000	46,000	1,000
SUBTOTAL CURRENT EXPENSE	$681,300	$541,300	$140,000

You are viewing an archived copy from the New Jersey State Library.

Restoration by Stipulation of Parties		$1,536,259	
TOTAL CURRENT EXPENSE RESTORED		$2,077,559	
CAPITAL OUTLAY RESTORED	$ 397	$ 397	–0–

The hearing examiner recommends that the Commissioner direct the Board to give close scrutiny to high school class size, the number of professional employees in the physical education department, their assignment for the entire school system, and to undertake an on-going analysis of the high school house plan. He sets down for consideration by the Commissioner the assortment of seventy-five classes in thirty-four different courses in Physical Training and Driver Education:

> "Recreational leadership, archery, badminton, tennis, swimming, softball, recreational games, behind the wheel, driver education theory, golf and tennis, adaptive physical education, gymnastics and slimnastics, weight training, field hockey, special dance, softball and baseball, health, senior life saving, swimming (intermediate), aquatics, touch football, weight training and slimnastics and tumbling for girls, basketball for boys."
>
> (R-1, at p. 7)

In summary the hearing examiner recommends that of the total reduction of $681,300 the Commissioner restore $541,300 to the Board's budget for the 1976-77 school year by supplemental certification to the Essex County Board of Taxation.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner and observes that exceptions pursuant to *N.J.A.C.* 6:24-1.17(b) were filed by the Board requesting restoration of the entire amount of the $681,300 under appeal.

The proposal of the Board for the current expense budget for the school year 1976-77 was $13,304,496. This was reduced by action of the Board of School Estimate to $11,086,964 for a reduction of $2,217,532.

Subsequently, *c.*113, *L.*1976 amending *c.*212, *L.*1975 (Public School Education Act) established an amount of $1,536,259 in unbudgeted State aid for application to general current expenses which the Board of School Estimate agreed should be added to the proposed 1976-77 current expense budget, leaving the amount of $681,300 under appeal. The Commissioner observes that the $140,000 not recommended for restoration by the hearing examiner represents one percent of the Board's proposed budget for current expenses to be raised by local tax levy. The Commissioner also observes that the document P-1 in evidence shows a current expense free appropriation balance for 1975-76 of $177,351.41.

You are viewing an archived copy from the New Jersey State Library.

The Board received a copy of suggested economies from the Board of School Estimate at a meeting with the Board of School Estimate on May 26, 1976, at the office of the Essex County Superintendent of Schools. The Board, with respect to these suggested economies, did "***[a]bsolutely nothing because we felt the suggestions were without merit *** and that we would pursue this at the appeal level***" and proceeded on the assumption of an unreduced budget despite the objection of the Board of School Estimate. (Tr. II-16-18)

The Commissioner is constrained to point out the impropriety of such action constituting, as it does, a form of deficit spending in violation of *N.J.S.A.* 2A:135-5.

In *State of New Jersey v. Charles G. Boncelet,* 107 *N.J. Super.* 444 (*App. Div.* 1969) the Court held that:

> "***The proofs were adequate to support a finding, implicit in the jury's verdict of guilty, that the overexpenditures were willfully and knowingly voted.***" (107 *N.J. Super.* at 452)

The Board's assumption of total restoration of the amount of reduction before the Commissioner is imprudent and cannot be used for total restoration of the amount of a budget reduction.

The Commissioner will deal *seriatim* with the Board's exceptions.

The Commissioner observes the prior reduction by the Board of three counselors and restores an additional $28,000 for this purpose to the 1976-77 school budget. (Board's Exceptions, p. 3)

The Commissioner finds no fault with the recommendation for the elimination of the use of the First Street School and recommends that a further amount of $9,000 be added to the current expense item. (Board's Exceptions, p. 3)

The Commissioner finds no credible evidence in the record that the existence of the remaining house plans is necessary to a thorough and efficient system of education (Tr. I-87, 88).

The Board comments in discussing the need for elementary science and math coordinators, "***It is uncontradicted that three elementary program positions have been eliminated in the past three years***" but goes on to claim "***the science and math programs *** are absolutely essential***. Elimination of these positions would halt all activities at the elementary level in curriculum development and program planning.***" (Board's Exceptions, p. 5)

The Commissioner cannot agree. The Board's argument overlooks the roles played by the building principals and classroom teachers with supervision from the Superintendent and assistant superintendent of schools in such activities.

You are viewing an archived copy from the New Jersey State Library.

The record is devoid of a specific description of duties or job analysis of such coordinators.

The Commissioner cannot agree with the Board's contention regarding the physical education staff that "***the same size staff is needed to teach the nearly 2,000 pupils at Columbia regardless of whether the courses are varied electives or a single course offering.***" (Board's Exceptions, p. 5)

The record speaks of class ratios but fails to show the class size of the electives taught by each physical education staff member. The Commissioner observes that to achieve a high school ratio of thirty pupils to one teacher in physical education classes, numerous courses must have small enrollments.

The Commissioner cannot agree with the Board's objections concerning high school class size and pupil-teacher ratios. No credible evidence is presented to document an optimum or ideal class size nor is there evidence to prove that an increase in class size would, of itself, impair the quality of a thorough and efficient education in the school system. Further, the Board has recognized the need for a reduction in the number of teaching positions by its elimination of 31.8 teaching positions since June 1975. (Board's Exceptions, p. 6) The Commissioner observes that the Board is faced with a decreasing enrollment, there being approximately 375 fewer pupils in the system for 1976-77 than in 1975-76. (Tr. I-116)

The Board objects to a reduction of teachers in art education yet the record reflects otherwise. The Superintendent testified, "***We hope that if we undertook a study it could perhaps reveal that one less person in each of the high schools would not adversely effect (sic) education in the arts." (Tr. I-41) Further testimony from Superintendent Shaw states, "***We would not suggest that in order to be thorough and efficient in art that we will have every student involved in art***." (Tr. I-56)

Finally the Board takes exception to the loss of $7,000 concerning audiovisual staff. The Commissioner finds no credible evidence in the record that shows that the audiovisual program as described is necessary to a thorough and efficient education. (Tr. I-58-60)

In summary, the Commissioner restores a total of $578,300 to the Board's budget for current expenses for the school year 1976-77 by supplemental certification to the Essex County Board of Taxation.

The Commissioner further authorizes the restoration of $397 to the capital outlay account from unbudgeted State aid.

COMMISSIONER OF EDUCATION

May 6, 1977

You are viewing an archived copy from the New Jersey State Library.

**In the Matter of the Tenure Hearing of Inez McRae,
School District of the City of Trenton, Mercer County.**

COMMISSIONER OF EDUCATION

ORDER

For the Complainant Board, Merlino & Andrew (Robert B. Rottkamp, Jr., Esq., of Counsel)

For the Respondent, Ruhlman & Butrym (Paul T. Koenig, Jr., Esq., of Counsel)

On August 12, 1975, the Board of Education of the City of Trenton certified a series of charges against respondent in her position as a tenured teacher in its employ and forwarded such charges to the Commissioner of Education pursuant to the statutory authority in the Tenure Employees Hearing Law, *N.J.S.A.* 18A:6-10 *et seq.* Subsequently, on August 13, 1975 the Board suspended respondent without pay. A hearing in the matter was conducted on January 6 and 7, 1976 by a hearing examiner appointed by the Commissioner.

On October 13, 1976, the hearing examiner received a letter from respondent, dated October 7, 1976, wherein respondent claimed that the Board had failed to comply with *N.J.S.A.* 18A:6-14 which provides:

> "Upon certification of any charge to the Commissioner, the board may suspend the person against whom such charge is made, with or without pay, but, if the determination of the charge by the Commissioner of Education is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made. Should the charge be dismissed, the person shall be reinstated immediately with full pay from the first day of such suspension. Should the charge be dismissed and the suspension be continued during an appeal therefrom, then the full pay or salary of such person shall continue until the determination of the appeal. However, the board of education shall deduct from said full pay or salary any sums received by such employee or officers by way of pay or salary from any substituted employment assumed during such period of suspension. Should the charge be sustained on the original hearing or an appeal therefrom, and should such person appeal from the same, then the suspension may be continued unless and until such determination is reversed, in which event he shall be reinstated immediately with full pay as of the time of such suspension."

Respondent asserts that the 120th day following the Board's certification of charges against her was December 10, 1975. Further, the Board has not paid her since the 121st day of her suspension without pay, pending a final determination by the Commissioner. Respondent declares, therefore, that the Board has failed to comply with *N.J.S.A.* 18A:6-14.

You are viewing an archived copy from the New Jersey State Library.

In reply to respondent's assertion, the Board addressed a letter to the hearing examiner dated October 25, 1976, wherein it stated, *inter alia,* as follows:

> "It is my understanding that Mrs. McRae has moved to North Carolina. In light of the extremely tight financial crunch the Trenton Board is in at the present time and in light of the inability to collect any funds that would be paid to Mrs. McRae, it is the Board's opinion that a decision from the Commissioner's office under the 60 day provisions of Title 18A is the proper way to proceed.***"

The Commissioner has considered the facts, arguments and the documents which are a part of this record. He observes that *N.J.S.A.* 18A:6-14 controls with respect to the instant matter.

In regard to the letter Motion to restore respondent's back pay for the controverted period of time following the 120th day of suspension without pay, the Commissioner has ruled that back pay must be restored to suspended employees in similar instances. See *Raymond Winter v. Board of Education of the Township of North Bergen, Hudson County,* 1975 *S.L.D.* 236; *In the Matter of the Tenure Hearing of Emma Matecki, School District of the City of New Brunswick, Middlesex County,* 1971 *S.L.D.* 566, aff'd State Board of Education 1973 *S.L.D.* 773, aff'd Docket No. A-1680-72 New Jersey Superior Court, Appellate Division, November 28, 1973 (1973 *S.L.D.* 773); *Joseph Banick v. Board of Education of the Township of Riverside, Burlington County,* 1975 *S.L.D.* 518; *In the Matter of the Tenure Hearing of Russell A. Fairfax, School District of the Village of Ridgewood, Bergen County,* 1974 *S.L.D.* 1126; *In the Matter of the Tenure Hearing of Joseph McDougall, School District of the Borough of Northvale, Bergen County,* 1974 *S.L.D.* 170.

There is no finding that respondent caused any delay in the pursuit of a timely hearing in the instant matter. All days of delay in the hearing procedure caused by respondent shall be excluded from the 120 day provision. *In the Matter of the Tenure Hearing of Anthony Polito, School District of the Township of Livingston, Essex County,* 1974 *S.L.D.* 662; *In the Matter of the Tenure Hearing of Walter Kizer, School District of the Borough of Haledon, Passaic County,* 1974 *S.L.D.* 501

The Commissioner observes that the statutory language is clear wherein the Board is obligated to pay respondent on the 121st day following its certification of charges to the Commissioner. The enforcement of *N.J.S.A.* 18A:6-14 is clearly enunciated in *Kathleen Pietrunti v. Board of Education of Brick Township,* 128 *N.J. Super.* 149 (*App. Div.* 1974), *cert.* denied 65 *N.J.* 573 (*Sup. Ct.* 1974), *cert.* denied 419 *U.S.* 1057 (1974) and *In the Matter of the Tenure Hearing of Paula M. Grossman, a/k/a Paul M. Grossman, School District of the Township of Bernards,* 127 *N.J. Super.* 13 (*App. Div.* 1974), *cert.* denied 65 *N.J.* 292 (1974), wherein the Court stated:

> "***It seems clear that in enacting it [*N.J.S.A.* 18A:6-14] the Legislature

You are viewing an archived copy from the New Jersey State Library.

must have had in mind the economic hardship endured by teachers and other Board of Education employees suspended without pay pending the outcome of charges filed against them and certified for hearing to the Commissioner of Education. We are certain, moreover, of the Legislature's awareness that in many instances, because of the volume of matters awaiting hearing, a prompt disposition of charges is not feasible. Thus, the obvious intent and purpose of the amendment was to alleviate the financial plight of those affected by providing for the payment of their full salary (less sums received from other employment during suspension) from the 121st day following the certification of charges until the determination thereof by the Commissioner, or in the case of an appeal by a Board from a decision adverse to it, until the determination of the appeal.***" (127 *N.J. Super.* at 35-36)

Accordingly, the Commissioner determines that in the instant matter the 121st day following the certification of charges commenced on December 10, 1975, and therefore orders the Board of Education of the City of Trenton to compensate respondent at regular salary effective from December 10, 1975.

COMMISSIONER OF EDUCATION

February 7, 1977

In the Matter of the Tenure Hearing of Inez McRae,
School District of the City of Trenton, Mercer County.

COMMISSIONER OF EDUCATION

DECISION

For the Complainant Board, Merlino and Andrew (Robert B. Rottkamp, Jr., Esq., of Counsel)

For the Respondent, Ruhlman and Butrym (Paul T. Koenig, Jr., Esq., of Counsel)

Written charges against respondent, a teacher with a tenure status, including failure to follow school and Board of Education regulations, corporal punishment, inefficiency, incapacity and other charges related to respondent's performance of her teaching duties, were certified to the Commissioner of Education on August 28, 1975 by the Board of Education of the City of Trenton, hereinafter "Board," by resolution dated August 12, 1975. A copy of the charges and the resolution were mailed to respondent by the Board on August 26, 1975. The Board certified that the charges would be sufficient, if true in fact, to warrant dismissal or reduction in salary.

You are viewing an archived copy from the New Jersey State Library.

Thereafter, respondent was requested to provide an Answer to the charges which the Petition contained and did respond on or about September 30, 1975. In general, respondent's response to the charges was either:

1. To deny the factual truth of certain specific charges; or

2. In the event certain charges, if true in fact, constituted inefficiency, to claim she had not been provided a ninety-day period of notice as required by the statute *N.J.S.A.*. 18A:6-12.

Additionally, with regard to Charge No. 3 which alleges an act of corporal punishment, respondent claimed self-defense from a perceived assault upon her by a pupil.

A hearing on the charges was conducted at the State Department of Education, Trenton, on January 6 and January 7, 1976 by a hearing examiner appointed by the Commissioner. The report of the hearing examiner follows:

On the first day of the hearing all of the contentions, as contained in respondent's Answer to the Petition, were duplicated in a subsequent Motion to Dismiss. The hearing examiner reviewed the arguments pertinent to the Motion but determined to hold the Motion in abeyance and to proceed with the Board's proofs. The hearing proceeded to the conclusion of the Board's presentation and respondent's affirmative defense, at which time the Motion to Dismiss was advanced again by respondent.

The charges will now be considered *seriatim* with respect to the proofs, and *in pari materia* with the arguments advanced in support of, and opposed to, the Motion to Dismiss.

CHARGE NO. 1

"On or about October 22, 1974, she failed to follow proper school and Board of Education regulation and failed to use sound and competent judgment in allowing a sixth grade female pupil to leave her classroom during a class period with an older boy not a student with the female student subsequently being abused by the intruder."

The building principal testified that respondent had allowed a female pupil, "J.S.," who was assigned to her classroom, to leave with a male pupil. He stated that the male pupil hereinafter "A.H.," was formerly assigned to respondent's classroom; however, the pupil was transferred to the class of a male teacher and was subsequently suspended from school and placed on home instruction at the time of the incident alleged in Charge No. 1. (Tr. I-23-33)

The principal testified that respondent forwarded a note advising him that J.S. had left respondent's classroom with A.H. (P-2) The principal stated that the school secretary received respondent's note; however she did not inform him of its content because there was no indication that it was an emergency. (Tr. I-82-86) He stated that, subsequent to the close of the school day, the school

You are viewing an archived copy from the New Jersey State Library.

secretary telephoned him at his home to inform him that a parent of J.S. had reported that J.S. had been molested by A.H. (Tr. I-23)

The principal asserted that respondent had been informed that A.H. had been suspended from school and placed on home instruction; therefore, she should have prevented J.S. from leaving the classroom with A.H. (Tr. I-68-73)

In his memorandum to the Superintendent on October 23, 1974, the day following the alleged incident, the principal reported, *inter alia,* as follows:

> "***Then [A.H.] told Mrs. Mc Rae that the office wanted [J.S.]. When [A.H.] said this Mrs. Mc Rae told [J.S.] not to leave the classroom. However, [J.S.] went to the cloak room and got her coat and left the classroom with [A.H.].
>
> "Mrs. Mc Rae told her not to leave and she walked out of the room. Mrs. Mc Rae notified the secretary, Mrs. Goodballet, that [J.S.] left the classroom without permission and with [A.H.].***" (P-3)

Respondent asserted that A.H. approached her classroom and called a female pupil, "D.R.," to the door. Respondent stated that she asked D.R. to return to her seat and D.R. complied. Respondent testified that A.H. then called J.S. to the door and J.S. refused to return to her assigned seat as requested by respondent. Subsequently, A.H. approached respondent's desk and respondent asserted that A.H. presented her with a note stating that the principal wanted J.S. to report to the school office. Respondent testified that it was the rule of the school to excuse pupils from the classroom when summoned by the building principal, therefore, she had no choice and permitted J.S. to leave the classroom with A.H. (Tr. II-131-132; PR-2, at p. 3)

Respondent testified that, subsequent to the departure of A.H. and J.S. from the classroom, D.R. informed respondent that A.H. had lied and that J.S. had not been summoned by the principal. Respondent asserted that she immediately wrote a note and had it delivered to the principal's office. (Tr. II-133) The note reads as follows:

> "[J.S.] put on her coat and went out [of] the room with [A.H.] I don't know where she went." (P-2)

Respondent further testified that she had not been aware that A.H. was suspended from school and placed on home instruction. (Tr. II-132)

The hearing examiner has examined all of the evidence with respect to this charge and finds that the Board failed to prove that respondent failed to follow school and Board regulations. There was no documentation produced by the Board to demonstrate that it had a written policy with regard to a procedure to permit a pupil to leave the assigned classroom. The principal, moreover, stated that he occasionally used pupils to relay messages to teachers and other staff members. (Tr. I-74-75) In addition, the hearing examiner finds that the Board failed to document its assertion that it had informed respondent that pupil A.H.

You are viewing an archived copy from the New Jersey State Library.

was suspended from the school. (Tr. I-80-81) Accordingly, the hearing examiner recommends that Charge No. 1 be dismissed.

CHARGE NO. 3

"On or about December 6, 1974, Mrs. Mc Rae lost control of herself over an incident in class, grabbed a girl student by the face and scratched her face. She did not report this incident to the principal nor did she send the student to the nurse despite the bleeding wound."

The principal testified that the parent of a pupil assigned to respondent's class appeared with the pupil in the school office on Monday morning, December 9, 1974, and requested the transfer of the pupil from respondent's classroom. He testified that the parent informed him that respondent had grabbed the pupil and scratched her face during the preceding school day, Friday, December 6. The principal asserted that he observed a "narrow" scratch on the pupil's face. (Tr. I-34, 93-95)

The principal testified that he called respondent to the office and conducted a conference with the parent and pupil at which time respondent admitted that she had scratched the pupil's face. (Tr. I-35) He subsequently filed two reports with the Assistant Superintendent in Charge of Personnel dated December 9, 1974 (P-4) and December 11, 1974 (P-5) with regard to the alleged incident.

The Assistant Superintendent testified that the allegation embodied in Charge No. 3 was discussed at a conference conducted by him on January 6, 1975 with respondent and the principal in attendance. (Tr. II-81) He subsequently filed a memorandum with respondent which said, *inter alia*:

"***It was noted following your description of the events leading up to this contact that the use of physical force was not considered necessary or prudent to control the situation and that a repitition (sic) of this type of conduct on your part would result in immediate suspension and eventual dismissal.***" (PR-2)

Respondent asserted that she admitted to the principal that she had indeed placed her hand in the pupil's face. She testified, moreover, that she did not recall a scratch on the pupil's face. (Tr. II-135-136) Respondent stated that she lost control of herself during the course of the incident; however, she averred that "***I was trying to protect myself because the girl seemingly to me was going to walk right into my face.***" (Tr. II-161)

The hearing examiner has considered all the evidence with respect to this charge and finds that on December 6, 1974, there was some physical contact between respondent and a pupil in her class during which time respondent lost control of herself.

Charges Nos. 2,4,5,6, and 7 are related and will be considered first separately and then as a whole.

You are viewing an archived copy from the New Jersey State Library.

CHARGE NO. 2

"On or about December 2, 1974, Mr. Samuel W. Scriven, Mrs. Mc Rae's school principal[,] observed Mrs. Mc Rae's class in a state of total chaos while she was sitting at a table working on papers from a previous assignment."

The major proofs in support of Charge No. 2 were offered by the principal in oral testimony. (Tr. I-41-46) He stated that on this occasion he observed a noisy classroom of twelve to fourteen pupils, some of whom were running around the classroom, others talking and yelling across the room, while still others had their heads on their desks. All of these activities took place, he testified, while respondent was sitting at the far side of the classroom marking papers. The principal asserted that initially there was no teaching conducted by respondent. (Tr. I-41-42) Subsequent to his arrival in the classroom, he stated that respondent got up from her work area and gave the pupils ditto papers. He observed that the pupils became quiet and started to work. (Tr. I-42)

The principal testified that in other observation periods he noted that respondent had misspelled words on the chalkboard with incorrect sentence structure and used incorrect English while instructing the class. (Tr. I-44)

The principal testified that respondent was originally assigned to his school as a first grade teacher for the 1970-71 academic year and continued in that assignment through the 1972-73 academic year. (Tr. I-12-14)

The principal's evaluations for those three years state that respondent was a satisfactory teacher and she was recommended for retention, salary increment and tenure. (P-1)

Subsequently, respondent was assigned to teach second grade for the 1973-74 academic year. The principal's evaluation in March 1974 stated that "Mrs. Mc Rae is a second grade teacher who no longer is an effective classroom teacher. Mrs. Mc Rae was a borderline teacher and this school year her teaching ability has decreased immensely." (P-1) He testified that her classroom preparation was no longer as good as it had been in the past and that she assigned "busy work" to the pupils. He stated further that there was a lack of discipline and that the classroom had a destructive atmosphere which resulted in the injury of pupils assigned to her classroom. (Tr. I-15)

Respondent was assigned to teach a sixth grade class for the 1974-75 academic year on the recommendation of the principal. The principal testified that since respondent was no longer effectively teaching the younger pupils, the assignment to older pupils who could function independently would benefit respondent. (Tr. I-20-21) The principal's evaluation of respondent for the 1974-75 academic year reported that she was unsatisfactory in the areas of planning, professional performance, classroom environment, classroom organization and her relationship with pupils. His evaluation reported that respondent needed improvement in her relationship with staff members and the community. (P-1) The narrative portion of the principal's evaluation stated that respondent

You are viewing an archived copy from the New Jersey State Library.

was no longer an effective teacher and that her ability to teach had deteriorated markedly. The report stated further that respondent did not control the pupils and that the classroom noise made it impossible for the pupils to learn. The principal noted that the pupils were aware of respondent's inadequacies and, therefore, had lost respect for her. He concluded the document by stating that he was providing respondent with all of the available resources at his command to help her in this situation. (P-1)

CHARGE NO. 4

"On or about February 19, 1975, Mrs. McRae was observed by Mr. William Love while teaching her sixth grade class. There was no planned purpose in her methodology. She required the students to read from a variety of books with no questions being asked at any time. Other students were playing and being disruptive with no attempt by Mrs. McRae to stop them. She exhibited exceedingly poor organization, grouping and general program planning."

The Director of Elementary Education proffered extensive testimony (Tr. I-123-150) and documentation (P-6) in support of Charge No. 4. He testified that he conducted a formal observation of respondent's classroom activities on February 19, 1975, and noted that:

"***The room was kind of barren.*** There wasn't much in the way of *** interest centers where youngsters might go during independent, free time to work on independent activities. Very little in the way of reading materials that youngsters might use for independent reading. Nothing in the way of bulletin board***. Mrs. McRae was moving from student to student listening to them read orally and there really did not seem to be purpose for this.***" (Tr. I-127)

"***The noise level in my judgment was a little high and I attributed that to the fact that youngsters really didn't have much in the way of purposeful activities.***" (Tr. I-128)

"***[O]ne boy in particular became increasingly more agressive.*** So, I took him out.***" (Tr. I-129-130)

He stated that he reviewed respondent's lesson plans and noted that, in addition to being skimpy, there was no correlation between the lesson plan and the classroom activities he observed. (Tr. I-131)

It was the Director's opinion that he would not assign respondent to a classroom with the full responsibility for the instructional program. He concluded his testimony by stating he did not believe that respondent had the skills necessary to conduct an adequate and effective program of instruction. (Tr. I-140)

CHARGE NO. 5

"On or about March 17, 1975, Dr. Robert E. Hiltenbrand observed Mrs.

You are viewing an archived copy from the New Jersey State Library.

McRae's reading class in a state of chaos. Mrs. McRae made no attempt to control the noise and shouting out of the children. No background was given to the students before the oral reading began nor was the story discussed during or after the reading. Mrs. McRae had several questions written on the chalkboard with many misspelled words and grammatical errors."

The Assistant Superintendent testified that he became aware of respondent through discussions with her principal early in December 1974. He asserted that the principal reported that respondent had had a continuous problem with regard to minimal lesson plans which subsequently led to pupil discipline problems through the lack of class control. (Tr. II-77-78)

Subsequently, on January 6, 1975, the Assistant Superintendent conducted a conference with respondent and the building principal with respect to the principal's supervisory reports of respondent's classroom activities. (Tr. II-80-86) In a memorandum, dated January 16, 1975, addressed to and signed by respondent, the Assistant Superintendent committed "***to writing those points discussed, and agreements entered into so that in the future it will not be necessary to rely on memory.***" (PR-2) He testified with regard to the document that specific problem areas of concern were discussed with respondent; *i.e.,* the incidents related to Charges No. 1 and 3, with major emphasis placed upon lesson plans, class control and discipline in the classroom. (Tr. II-80-85) He concluded the document with the admonition that "***if improvement was not shown in this area and a greater degree of class control established, steps would be taken that could result in the termination of your services with the Trenton Board of Education." (PR-2)

The Assistant Superintendent testified that the memorandum of January 16, 1975 (PR-2), served as the notice to respondent of her inefficiencies and provided her with sufficient time to correct them. (Tr. II-113) He testified that he did not state a specific period of time for correction but, rather, he wished to observe her improvement prior to the close of the academic year. (Tr. II-116)

The Assistant Superintendent testified that a subsequent conference with respondent and the principal was held on February 19, 1975. (Tr. II-86; P-10) He stated that on March 12, 1975, he conducted a formal classroom observation of respondent (Tr. II-88-89) and subsequently filed a memorandum with regard to that observation dated March 17, 1975. (P-10) In addition to his observation of the formal classroom visitation which will be dealt with *post,* the Assistant Superintendent reported that a helping teacher had been assigned to respondent full time from February 27, 1975 to March 7, 1975. His memorandum to respondent continues to report that the helping teacher demonstrated methods and approaches to teaching, observed respondent teaching and made suggestions to assist her with preparation of lesson plans and the presentation of materials to the pupils. (P-10) The memorandum further informed respondent that the Administrative Assistant to the principal had been assigned full time to her classroom to assist in the maintenance of discipline until such time as class control had been reestablished by respondent. (P-12)

You are viewing an archived copy from the New Jersey State Library.

With regard to his report of the formal classroom observation, the Assistant Superintendent devoted three single-spaced typewritten pages to this activity. Both in this document and his testimony, the Assistant Superintendent asserted that: respondent failed to maintain class control, little was accomplished with a reading group; the room had little pupil work displayed and nothing had been done to make the room pleasant or attractive; respondent had placed written work on the chalkboard that contained misspelled words and grammatical errors. (Tr. II-90-96; P-10) He stated in his memorandum that he was disappointed in what he had observed in respondent's classroom. Moreover, he said he intended to continue the observation of her progress and to assess the need to consider alternatives available for the 1975-76 school year. (P-10)

The Assistant Superintendent testified that respondent was removed from her classroom and assigned to the Board's Training Center from March 17 through April 4, 1975. He stated that respondent did not return to her original assignment after she had completed her assigned duty at the Training Center, but rather reported ill for the remainder of the school year. (Tr. II-97)

While respondent was absent from her assigned duties, the Assistant Superintendent testified that he contacted respondent to review with her the report of his formal classroom observation. He asserted that a conference was held with respondent on April 21, 1975 at which time he stated that he was disappointed with the lack of class control and particularly with her lesson plans. (P-11) He testified that he told respondent that the lesson plans lacked detail and did not include the objectives to be achieved by the pupils. (Tr. II-99-101)

During the conference of April 21, 1975, the Assistant Superintendent testified that respondent told him that she would return to her classroom on April 24, 1975. He stated that he would visit her classroom for a follow-up observation after she had established rapport with the pupils. He asserted that respondent did not return to her assigned duty as she had assured him she would. (Tr. II-103)

The Assistant Superintendent forwarded a letter to respondent dated July 7, 1975, via certified mail, return receipt requested, and signed by respondent's sister. (Tr. II-106-107) In the letter (P-12), the Assistant Superintendent reviewed the conference with respondent held on April 21, 1975. He stated that he had reviewed respondent's evaluations with her and had made her aware that in the event he had not observed improvement in her performance, he would recommend to the Board that it take action to terminate her services with the school district. (P-12) He continued to state that inasmuch as respondent had not returned to her teaching position, he was not in a position to verify her improvement. (P-12) His letter to respondent concluded as follows:

> "***As I mentioned above it is my intention to make a recommendation to the Board of Education at the August Board meeting, but before I do, I would like to hear from you if possible and to give you the opportunity to resign rather than be terminated if that is your wish.***" (P-12)

You are viewing an archived copy from the New Jersey State Library.

CHARGE NO. 6

"During the weeks of March 17 through 21 and March 31 through April 4, 1975, Mrs. McRae was assigned to the Trenton Board of Education local training center to assist her in classroom management procedures, planning and the development of positive reinforcement procedures with interacting with students. At the completion of the training program, Mrs. McRae did not have the paper work prepared for review with the staff training coordinator, nor did she have plans for the management procedures she planned to use upon her return to Jefferson School. She also did not appear at a required meeting with the coordinator on April 7, 1975."

The Assistant to the Assistant Superintendent for Personnel testified that on April 3, 1975, he observed respondent in her then assigned training program in a demonstration class. He stated that respondent had been assigned to this situation to provide her assistance and to strengthen her weakness in teaching techniques under the direction of a regularly employed demonstration teacher. (Tr. II-56-57) He subsequently filed a report of this observation with the Assistant Superintendent which was signed by him and respondent. (P-9)

His testimony and the report of the observation of respondent on April 3, 1975, were essentially the same. He stated that on several occasions when respondent did not react to the pupil's questions the demonstration teacher had to assist and respond to such questions. (Tr. II-58-59, 61-62; P-9) The Assistant to the Assistant Superintendent for Personnel summarized his observation report as follows:

"***The exemplary qualities of a successful classroom teacher were not evident during this observation of Mrs. Inez McRae. For example, Mrs. McRae did not become actively involved with any student for any length of time. All of her assistance appeared to be superficial. She moved about in a hazy manner which indicated to me that she did not fully understand her role as a teacher in that particular situation. Also, she did not perform in an enthusiastic manner which is essential in helping to motivate children to learn." (P-9)

CHARGE NO. 7

"Mrs. McRae's class was observed on March 7th, 10th, 11th, 14th and 17th of 1975 by Mr. Ownsby, an administrative assistant. His daily log shows a complete lack of discipline control and a complete inability to effectively prepare, plan and execute the basic fundamentals of teaching. Her method is completely haphazard and her ability appears to be totally incompetent."

The administrative assistant to the principal testified that he was assigned to respondent's classroom to observe and aid her with the maintenance of order and class control for five days in March 1975. During the course of his testimony, the administrative assistant to the principal relied upon notes which, he asserted, were a log of the events that occurred while he observed respondent's classroom activities. (P-8) His notes and testimony reported a

You are viewing an archived copy from the New Jersey State Library.

variety of incidents where respondent could not control the pupils in order to carry out an instructional program. He stated that the pupils were running around the classroom, yelling and throwing paper. Although respondent attempted to talk to the pupils, he said that he could not hear her because of the noise level. He testified that he subsequently assisted respondent in quieting the pupils. (Tr. II-19; P-8)

He further testified that he did not observe respondent use prepared lesson plans during the five days he observed her classroom. (Tr. II-38-39) In his log he reported that on three separate occasions, respondent commenced lessons without instructions to the pupils with regard to the purpose of the activity. (P-8) He stated that the pupils did not appear to understand the intent of the assignments. (Tr. II-29)

The administrative assistant to the principal testified that a substitute teacher was employed for respondent's classroom on March 17, 1975, and completed the school year in that assignment. (Tr. II-46-47) His log reported that the class was orderly with every pupil seated and working on the first day of the substitute's assignment. (P-8) He testified that there was "an unbelievable transformation" in the behavior of the pupils "for the good." (Tr. II-47)

Respondent did not come forward with a separate defense but rather propounded a Motion to Dismiss Charges Nos. 2, 4, 5, 6 and 7. Respondent argued that said Charges constituted charges of inefficiency and that she was not provided the opportunity of a ninety day period of time within which to take remedial action as provided in *N.J.S.A.* 18A:6-12, the effective statute at the time of certification of charges, which reads as follows:

> "The board shall not forward any charge of inefficiency to the commissioner, unless at least 90 days prior thereto and within the current or preceding school year, the board or the superintendent of schools of the district has given to the employee, against whom such charge is made, written notice of the alleged inefficiency, specifying the nature thereof with such particulars as to furnish the employee an opportunity to correct and overcome the same."

This statute was repealed February 7, 1976 and the 90 day provision is embodied in *N.J.S.A.* 18A:6-11, as amended.

Respondent asserted that the Assistant Superintendent's memorandum of January 16, 1975 (PR-2) was insufficient, both in form and substance, to accomplish the intended result to provide respondent with adequate notice of inefficiency and to commence the running of the ninety day period as set forth in *N.J.S.A.* 18A:6-12 and cites *In re Jakucs,* 1968 *S.L.D.* 189 and *In re Simmons,* 1973 *S.L.D.* 721. Additionally, respondent avers that the Board failed to establish that respondent did not correct the alleged inefficiencies. (Respondent's Memorandum in lieu of Brief, at pp. 1-2)

The Board argues that Charges Nos. 2, 4, 5, 6 and 7 embodied significantly more than the single charge of inefficiency. It declares that the charges, albeit

You are viewing an archived copy from the New Jersey State Library.

incorporating inefficiency, went beyond the single category of inefficiency to include incapacity on the part of respondent to perform the duties and responsibilities of the position to which she was assigned. (Tr. II-174) In any event, the Board contends that the ninety day prior notice before a charge of inefficiency may be filed by the Board before the Commissioner (*N.J.S.A.* 18A:6-12), must be read in conjunction with *N.J.S.A.* 18A:6-13, which provides:

> "If the board does not make such a determination within 45 days after receipt of the written charge, or within 45 days after the expiration of the time for correction of the inefficiency, if the charge is of inefficiency, the charge shall be deemed to be dismissed and no further proceeding or action shall be taken thereon."

The Board asserts that respondent was given the required notice on January 16, 1975. (PR-2) The notice and the testimony of the Assistant Superintendent stated that respondent was provided the remainder of the 1974-75 academic year, or until June 30, 1975, to correct her deficiencies. (Tr. II-116; P-12) The Board continued to state that this time period for respondent to correct the alleged inefficencies is bolstered by a subsequent memorandum to respondent from the Assistant Superintendent dated March 17, 1975. (P-10) The memorandum and the testimony of the Assistant Superintendent stated that he intended to continue to observe respondent's progress and to assess the need to consider alternatives available to the Board for the 1975-76 school year. (P-10) The Board avers that respondent had until June 30, 1975 in which to improve her noted deficiencies. Subsequently, on August 12, 1975, within 45 days of June 30, 1975, the Board took action and certified charges to the Commissioner based upon respondent's failure to improve or correct her inefficient, inept and incompetent performance of her teaching duties. (Board's Letter Memorandum in lieu of Brief, at p. 2) The Board states, therefore, that respondent's Motion to Dismiss Charges Nos. 2, 4, 5, 6 and 7 should be dismissed.

This completes a recital of the charges against respondent and the evidence adduced in support of such charges at the hearing. The hearing examiner believes it is necessary to recite some of the evidence and testimony in summary form at this juncture and to make certain observations as follows:

1. With regard to Charge No. 1, the Board failed to produce documentation with respect to its policies to excuse pupils or to permit pupils to leave their assigned classrooms during the course of the school day. The absence of a precise policy with regard to the procedure to be followed by teaching staff members when pupils are summoned by the administrative staff is a highly questionable practice under any circumstances. The principal testified that he had, in fact, used pupils as messengers in his school. Respondent testified that she relied upon this past practice and, therefore, permitted a pupil to leave her classroom. The hearing examiner recommends that Charge No. 1 be dismissed.

2. With respect to Charge No. 3, respondent admitted that she had placed her hand in the face of a pupil (Tr. II-135-136) and had lost control of herself

You are viewing an archived copy from the New Jersey State Library.

when she did so. She averred that her actions were in self-defense. (Tr. II-161) There was no evidence that a pupil had, infact, attacked or touched her. With respect to Charge No. 3 and to acts of corporal punishment by teachers, the Commissioner commented *In the Matter of the Tenure Hearing of Thomas Appleby, School District of Vineland, Cumberland County*, 1969 *S.L.D.* 159, aff'd State Board of Education 1970 *S.L.D.* 449, aff'd Docket No. A-539-70, New Jersey Superior Court, Appellate Division, March 14, 1972 (1972 *S.L.D.* 662) as follows:

> "***While the Commissioner understands the exasperations and frustrations that often accompany the teacher's functions, he cannot condone resort to force and fear as appropriate procedures in dealing with pupils, even those whose recalcitrance appears to be open defiance. The Commissioner finds in the century-old statute prohibiting corporal punishment (*N.J.S.A.* 18A:6-1) an underlying philosophy that an individual has a right not only to freedom from bodily harm but also to *freedom from offensive bodily touching even though there be no actual physical harm.****" (*Emphasis supplied.*) (1969 *S.L.D.* at 172-173)

Within the context of *Appleby, supra,* and respondent's admission that she had indeed lost control of herself during the course of an incident with a pupil, the hearing examiner finds that Charge No. 3 did constitute corporal punishment.

3. The hearing examiner's findings establish the truth of the basic factual allegations contained in Charges Nos. 2, 4, 5, 6 and 7. Respondent failed to present a credible defense to the charges. Respondent did not dispute the events described in the allegations, but rather, attempted to develop a framework for her actions. She alleges that the pupils had lost respect for her and that she could not control the pupils due to the principal's "scolding" respondent in the presence of her pupils. Respondent failed to call a witness to corroborate the allegation.

4. The Board's allegation that respondent had misspelled words and committed grammatical errors in the classroom was not disputed. Nor was a defense advanced with respect to respondent's classroom management, classroom organization, lesson planning and the teaching-learning environment she expected to achieve.

5. The Board presented credible evidence that it had indeed provided respondent with aids to assist her to overcome her alleged deficiencies with regard to her lesson plans (P-10), teaching methods and techniques (Tr. II-56-57) and classroom control management and pupil discipline. (Tr. II-19-39; P-12)

6. Subsequent to April 4, 1975, respondent did not return to her assigned classroom duties; therefore, she denied the Board the opportunity to observe and evaluate her progress to overcome the alleged deficiencies.

Respondent moved to dismiss Charges Nos. 2, 4, 5, 6 and 7 as charges of inefficiency because of the Board's failure to provide the required ninety day

You are viewing an archived copy from the New Jersey State Library.

notice as provided in *N.J.S.A.* 18A:6-12 [now 18A:6-11]. Notwithstanding respondent's contention that inefficiencies did, in fact, exist, the hearing examiner finds that respondent demonstrated gross ineptness in performing the responsibilities of a classroom teacher. The testimony of the supervisors clearly portrays this ineptness. Whether the ineffectiveness in this case results from lack of understanding of the teaching-learning process, from lack of effort or from indifference, the hearing examiner finds that respondent failed to measure up to even minimal standards of satisfactory teaching. Respondent's lack of adequate and thorough planning demonstrated a dereliction of duty. Her lack of discipline and class control was so gross as to rise above a charge of minimal inefficiency to incompetency. As was said *In the Matter of the Tenure Hearing of Leo S. Haspel, Board of Education of Metuchen, Middlesex County,* 1964 *S.L.D.* 17, aff'd State Board of Education 31, aff'd Docket No. A-160-64, New Jersey Superior Court, Appellate Division, June 10, 1965 (1965 *S.L.D.* 201):

> "***Poor discipline is most often rooted in poor teaching. *** Youth who are unchallenged, bored with stereotyped and unimaginative routines which to them have little meaning and no purpose, quickly lose respect for and rebel against the person who provides such leadership.***" (at 27)

Additionally, respondent demonstrated incompetency to perform routine duties expected of her by pupils, supervisors and parents. The hearing examiner therefore recommends that respondent be dismissed as a teaching staff member of the Trenton City School District.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner. He observes that no exceptions thereto were filed by the parties. The question that remains for determination is whether or not respondent, by her own actions, has forfeited the protection which tenure affords to teaching staff members who have otherwise complied with statutory prescription. *N.J.S.A.* 18A:28

A similar question was considered by the Court with respect to a school principal in *Redcay v. State Board of Education,* 130 *N.J.L.* 369 (*Sup. Ct.* 1943), aff'd 131 *N.J.L.* 326 (*E.&A.* 1944) and the Court said:

> "***An inefficient and incapable principal may do great injury to both pupils and teachers. When the charges of such conduct have been clearly proved, the removal should be easy and prompt. *Devault v. Mayor of Camden,* 48 *N.J.L.* 433.***" (at 370)

> "***Unfitness to hold a post might be shown by one incident, if sufficiently flagrant, but it might also be shown by many incidents. Fitness may be shown either way.***" (at 371)

In the context of such dicta, applicable to all teaching staff members, the

You are viewing an archived copy from the New Jersey State Library.

findings set forth herein comprise a series of many incidents which demonstrate respondent's unfitness to hold a post. The Commissioner holds, therefore, that respondent is found to be incompetent and guilty of conduct unbecoming a teacher.

Accordingly, the Commissioner determines that respondent shall be dismissed from her employment with the School District of the City of Trenton as of the date of her suspension by the Board on August 28, 1975.

COMMISSIONER OF EDUCATION

May 13, 1977

In the Matter of the Annual School Election Held in the Constituent District of Voorhees Township, Eastern Camden County Regional School District, Camden County.

COMMISSIONER OF EDUCATION

DECISION

The announced results of the balloting for two members of the Board of Education for full terms of three years each at the annual school election held March 22, 1977 in the Constituent District of Voorhees Township, Eastern Camden County Regional School District, Camden County, were as follows:

	At Polls	Absentee	Total
John J. Szombathy	174	–0–	174
Harry S. Callaway	144	–0–	144
Peter Zebryk	126	–0–	126
Robert J. Pilkauskas	117	–0–	117
Phil Del Palazza (Write-in Candidate)	1	–0–	1

Pursuant to a letter request from Peter Zebryk dated March 29, 1977, the Commissioner of Education directed an authorized representative to conduct a recount of the ballots cast. The recount was conducted on May 4, 1977 at the office of the County Superintendent of Schools in Pennsauken.

At the conclusion of the recount with two ballots challenged and three ballots voided, the tally stood as follows:

	At Polls	Absentee	Total
John J. Szombathy	174	–0–	174
Harry S. Callaway	143	–0–	143

You are viewing an archived copy from the New Jersey State Library.

Peter Zebryk	124	–0–	124
Robert J. Pilkauskas	117	–0–	117

The one write-in vote was not considered by the Commissioner's representative since it did not affect the result of the recount.

Since the inclusion or exclusion of the two contested ballots would not change the outcome of the election, it is unnecessary for the Commissioner to determine their validity.

The Commissioner finds and determines that John J. Szombathy and Harry S. Callaway were elected to full terms of three years each on the Board of Education of the Eastern Camden County Regional School District.

COMMISSIONER OF EDUCATION

May 17, 1977

In the Matter of the Annual School Election Held in the School District of the Borough of Pompton Lakes, Passaic County.

COMMISSIONER OF EDUCATION

DECISION

The announced results of the balloting for candidates for three seats on the Board of Education of the Borough of Pompton Lakes, hereinafter "Board," at the annual school election held on March 29, 1977, were as follows:

	At Polls	Absentee	Total
George K. North	494	3	497
Donald Allison	438	3	441
Stanley Lehrer	396	3	399
Jerome Bellet	380	4	384
Harvey Sakolsky	–0–	1	1

Pursuant to charges of irregularities filed by write-in Candidate Jerome Bellet, hereinafter "petitioner," by letter dated March 30, 1977, an inquiry was conducted by a representative of the Commissioner of Education on April 11, 1977 at the office of the Passaic County Superintendent of Elections, Paterson. From the statements heard and the documentary evidence received, the following facts were elicited:

Three candidates' names appeared on the voting machine ballot for three seats on the Board for three-year terms. Additionally, petitioner conducted a

You are viewing an archived copy from the New Jersey State Library.

write-in campaign for one of the three contested seats. Petitioner's letter complaint alleges several irregularities which he avers led to his defeat at the polls. He prays that the election be declared invalid and that a new election be held.

When petitioner decided to campaign for a seat on the Board, he was advised by the office of the Passaic County Commissioner of Elections how to instruct his supporters to write his name on the ballot, to wit: lift the large two inch square (personal choice) slide at the top of the voting machine over the first column and write in the name of the candidate.

The voting machine used is the Jamestown which is designed with several vertical columns numbered sequentially from left to right beginning with number one. Horizontal letter designations are placed to the left of column one from top to bottom beginning with letter A. In addition to the square above column one, an oblique slot is provided at the top of the machine over each of the remaining vertical columns so that a write-in vote is possible over each numbered column. Four voting machines were used in this election. Candidate Donald Allison's name appeared on line A and Candidates Stanley Lehrer and George K. North appeared on lines B and C.

A properly prepared voting machine would permit a voter to cast a ballot for any three of the four persons named herein. Petitioner alleges that he learned at the time he went to vote that a voter had complained because she had voted for a write-in candidate and could not also vote for Candidate Allison. Petitioner discovered that it was physically impossible to write in a name in the personal choice square provided and also vote for Candidate Allison. If the personal choice square cover above column one was raised, it locked out Candidate Allison's name. The reverse was also true. If the lever next to Candidate Allison's name was depressed, the personal choice square was locked so that it was impossible to write in a name. (Tr. 2-4, 13-15) Petitioner's allegations are corroborated by the statements given by the Board Secretary and the Superintendent of Elections. Documentary evidence reveals, also, that the levers opposite the names of the other two candidates, when depressed, may have affected petitioner's total vote. (Exhibit B)

When the Board Secretary learned of the difficulty with the machines in each polling place, he called the office of the Superintendent of Elections for assistance. He was advised to tape shut the personal choice square over column one and tape over the next three slots. Thereafter, voters wishing to cast a write-in ballot were advised to write in the fourth slot. He followed this advice and for a period of twenty minutes, the personal choice square and the following three oblique slots on each machine were taped shut. The Board Secretary then tested this procedure on one machine and discovered that he could vote for all three candidates on the machine and cast a write-in ballot as well in the fourth oblique slot, thus permitting a voter to cast a ballot for four candidates instead of three. Realizing that this procedure would not work, he removed the tape from all machines and decided that nothing could be done to correct the difficulty. The election proceeded with the machines improperly aligned. (Tr.

You are viewing an archived copy from the New Jersey State Library.

7-13) The Superintendent of Elections stated clearly that "our office goofed in setting up these machines. They were not properly set up***." (Tr. 17) During portions of the day, petitioner alleges that persons were denied an opportunity to vote because they left the polling places after long delays waiting for the machines to be placed in proper operating condition. He avers, also, that paper ballots were issued to some voters and that the total number of those ballots issued and not issued could not be determined. In this regard, the Board Secretary stated that ten or fewer paper ballots were issued and that the remainder of the ballots were taken back to his office. Petitioner alleges also that voters were denied a secret ballot for a time because they were asked by election workers if they intended to cast a write-in ballot. The purpose of this question was to instruct the voters how to cast such ballots since much difficulty was being experienced with the machines. At one time, voters were told to write in a candidate's name in the personal choice square over column one. Later, when this square and the next three slots were taped shut, voters were instructed to write in the candidate's name in the fourth oblique slot. Still later, they were advised again to use the personal choice square over column one. Petitioner alleges, also, that two Board employees were paid as election workers at the polls in violation of *N.J.S.A.* 18A:14-6. The record supports this allegation. (Tr. 22-24)

In reviewing all of petitioner's allegations of irregularities, the Commissioner's representative finds each of them to be true in fact. Nevertheless, only one of the irregularities warrants further consideration by the Commissioner in determining what remedy, if any, is to be provided. The Commissioner and the courts have held consistently that irregularities in the conduct of elections having no effect upon the voting will not vitiate an election. *In the Matter of the Annual School Election Held in the School District of South Orange-Maplewood, Essex County,* 1974 *S.L.D.* 1049, the Commissioner commented as follows:

> "***[T]he Commissioner finds no showing of fraud, collusion or misconduct which would vitiate the election. It is purely speculative to presume that, if conditions had been different, the results would have been different. The Commissioner has consistently declined to set aside contested elections unless there is clear proof that the irregularities affected the result of the election. The Commissioner has consistently and vigorously condemned any procedural faults and irregularities found in a school election, but even gross irregularities not amounting to fraud do not vitiate an election. The Commissioner cannot find that the conduct of this school election was such that the will of the people was thwarted or could not be fairly determined. *Love v. Board of Chosen Freeholders,* 35 *N.J.L.* 269 (*Sup. Ct.* 1871); *Application of Wene,* 26 *N.J. Super.* 363 (*Law Div.* 1953), aff'd 13 *N.J.* 185 (1953); *Sharrock v. Borough of Keansburg,* 15 *N.J. Super.* 11, 19 (*App. Div.* 1951); *In re Moore,* 57 *N.J. Super.* 244, 251-52 (*App. Div.* 1959); *Petition of Clee,* 119 *N.J.L.* 310 (*Sup. Ct.* 1938)***" (at 1053)

The Commissioner has also stated that "***[t]here must be facts

You are viewing an archived copy from the New Jersey State Library.

established to show that the acts complained of constituted such misconduct or omission of duty on the part of the election officials that the result of the election would be changed.***" *In the Matter of the Annual School Election Held in the Township of Dover, a Constituent District of the Toms River Regional School District, Ocean County,* 1967 *S.L.D.* 52, 54

The Commissioner's representative finds, in the instant matter, gross error in the performance of duty by election officials so that the will of the voters could not fairly be determined. Candidate Allison won a seat on the Board despite the fact that each voter who raised the personal choice square above column one was precluded from casting a vote for him. On the other hand, petitioner was less fortunate. It cannot be determined how many voters wished to vote for petitioner and for Allison. What is clear, however, is that approximately four hundred thirty-eight voters depressed the lever to vote for Allison and were thereafter precluded from voting for petitioner if they wished to do so. Petitioner was deprived of a seat on the Board by fifteen votes. (Exhibit A)

The Commissioner's representative has considered such facts and concludes that the irregularities evidenced herein were so gross as to thwart the will of the electorate with respect to election of candidates for seats on the Board. Accordingly, he recommends that the announced results of the election for seats on the Board be invalidated but that the announced tally of votes for or against the budgetary appropriations be permitted to stand.

This concludes the report of the Commissioner's representative.

* * * *

The Commissioner has reviewed the report of his representative and considered the gross irregularities reported therein. The whole of this election was marked by confusion as evidenced by statements given at the hearing. (Tr. 21-22) The statement of the County Election Board official was an admittance that voting machines had been improperly prepared and "***it was totally a mistake of this office.***" (Tr. 18) The official also stated that "***the results might very well have been different had the machines been properly set-up.***" (Tr. 18) It is clear from other statements that the great confusion prompted delays in the voting procedure which were so extensive that the voting franchise was almost certainly denied to some citizens. (Tr. 21)

In the context of such statements and facts the Commissioner determines that the tally of votes from improperly prepared voting machines at the annual school election in Pompton Lakes cannot be held to be a valid expression of the will of the electorate. Accordingly, the Commissioner holds the election must be set aside with respect to the announced tally of votes for candidates for seats on the Board.

This holding is one in a series of election disputes occasioned by the difficulty which has often been "***a normal concomitant of irregular balloting.***" *In the Matter of the Annual School Election Held in the*

You are viewing an archived copy from the New Jersey State Library.

Township of Hillsborough, Somerset County, 1965 *S.L.D.* 74, 77 Write-in voting is difficult, at best, when voting machines are properly prepared. If such machines are not correctly prepared, or if they are mechanically imperfect, a whole election can be rendered a nullity. Accordingly, the Commissioner is again constrained to caution this Board and all local boards of education and election officials to employ all possible precautions to insure, prior to election, that voting machines are in good working condition. The Commissioner is also constrained to repeat some observations made in *Hillsborough* of pertinent and/or peripheral interest:

> "***The unfortunate chain of events which created confusion and doubt in this election is even more regrettable when it is apparent, as it became during the course of this inquiry, that the actions taken were not intended to create problems but to avoid them. There is no indication that anyone involved acted with other than the best of intentions and proper motives. It is unfortunate that the well-meaning efforts of a number of persons aimed at avoiding confusion had an opposite effect.
>
> "There appears to be no clear practice with respect to the use of irregular ballot slot #1 among the various election boards of the State. This larger write-in space is provided primarily for use in presidential elections in which the voter may want to write the names of a series of electors.*** The Commissioner has observed, in his experience ***, that where large slot #1 is not locked out it is often necessary to void a ballot because more than one name has been written in this space. From his experience, the Commissioner would recommend that slot #1 not be used in school elections.***" (1965 *S.L.D.* at 76)

Such observations are at point herein to insure that in future elections voting machines are not only correctly prepared to allow the permissible number of votes but also to avoid the difficulty frequently experienced in the use of slot #1.

There remains the question of the remedy for irregularities which have resulted in the vitiation of this election. In this regard there is no provision for a second annual or run-off election in the school laws, and the Commissioner holds that such election would not be desirable. Conflicts with primary and general elections are required to be avoided. Expenses of conducting elections are significant. The statutory prescription clearly sets forth an alternative. As the Commissioner said in *Hillsborough, supra*:

> "***Petitioner asks that a new election be ordered. The Commissioner knows of no authority by which this can be done. The only provision for a second election in the statutes is in the case of the resubmission of defeated items of appropriation under R.S. 18:7-81 [since repealed]. Where there is a clear showing that election irregularities were of such nature that the will of the people was thwarted or could not be fairly determined, the Commissioner may act to set the results aside and to declare a failure to elect. In such case the County Superintendent of

You are viewing an archived copy from the New Jersey State Library.

Schools is directed to fill the vacancies until the next annual election. (R.S. 18:4-7d) [Now *N.J.S.A.* 18A:12-15] ***" (*Id.* at 77)

(See also *In the Matter of the Annual School Election Held in the School District of South River, Middlesex County,* 1968 *S.L.D.* 84; *In the Matter of the Annual School Election Held in the Township of Medford, Burlington County,* 1967 *S.L.D.* 50; *In the Matter of the Contested Annual School Election in the City of Rahway, Union County,* 1959-60 *S.L.D.* 138.)

The holding herein is that the will of the people was thwarted and that the election must be set aside. Accordingly, the Commissioner directs the Passaic County Superintendent of Schools to appoint three persons from the Borough of Pompton Lakes to serve on the Board of Education of Pompton Lakes until the organization meeting following the next annual school election.

COMMISSIONER OF EDUCATION

May 17, 1977

In the Matter of the Annual School Election Held in the School District of the Borough of Fairview, Bergen County.

COMMISSIONER OF EDUCATION

DECISION

A letter of complaint dated April 11, 1977 was filed by Emanuele L. Triggiano, an unsuccessful candidate for a seat on the Board of Education of the Borough of Fairview, alleging that a successful candidate, Mrs. Sophia Pavidis Stas, was not a legal resident in the school district for two years prior to the annual school election as required by law.

An inquiry was thereafter conducted by a representative appointed by the Commissioner of Education at the office of the Bergen County Superintendent of Schools on April 22, 1977. The report of the Commissioner's representative follows:

Complainant Triggiano alleges specifically that Sophia Pavidas Stas was previously registered as a voter in Boonton and did not register to vote in Fairview until February 15, 1977. He alleges also that Candidate Stas' last legal address was 217 Old Boonton Road, Boonton, and that prior to this annual school election she had never voted in Fairview. (Complainant's Letter, April 11, 1977) Complainant introduced in evidence a copy of a post office change of address card. (Exhibit D)

You are viewing an archived copy from the New Jersey State Library.

The Board Secretary submitted a copy of Candidate Stas' nominating petition containing ten signatures of persons certifying that she was legally qualified under the laws of this State to be elected a member of the Board. (Exhibit F)

Candidate Stas testified that she has been a legal resident and has made her home in Fairview at all times since 1943. She testified that she retired as a teacher in the school district of the Town of Boonton in 1975 and had been a teacher there since 1946. She testified that the distance between Boonton and Fairview was approximately thirty miles and when bus service became less regular, about nine years ago, she rented a room in Boonton because she did not drive. She spent her weekends at her home in Fairview. She admits registering to vote in Boonton many years ago but could not recall exactly when. She testified that she voted in Boonton only in school elections and that she had never voted in Fairview prior to this annual school election. Candidate Stas testified that her husband has resided in their home in Fairview at all times since their marriage in 1947. She testified that she moved back to her home full time on March 13, 1975, and that her husband drove her to work until she retired at the end of the school year. Introduced in evidence to support this testimony is a letter from her landlady. (Exhibit E) Candidate Stas introduced in evidence, also, a letter from the Board Secretary of the Boonton school system which corroborates her testimony that the Board had always considered her legal address to be in Fairview. (Exhibit A) A letter from the Board of Assessors of the Borough of Fairview to Mrs. Stas regarding her inquiry about senior citizens' deductions was introduced as Exhibit B. Candidate Stas also showed the Commissioner's representative her personal copy of the W-2 federal income tax form on which her address in Fairview was listed. This form was returned to her.

Candidate Stas testified that the post office change of address card simply shows that she wanted her mailing address in Boonton changed on July 1, 1975 to Greenwood Lake, New York, where, she testified, she and her husband own a summer bungalow.

The statute requires that prospective board of education members shall be residents of the school district in which they seek to serve for at least two years immediately prior to the annual school election. *N.J.S.A.* 18A:12-1 In the judgment of the Commissioner's representative, Candidate Stas has been a legal resident of the Borough of Fairview at all times since 1943. It is the opinion of the Commissioner's representative that she was improperly registered to vote in Boonton since her legal address is, and has been, in Fairview.

To support this contention, it is necessary to comment on the following definitions as they apply to this matter.

> *Black's Law Dictionary* 572, 1473 (rev. 4th ed. 1968) is quoted, in part, as follows:
>
> "DOMICILE. That place where a man has his *true, fixed, and permanent home* and principal establishment, *and to which whenever he is absent he*

You are viewing an archived copy from the New Jersey State Library.

has the intention of returning. Kurilla v. Roth, 132 N.J.L. 213, 38 A.2d 862, 864 ******Not for a mere special or temporary purpose,*** but with the present intention of making a permanent home, for an unlimited or indefinite period.*** In re Gilbert's Estate, 18 N.J. Misc. 540***.

"The established, fixed, permanent, or ordinary dwelling place or place of residence of a person, *as distinguished from his temporary and transient, though actual, place of residence. It is his legal residence, as distinguished from his temporary place of abode;* or his home, as distinguished from a place to which business or pleasure may temporarily call him.***"
(*Emphasis supplied.*)

"RESIDENCE. A factual place of abode. Living in a particular locality. *** It requires only bodily presence as an inhabitant of a place.***

"As *'domicile'* and *'residence'* are usually in the same place, they are frequently used as if they had the same meaning, but they *are not identical terms, for a person may have two places of residence, as in the city and country, but only one domicile.* Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place *and also an intention to make it one's domicile*.***" (*Emphasis supplied.*)

The courts have determined that every person has a domicile somewhere under all circumstances and conditions and that a person may have several residences or places of abode, but can only have one domicile at a time.

The Commissioner quoted from *State v. Benny,* 20 *N.J.* 238 (1955) as follows:

"***It is everywhere conceded that a person can have only one true domicile, which is synonymous with the common understanding of the word 'home,' *Stout v. Leonard,* 37 *N.J.L.* 492 (*E.&A.* 1874); *Cromwell v. Neeld,* 15 *N.J. Super.* 296 (*App. Div.* 1951).

"Residence, on the other hand, though parallel in many respects to domicile, is something quite different in that the elements of permanency, continuity and kinship with the physical, cultural, social and political attributes which inhere in a 'home' according to our accepted understanding, are missing. *Intention adequately manifested is the catalyst which converts a residence from a mere place in which a person lives to a domicile.****" (*Emphasis supplied.*)

Thus, it is clear to the Commissioner's representative that Candidate Stas' domicile or legal place of abode has been in Fairview since 1943. She merely resided in Boonton where she worked and never intended that Boonton be her home. The fact that she reregistered to vote in Fairview on February 15, 1977 is of no moment in this matter. Although the place in which a person registers to

You are viewing an archived copy from the New Jersey State Library.

vote is his domicile, if registered legally, it is not necessary to be registered as a voter to have one's domicile in a particular place. Therefore, she was domiciled in Fairview prior to her registration as a voter. But even if her Boonton address could have been considered her domicile before her return to Fairview, the record shows that she left her Boonton residence on March 13, 1975 and returned to Fairview. This date alone establishes that she was domiciled in Fairview at least two years immediately prior to the annual school election on March 29, 1977. *N.J.S.A.* 18A:12-1 (Exhibit E)

An examination of the nominating petition for Candidate Stas shows that it is in compliance with the relevant statute. *N.J.S.A.* 18A:14-9 There is no proof evidenced by complainant that the nominating petition is defective. This concludes the report of the Commissioner's representative.

* * * *

The Commissioner has reviewed the report of his representative and concurs with his findings and conclusions. The results of the annual school election held in the Borough of Fairview will stand as announced.

COMMISSIONER OF EDUCATION

May 17, 1977

Paul Albert,

Petitioner,

v.

Board of Education of the Freehold Regional High School District, Monmouth County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Chamlin, Schottland & Rosen (Michael D. Schottland, Esq., of Counsel)

For the Respondent, Murray, Meagher & Granello (James Granello, Esq., of Counsel)

Petitioner, who was employed as a school bus driver by the Board of Education of the Freehold Regional High School District, hereinafter "Board," challenges an action of the Board taken on February 17, 1975 by which his

You are viewing an archived copy from the New Jersey State Library.

employment was terminated. Petitioner alleges that such termination violates his property right to continued employment without affording him due process of law, and that the action itself is arbitrary, capricious, and unreasonable. Petitioner further alleges that the action taken to terminate his employment was in direct violation of the agreement entered into by the Board with the Freehold Regional Bus Drivers Association, hereinafter "Association," of which he is a member. Petitioner seeks reinstatement to his employment with the Board with all back pay. The Board denies each of the allegations and asserts that its action to terminate petitioner's employment was for just cause and in all other respects proper and legal.

The parties filed Cross-Motions for Summary Judgment and the matter is referred directly to the Commissioner of Education for adjudication on the record, including the pleadings, exhibits and Briefs of the parties in support of their respective positions.

The salient facts of the matter are these:

Petitioner was in his fourth year of employment with the Board as a school bus driver during 1973-74. The minutes (R-1; R-1A) of a meeting conducted on February 17, 1975, show that upon the recommendation of its transportation director and Board Secretary, the Board determined to terminate petitioner's employment effective February 18, 1975, because he was "***unfit to drive on Thursday, February 13, 1975 at approximately 1:10 P.M. when he reported to the bus yard at Freehold High School and for failure to report to the school doctor when requested." (R-1) When the resolution to terminate petitioner's employment was introduced, the Board elected to table it until after its private session. (R-1) After the Board reconvened from its private session, the resolution was approved by the Board. (R-1A) The Board Secretary notified petitioner by letter (R-2) dated February 19, 1975, that the Board had terminated his employment for the precise reasons stated above. The Board Secretary did not advise petitioner in this letter (R-2) that his termination was to be effective February 18, 1975.

The Commissioner observes that the incident that occurred on February 13, 1975, which triggered petitioner's termination and which shall be discussed, *post,* resulted in his suspension by the transportation director on February 14, 1975.

Petitioner had not received the Board Secretary's letter (R-2) of February 19 notifying him of his termination by February 20, 1975 for on that date petitioner wrote the transportation director the following:

> "I would appreciate your advising me in writing as to my current employment status.
>
> "On Friday, February 14, 1975, you informed me verbally that I was suspended, According to the terms of my contract I am now asking for the reasons in writing." (R-3)

You are viewing an archived copy from the New Jersey State Library.

Petitioner received the Board Secretary's letter (R-2) and on February 24, 1975, he advised the Board:

> "I am in receipt of your letter of Feb. 19, 1975 in which you advise of my termination.
>
> "Under the terms of the Master Agreement, [with the Association] I wish to grieve this termination. Please arrange a meeting as soon as possible." (R-4)

The secretary of the Association advised the Board by letter dated February 26, 1975, that the Executive and Grievance Committee of the Association wanted a meeting with the Board:

> "***to substantiate the reasons for [the] dismissal of Paul Albert [petitioner], as the letter [the Board Secretary's dated February 19, *ante*] sent to him does not follow the fair dismissal procedure as outlined in our Contract [Agreement], Article X, Section 1." (R-5)

The Commissioner observes that Article X, Section 1 of the Agreement (C-1) provides as follows:

> "Any employee who receives a notice of nonemployment shall be informed of the reasons why said employment was terminated." (C-1, at p. 8)

The Board Secretary notified the secretary to the Association by letter (R-6) dated February 28, 1975, that his letter (R-2) dated February 19, 1975, did advise petitioner the reasons why his employment was terminated, and that the request for a meeting with the Board was not consistent with the grievance procedure of Article IV of the Agreement. (C-1)

The grievance procedure provides that an employee who has a grievance shall discuss it first with his immediate supervisor. If the matter is not resolved within five days, the employee shall reduce his grievance to writing and submit it in writing. The supervisor shall set forth his decision in regard to the grievance in writing within five days. The employee may appeal a supervisor's adverse decision to the Superintendent of Schools, then to the Board. The Board may, in its discretion, grant the employee a hearing. Should the employee fail to properly appeal an adverse decision to the next step in a timely fashion, the grievance shall be deemed to have been settled. (C-1, at pp. 3-4)

The Association secretary, by letter (R-7) dated April 1, 1975, requested a meeting with the Superintendent to review petitioner's termination of employment. The Superintendent, by letter (R-8) dated April 10, 1975, agreed to meet with the Association representatives. Thereafter, the Association secretary by letter (R-9) dated April 14, 1975, notified petitioner that the Superintendent had agreed to a meeting in regard to his termination. Petitioner was requested to contact her so that a mutually convenient date for such a

You are viewing an archived copy from the New Jersey State Library.

meeting could be established. Petitioner did not contact the Association secretary as requested and on April 23, 1975, she notified the Superintendent that:

> "The *** Association wishes to express their appreciation for your willingness to meet with us regarding the dismissal of [petitioner].
>
> "He has not, however, been in touch with us concerning a meeting time.
>
> "We, therefore, assume that he has no wish to continue his grievance.***" (R-10)

Thereafter, petitioner's counsel notified the Superintendent by letter (R-11) dated April 25, 1975, that he was representing petitioner in his claim that he "***has been wrongfully terminated from his employment***." (R-11) Counsel further advised that a member of his firm would accompany petitioner at the meeting the Superintendent agreed to have, *ante.* Counsel to the Board replied by letter (R-12) dated May 7, 1975, that because petitioner had exceeded the time limits pursuant to the grievance procedure, *ante,* of the Agreement (C-1), petitioner had waived his right to further appeal within that procedure. The instant Petition of Appeal was then filed on June 24, 1975.

The Board, in support of its Motion for Summary Judgment, submitted several statements (R-13 through 23) of persons who asserted they witnessed the physical condition of petitioner on February 13, 1975, when he reported to work. The transportation director asserted in his statement (R-13) that on that date he received a telephone call from the assistant transportation director who reported that petitioner was behaving in an erratic manner. The transportation director asserted that:

> "***Mr. Dobbins [assistant Board Secretary] and myself went to the [school bus] yard. Before we reached there, [petitioner] had backed his bus into another bus, broke a mirror and would have driven away.
>
> "[Petitioner] was sitting in rear room, [his] speech was slurred and he smelled of alcohol.
>
> "[Petitioner] asked to know why he was sitting there. [The Board explains in its Brief that petitioner had been taken to the school transportation office subsequent to his driving into the other bus. (Board's Brief, at p. 2)] I asked if he had any problems, what was the matter. He retorted by broken laughter. I asked what had caused his accident. He retorted what accident? He never had an accident.
>
> "His actions were disorganized and [his] speech was not in a normal manner. I requested that he come with Mr. Dobbins and myself to the school doctor. He laughed and stated that he didn't need a doctor, we did. He became angry and demanded to know what our reason was. He wanted us to state our reason that we were implying and he would pin us to the wall and seize our assets.

You are viewing an archived copy from the New Jersey State Library.

"He attempted to light a cigarette. It took nearly five minutes to get it lit. As he did, it fell from his mouth onto his pants and then to the floor.

"Mr. Dobbins asked him to go to the doctors (sic). He refused and dared us to take him physically.

"I informed him that he would be taken off his [school bus] runs this afternoon. He seemed to be, in my judgment, not capable of driving his bus this afternoon." (R-13)

The assistant Board Secretary, in his filed statement (R-14), corroborated the essential assertions of the transportation director with respect to the physical condition of petitioner on February 13, 1975. He described petitioner's physical condition in the following manner:

"***[Petitioner's] eyes were red. His cheeks were flushed. He talked irratic (sic), slowly and with a thick tongue.***

"He was nasty, abusive, and argumentative in his discussion with [the transportation director].

"***He appeared very muddled and his reactions were slow and dull.***" (R-14)

The assistant Board Secretary concluded in his statement that:

"[Petitioner] was in my opinion far too intoxicated to drive on his afternoon school bus run.***" (R-14)

The assistant transportation director asserted in his filed statement (R-22) that petitioner's facial complexion was red and flushed and that he smelled alcohol on petitioner's breath. A colleague of petitioner's, another school bus driver, asserted in his filed statement (R-23) that, based on his observation of petitioner on February 13, 1975, "***he was not capable of driving***" and that petitioner had "***backed into bus #19 which was behind him.***" R-23)

Other persons who asserted they observed petitioner's physical appearance on February 13, 1975, filed statements in this regard. One asserted that petitioner "***looked as if he was drinking, he talked with a slur, & acted funny when he came into the office." (R-15) The driver of school bus number nineteen stated that petitioner "***backed up right into my bus***." (R-16) Another person reported that petitioner's "***speech was abnormal in that it was slightly slurred." (R-17) A person who was walking into the school bus yard on February 13, 1975, asserted that petitioner "***appeared to be under the influence of alcohol.***" (R-18) Another stated that petitioner "***was under the influence of alcohol.***" (R-19) Another observed that petitioner "***did not act in a normal behavior." (R-20) Another observed that petitioner "***sounded kind of different like his speech sounded slurred and his words did not come out right, his face was flushed and he appeared to be very nervous

You are viewing an archived copy from the New Jersey State Library.

while talking with [the assistant transportation director]. I did not smell anything on him." (R-21)

It was this incident upon which the Board concluded that petitioner was unfit to drive on February 13, 1975, and failed to report to the school doctor when requested. Upon this conclusion the Board acted to terminate petitioner's employment.

Petitioner, in his Brief filed in support of his Motion for Summary Judgment, asserted that the Board at its meeting of February 17, 1975, tabled the resolution to terminate his employment. (R-1) Thus, he asserted the Board did not take the action necessary to effectuate his termination. The Commissioner does not agree. The Board, upon reconvening from its private session that evening, adopted the resolution to terminate petitioner's employment by a unanimous vote of the eight members present. (R-1A) Petitioner's argument that the Board tabled the resolution with respect to his termination is grounded solely on his failure to consider the minutes (R-1A) of the reconvened portion of the meeting. The Commissioner holds that the Board did take formal action to terminate petitioner's employment on February 17, 1975.

The Board entered into an employment contract (C-1A) with petitioner for the 1974-75 academic year, which provides, *inter alia*:

> "***Subject to the provision of the Agreement [C-1, *ante*] between the Freehold Regional Bus Drivers Association and the Freehold Regional High School District Board of Education, the Board of Education reserves the right to terminate you upon notice for specific reason or reasons during the aforementioned fixed employment period. [September 1, 1974 through June 30, 1975] Such termination shall be preceded by a notification to you by certified mail at least five (5) days prior to the effective date of said termination.***" (C-1A)

The Commissioner observes that while the Board Secretary's letter (R-2) of February 19, 1975, by which petitioner was notified of his termination was not "by certified mail," petitioner stipulates that on or about February 20, 1975, he did receive the letter. (R-2; Petitioner's Brief, at p. 4)

Petitioner contends that because the Board did not provide him with at least five days' notice of termination, it, at the very least, must compensate him for the remainder of his 1974-75 employment contract. But beyond that, petitioner asserts that his employment contract (C-1A) provides that he could only have been properly terminated for cause subsequent to a hearing on the allegations. Petitioner attempts to equate the ruling of the Commissioner in *Luther McLean v. Board of Education of the Borough of Glen Ridge et al., Essex County,* 1973 *S.L.D.* 217, aff'd State Board of Education 1974 *S.L.D.* 1411 with the instant matter wherein the Commissioner held that when a board employs a janitor for a fixed term and the employment contract contains no termination clause, the board must file charges and request a hearing before the

You are viewing an archived copy from the New Jersey State Library.

Commissioner in order to terminate such an employee for cause during the term of the contract. Petitioner also lays claim to a property right to continued employment with the Board until and if a hearing affording him procedural due process of law occurs and cites *Board of Regents v. Roth,* 408 *U.S.* 564 (1972) and *Perry v. Sindermann,* 408 *U.S.* 593 (1972).

Petitioner maintains, in his reliance upon *McLean, supra,* that the procedure the Board should have used for his termination is set forth at *N.J.S.A.* 18A:28-5 and contends he has acquired tenure pursuant to that statute. Specifically, petitioner asserts that the benefits of the statute are applicable to him by virtue of the phrase "***such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education***." *N.J.S.A.* 18A:28-5 Petitioner argues that boards of education derive their authority to employ persons as school bus drivers from *N.J.S.A.* 18A:39-17, 19 and 20. He further argues that State Board of Education rules and regulations with respect to school bus drivers are set forth at *N.J.A.C.* 6:21-6. Petitioner's referenced statutes address the necessity of persons employed as school bus drivers to have their names, addresses, photographs, and fingerprints on file; that the character of such persons employed is subject to investigation; and that a board or school bus contractor who fails to comply with these requirements is guilty of a misdemeanor. *N.J.A.C.* 6:21-6 *et seq.* sets forth the State Board rules and regulations in regard to school bus body and equipment specifications. Boards of education have authority to employ persons as school bus drivers, *N.J.S.A.* 18A:16-1, and the State Board rules and regulations with respect to school bus drivers are set forth at *N.J.A.C.* 6:21-11.1. Next, petitioner contends that because the Board violated his employment contract (C-1A) and the Agreement which provides him with greater rights than accrue to employees under Title 18A, Education Law, and because he cannot be barred from exercising or gaining benefits from such rights acquired through the Agreement, he can demand immediate reinstatement to his position of employment with all rights, benefits and compensation improperly withheld from him since the date of his termination.

The Board argues that petitioner has waived any rights to further appeal of his termination for failure to take a timely appeal within the bounds of the agreed upon grievance procedure. The Commissioner knows of no requirement or authority, nor has any been cited to him, that would bar the Commissioner from exercising his authority, pursuant to *N.J.S.A.* 18A:6-9 to hear and determine controversies and disputes arising under school law, for failure of an individual to exhaust remedies available at the local level. Consequently, the matter now is properly before the Commissioner.

Local boards of education are agencies of the State and as such have only those powers specifically granted, necessarily implied or incidental to authority expressly conferred by the Legislature. *Edwards v. Mayor and Borough of Moonachie,* 3 *N.J.* 17 (1949); *N.J. Good Humor, Inc. v. Bradley Beach,* 124 *N.J.L.* 162 (*E.&A.* 1939) Such powers can neither be increased nor diminished except by the Legislature. *Burke v. Kenny,* 6 *N.J. Super.* 524 (*Law Div.* 1949)

You are viewing an archived copy from the New Jersey State Library.

The Board derives its authority to employ persons as school bus drivers from *N.J.S.A.* 18A:16-1, which provides, *inter alia,* that:

> "Each board of education *** may employ *** other officers and employees, as it shall determine, and fix and alter their compensation and the length of their terms of employment."

Furthermore, *N.J.S.A.* 18A:11-1 provides boards of education with authority to:

> ***
>
> "a. Adopt an official seal;
>
> "b. Enforce the rules of the state board;
>
> "c. Make, amend and repeal rules, not inconsistent with this title or with the rules of the state board, for its own government and the transaction of its business and for the government and management of the public schools and public school property of the district and for the employment, regulation of conduct and discharge of its employees, subject, where applicable, to the provisions of Title II, Civil Service, of the Revised Statutes ***; and
>
> "d. Perform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the district."

Petitioner's reliance upon the prior ruling in *McLean, supra,* is misplaced. In that instance petitioner had been employed by the board of education as a school janitor. As such, he challenged the termination of his employment pursuant to the protection afforded him by *N.J.S.A.* 18A:17-3. In the instant matter, however, petitioner may lay no claim to employment protection pursuant to *N.J.S.A.* 18A:17-3 for he was employed as a school bus driver, not as a school janitor.

Petitioner argues that Article XV, Section 3, of the Agreement (C-1) which requires a six month period of employment probation gives him employment protection in a manner similar to that discussed in *McLean, supra.* The Commissioner does not agree. The referenced provision of the Agreement states, in full, as follows:

> "A six (6) month period of probation shall be required of all newly appointed drivers. If, after this period of probation, it is determined that the driver is not performing in a capable manner (as determined by the Director of Transportation) that driver shall be dismissed."

Should this provision of the Agreement be interpreted in the manner urged by petitioner, such a holding would be an extension of rights to school bus drivers which is not within the authority of a board of education to provide.

You are viewing an archived copy from the New Jersey State Library.

Burke, supra Furthermore, petitioner's argument that by virtue of his membership in the Association and the Association's Agreement (C-1) with the Board he has greater rights than those provided by Title 18A, Education Law, is wholly without merit. It has been consistently held that the provisions of a negotiated agreement may not abrogate the authority and responsibility of a board under the statutes. *Michele Lopez et al. v. Board of Education of the Township of Madison, Middlesex County,* 1975 *S.L.D.* 996; *Woodbridge Township Federation of Teachers Local No. 822, AFL-CIO, AFT v. Board of Education of the Township of Woodbridge, Middlesex County,* 1974 *S.L.D.* 1201

Petitioner has no claim to a tenure status pursuant to *N.J.S.A.* 18A:28-5 which is concerned solely with tenure of "teaching staff members" which term is defined at *N.J.S.A.* 18A:1-1. Thus, the issue presently before the Commissioner is whether the Board acted improperly or illegally with respect to its termination of petitioner's employment.

Petitioner's employment contract (C-1A) for the academic year 1974-75 provided that the Board may terminate the employee, for cause, by providing five days' written notice by certified mail. In the instant matter, the cause is the incident which occurred on February 13, 1975, as hereinbefore described. The contract (C-1A) itself does not require that the cause be established at a formal adversary hearing, nor may it, for such a provision would be an extension of the statutes which the Board is not allowed to provide. *Lopez, supra* Petitioner agreed to the offer of employment by the Board subject to the provisions of the contract. (C-1A) Thus, there can be no greater property right to an expectation of employment than that which is set forth in the employment contract. *Board of Regents, supra; Perry, supra*

The Board's notice (R-2) from its Secretary to petitioner that his employment would be terminated is defective to the extent that the notice did not provide five days' written notice as required by the employment contract. (C-1A) This deficiency, standing alone, does not nullify the prerogative of the Board to exercise it. The Commissioner so holds.

The Board argues that Title 18A, Education, provides petitioner with no substantive right to continued employment or procedural rights with respect to his termination of employment and cites *Zimmerman v. Board of Education of Newark,* 38 *N.J.* 65 (1962). Furthermore, the Board asserts that it fully complied with the provisions of the Agreement (C-1) and the petitioner's employment contract (C-1A) when it notified petitioner of his termination and the reasons therefor.

The Commissioner is satisfied from a review of the record and the applicable law that petitioner is not entitled to a hearing as a matter of right. Petitioner has not demonstrated that the Board acted without cause in violation of his employment contract. (C-1A) This finding, however, is tempered by the prior holding that the Board failed to provide five days' notice of termination. Therefore, the Board is directed to compensate petitioner five days' salary at the rate established during 1974-75.

You are viewing an archived copy from the New Jersey State Library.

Having found that the Board has not violated any law nor abused its discretion with respect to petitioner's termination of employment, the Commissioner of Education hereby grants Summary Judgment for the Board.

COMMISSIONER OF EDUCATION

May 17, 1977

In the Matter of the Tenure Hearing of Joseph Mamatz, School District of the Borough of Little Ferry, Bergen County.

COMMISSIONER OF EDUCATION

DECISION

For the Complainant, DeLorenzo and DeLorenzo (William DeLorenzo, Jr., Esq., of Counsel)

For the Respondent, Howard Goldberger, Esq.

This matter is before the Commissioner of Education for ratification of an action taken by the Board of Education of the Borough of Little Ferry, Bergen County, hereinafter "Board," by which it determined, subsequent to an adversary hearing it conducted, that Joseph Mamatz, a janitor with a tenure status in its employ, committed two acts of conduct unbecoming a school employee. The Board affixed a penalty of two days' suspension without pay.

A hearing was conducted in the matter on September 6, 1974 at the office of the Bergen County Superintendent of Schools by a hearing examiner appointed by the Commissioner. The report of the hearing examiner is as follows:

On October 18, 1973, two school principals, each of whom were assigned to different school buildings by the Board, submitted written reports (P-8; P-9) to the Superintendent of Schools in regard to their respective observations of respondent on the previous day.

The principal of the Wilson and Washington Schools reported (P-8) that on October 17, 1973, he could not locate respondent at approximately 2:20 p.m. when respondent was to have been on duty. The principal further reported that he located respondent at approximately 2:40 p.m. at a local restaurant having refreshments with another school janitor.

The principal of the Memorial School reported (P-9) that he observed respondent on October 17, 1973 at approximately 9:45 p.m. at the Memorial

You are viewing an archived copy from the New Jersey State Library.

School having coffee with members of the Parent-Teachers Association, when he was to have been on duty at the Washington School.

It is the substance of these two reports which forms the basis for the charges of conduct unbecoming against respondent. The record shows that following the submission of these reports (P-8; P-9) by the school principals to the Superintendent no further action was taken until March 6, 1974 when the Board itself conducted an adversary hearing into the charges, heard testimony, arrived at a finding of facts on the merits of the charge, and determined that an appropriate penalty of two days' suspension without pay was warranted for the offenses committed.

The Board Secretary, by letter (C-1) dated April 10, 1974 to respondent, recapitulated the conduct of the hearing on March 6, 1974, and advised respondent of the penalty assessed against him. Specifically, the Board Secretary advised respondent of the substance of the charges, hereinbefore stated, and further advised that that conduct violated specific portions of Board policy. The Board Secretary then specified those persons who were present at the hearing, which included eight of its nine members, an attorney other than the one of record herein, the Superintendent, and himself. Next, the Board Secretary stated that respondent was called into the hearing, with his representative, to give testimony as to the charges but that both declined to do so and left the hearing. The Board Secretary then stated that the two school principals who authored the original reports (P-8; P-9) upon which the charges were predicated were called to testify, and thereafter the hearing was adjourned. The Board then conducted an executive session on March 13, 1974 "***to take into consideration the facts and testimony that was presented***" at the hearing. (C-1) The Board Secretary then advised respondent of the following:

> "***The Board deliberated on the facts and testimony given on March 6, 1974 and the Board determined that you were in violation of the rules and regulations of the Board, as promulgated in the Policy Manual, in that you were away from your assigned duty station without permission *** [as charged]. The Board *** unanimously recommended two days suspension without pay at the discretion of the Board's agent, the Superintendent of Schools, within thirty (30) days from the date of this notice.
>
> "You will be duly advised of the suspension date. You have the right to appeal this decision and should seek legal counsel in connection therewith. Failure to appeal within the statutory limitation shall render this decision final and binding." (C-1, at p. 2)

The instant matter before the Commissioner was initiated not by respondent on appeal from his two days' suspension without pay, but by way of a Board action (C-2) taken on April 30, 1974 by which it determined to certify to the Commissioner for adjudication the very same charge it had already acted upon as judge, jury and prosecutor. Respondent has not been suspended from his employment and it is not established whether the two days' suspension without pay has been imposed by the Board. (Tr. 12)

You are viewing an archived copy from the New Jersey State Library.

The hearing examiner initially observes that the actions of the Board with respect to its conducting a "hearing" into charges filed with it against one of its employees, arriving at a finding of facts on the merits of the charge, and then establishing a penalty for the offenses committed, is diametrically opposed to the Tenure Employees Hearing Law set forth at *N.J.S.A.* 18A:6-10 *et seq.*

The Appellate Division of the Superior Court of New Jersey thoroughly reviewed and clarified the Tenure Employees Hearing Law in the case of *In the Matter of the Tenure Hearing of David Fulcomer, Holland Township, Hunterdon County,* 93 *N.J. Super.* 404 (*App. Div.* 1965). Judge Carton, writing for the Court, stated that:

> "***The legislative intent that the Commissioner shall hear and decide the entire controversy clearly appears from a brief review of its provisions and an examination of its historical background.*** (at 410)
>
> "***The Tenure Employees Hearing Act *** establishes an entirely new and comprehensive procedure for the resolution of all controversies involving charges against *all* tenure employees not subject to Civil Service under *Title* 18.*** (*Emphasis in text.*)
>
> "Formerly all phases of the hearing and decision making function were performed by the local boards. The Commissioner reviewed such determinations on appeal pursuant to the general power conferred upon him to 'decide *** all controversies and disputes arising under the school laws.' *R.S.* 18:3-14. [now *N.J.S.A.* 18A:6-9]
>
> "Now the Commissioner conducts the initial hearing and makes the decision.*** (at 411)
>
> "There is nothing in the new act which suggests the local boards were intended to retain any part of the jurisdiction which they formerly exercised in such controversies other than preliminary review of the charge and the required certification to the Commissioner. Their participation in such proceedings is specifically confined to that limited function. Thus the Legislature has transferred, from the local boards to the Commissioner, the duty of conducting the hearing and rendering a decision on the charge in the first instance. His jurisdiction in all such cases is no longer appellate but primary.***" (at 412)

Judge Carton also stated the purpose of this legislation as follows:

> "***The main purposes of that law [*L.*1960, *c.*136] were two-fold. The first was to eliminate the vice which inhered in the former practice of the board's being at one of the same time investigator, prosecutor and judge.*** (at 413)
>
> "The second and no less important purpose was to remove the trial of such cases from the publicity attendant on the local hearing which 'tears the

You are viewing an archived copy from the New Jersey State Library.

community apart' and 'disrupts the orderly conduct of local school affairs.'***" (93 *N.J. Super.* at 414)

It is recognized that *c.*304, *L.*1975, effective February 7, 1976, amended the provisions of *N.J.S.A.* 18A:6-11 to the extent that a board's "limited function" with respect to tenure charges has been expanded to include the responsibility of determining probable cause to credit evidence in support of such filed charges. That amendment, however, is not applicable herein for the charges, *sub judice,* arose prior to its effective date and the amendment does not alter the prohibition of a local board of education from conducting a hearing into tenure charges or establishing a penalty.

Respondent is a member of Local Union 866, International Brotherhood of Teamsters, which entered into an Agreement with the Board. Petitioner asserts that the Agreement requires that any attempt by the Board to discharge, suspend, or otherwise discipline such an employee must first be subjected to the grievance procedure and, finally, an impartial arbitrator. Consequently, respondent moved to have the proceedings before the Commissioner held in abeyance pending the outcome of the matter being grieved and/or the determination of an impartial arbitrator with respect to whether the Board's action was proper and justified.

Subsequent to respondent's Motion being denied, he withdrew from the hearing and ceased his active defense. (Tr. 20) The hearing proceeded *ex parte.*

The statutes are clear that any employee who has acquired a tenure status shall not be dismissed or have his salary reduced unless charges of incapacity, inefficiency, unbecoming conduct, or other just cause are first filed with the Board and subsequently certified to the Commissioner for adjudication on the merits of the charge. *N.J.S.A.* 18A:6-10; *N.J.S.A.* 18A:6-11; *In re Fulcomer, supra* Because such charges can only be filed and certified by the authority set forth in Title 18A, Education Law, disputes such as herein are beyond the scope of negotiated grievance procedures and outside arbitration. *N.J.S.A.* 18A:6-9 is unequivocal that the Commissioner shall have jurisdiction to hear and determine controversies and disputes arising under school law.

The hearing examiner, notwithstanding the impropriety of the Board conducting a hearing into the charges, *sub judice,* finds independently that the written evidence (P-8; P-9) of the two principals plus their uncontradicted testimony (Tr. 22-32) establishes the truth of the charges. The hearing examiner recommends that the Commissioner establish as a penalty, if a penalty is warranted, a two day suspension without pay. If such a penalty has already been imposed upon respondent, it is recommended that the matter be dismissed.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, including

You are viewing an archived copy from the New Jersey State Library.

the report of the hearing examiner to which neither party filed exceptions nor objections.

The Commissioner adopts as his own findings of fact and conclusions of law set forth by the hearing examiner. It is well settled that the Commissioner has the authority and responsibility to adjudicate charges brought against an employee of a local board of education who has acquired a tenure status. *In re Fulcomer, supra; N.J.S.A.* 18A:6-9 A hearing and subsequent determination on tenure charges may not be subject to a negotiated grievance procedure or outside arbitration, because the practical effect would be to amend the Tenure Employees Hearing Law set forth at *N.J.S.A.* 18A:6-10 *et seq.* The Legislature alone has the authority to amend statutory enactments. (See *Lullo v. International Association of Fire Fighters Local 1066,* 55 *N.J.* 409 (1970).)

The hearing examiner independently found that respondent was absent from his assigned duties on October 17, 1973 on two separate occasions. The Commissioner concurs in this finding and directs, as a penalty to be assessed, that the Board withhold two days' salary at the rate respondent was paid during the 1972-73 school year. If such penalty has already been assessed by the Board against respondent, no further penalty is warranted.

COMMISSIONER OF EDUCATION

May 17, 1977

In the Matter of the Annual School Election Held in the School District of the Borough of Union Beach, Monmouth County.

COMMISSIONER OF EDUCATION

DECISION

At the annual school election held on March 29, 1977, the announced results of the balloting for candidates for three seats for full terms of three years each and one seat for a full term of one year on the Borough of Union Beach Board of Education, Monmouth County, hereinafter "Board," were as follows:

For Three-Year Term	At Polls	Absentee	Total
Elizabeth Coughlin	119	1	120
Manon Zobiri	16	–0–	16
Richard Ellison	9	–0–	9
Irving Graham	9	–0–	9

Ten additional persons were listed as having received a collective total of twenty-two votes. No one of them received more than five votes; therefore it is unnecessary that they be listed here.

You are viewing an archived copy from the New Jersey State Library.

For One-Year Term	At Polls	Absentee	Total
Violet Eastmond	112	1	113

The announced results on the question of the appropriation of $915,320 for current expenses for the 1977-78 school year were as follows:

	At Polls	Absentee	Total
Yes	74	–0–	74
No	73	1	74

Pursuant to a letter request from M. L. Ackerman, Board Secretary, dated April 1, 1977, the Commissioner of Education directed his representative to conduct a recheck of the totals on the voting machine used and of the write-in votes in this election. This recheck was conducted at the warehouse of the Monmouth County Board of Elections, Freehold, on April 11, 1977.

The school election ballot listed only the names of Elizabeth Coughlin for a three-year term and Violet Eastmond for a one-year term. A recheck of the two voting machines confirmed that the tally of machine votes cast was properly reported as 119 for Elizabeth Coughlin and 112 for Violet Eastmond. Since these numbers represent a majority of the total votes cast by machine and by absentee ballot (one for Coughlin and one for Eastmond), it is clear that Elizabeth Coughlin was elected to a three-year term and Violet Eastmond was elected to a one-year term. It remains to determine who was elected to the two remaining three-year terms from among the numerous write-in candidates. The Commissioner's representative has verified that the following votes are identifiable with those candidates previously shown to be the only three possible contenders for the two remaining three-year terms:

	Clearly Admissible Votes	Identifiable for Totals	Grand Total
Manon Zobiri	16	–0–	16
Richard Ellison	8	Ellis 1	9
Irving Grahm	9	–0–	9

Having reviewed such tallies, the Commissioner's representative concludes that Manon Zobiri was clearly elected to a three-year term on the Board. It would appear, however, that the Judge of Elections permitted the write-in vote cast for "Ellis" to be added to the tally for Richard Ellison. Thus, a tie for the third seat for a three-year term was created between Candidates Ellison and Graham.

At the close of the recheck the total results of the voting on the question of current expense appropriations for the 1977-78 school year stand as follows:

	At Polls	Absentee	Total
Yes	74	–0–	74
No	73	1	74

You are viewing an archived copy from the New Jersey State Library.

This concludes the report of the Commissioner's representative.

* * * *

The Commissioner has reviewed the report of his representative and makes the following determinations with regard to the balloting for candidates:

The Commissioner determines that the ballot marked "Ellis" cannot be counted for Candidate Ellison, since the ballot did not, in fact, comport with his name nor did the ballot contain a requisite distinguishing initial. Such circumstances were considered by the Commissioner *In the Matter of the Recount of Ballots Cast at the Annual School Election in the City of Estell Manor, Atlantic County,* 1957-58 *S.L.D.* 90 and *In the Matter of the Recount of Ballots Cast in the Annual School Election in the Township of Hainesport, Burlington County,* 1951-52 *S.L.D.* 45. In the latter decision it was said, *inter alia,* that:

> "***[T]he Commissioner cannot find any amendment of the General Election Law which would permit the counting of a write-in vote in the personal choice space with only the last name of a candidate, and has found no subsequent decision superseding the ruling that testimony cannot be taken to prove that there is only one person with a certain name within the district.***" (at 45)

Accordingly, the Commissioner finds that Elizabeth Coughlin, Manon Zobiri and Irving Graham were elected for full terms of three years each and Violet Eastmond for a term of one year to seats on the Union Beach Borough Board of Education at the annual school election held on March 29, 1977.

Additionally, the Commissioner finds and determines that the question of the appropriation of $915,320 for current expenses for the 1977-78 school year failed the approval of the voters of the Borough of Union Beach at the annual school election held on March 29, 1977.

COMMISSIONER OF EDUCATION

May 17, 1977

You are viewing an archived copy from the New Jersey State Library.

In the Matter of the Application of the Board of Education of the Borough of Ogdensburg for the Termination of its Sending-Receiving Relationship with the Board of Education of the Borough of Franklin, Sussex County.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Cohn & Lifland (James D. Opfer, Jr., Esq., of Counsel)

For the Respondent, Edward B. Stevens, Esq.

The Board of Education of the Borough of Ogdensburg, hereinafter "Ogdensburg Board," requests that the Commissioner of Education approve the termination of the sending-receiving relationship whereby petitioner's ninth through twelfth grade pupils, since approximately 1925, have been educated at the Franklin High School operated by the Board of Education of the Borough of Franklin, hereinafter "Franklin Board." The Franklin Board opposes the proposed termination on grounds that it would violate an existing contract, be more costly to taxpayers of both Franklin and its three sending districts, and have an adverse effect upon the quality of the educational program that can be maintained at Franklin High School.

Hearings were conducted on December 10, 14 and 16, 1976 at the office of the Sussex County Superintendent of Schools, Newton, by a hearing examiner appointed by the Commissioner. Briefs were filed subsequent to the hearing. The hearing examiner report follows setting forth first those uncontroverted relevant facts necessary for an understanding of the matter:

Franklin High School on October 16, 1976, had an enrollment of 609 pupils from four school districts as follows:

Franklin Borough	258	
Ogdensburg Borough	92	
Hardyston Township	178	
Hamburg Borough	81	(J-3)

Franklin High School includes two relocatable on-site classrooms and a schoolhouse built in stages in 1914, 1929, 1945, and 1959. (Tr. II-152) The schoolhouse is also occupied in part by pupils of grades kindergarten through eight from Franklin Borough. Additionally, approximately 100 of the 636 elementary pupils from Franklin Borough are housed in a nearby church where six classrooms have been approved as a temporary substandard facility on an annual basis by the County Superintendent of Schools. (J-3; J-11) Per pupil costs at Franklin High School for recent years have been as follows:

1972-73	$1,075
1973-74	$1,267

You are viewing an archived copy from the New Jersey State Library.

1974-75	$1,488	
1975-76	$1,948	(J-8)

The Ogdensburg Board President signed a renewal agreement to continue sending Ogdensburg pupils to Franklin High School for ten years beginning September 1968. This agreement, however, was neither dated nor signed by the President or other representative of the Franklin Board. (J-9)

On November 28, 1972, the voters of the Franklin School District and its three sending districts of Hamburg, Hardyston and Ogdensburg approved by a vote of 1,138 to 282 a proposal for the formation of the Wallkill Valley Regional High School District. Although on April 30, 1974, the voters of this newly formed regional district approved acquisition of a land site for a regional high school, three subsequent referenda held in December 1974, September 1975 and December 1976 seeking approval of the construction of a Wallkill Valley Regional High School were defeated. Thus, pupils of the regional's constituent districts continue to be educated at Franklin High School. (J-2)

The Ogdensburg Board seeks a gradual withdrawal of its pupils presently enrolled at Franklin High School on the basis of individual pupil option and proposes to send both those pupils who choose to transfer and its ninth grade pupils beginning September 1977 to Sparta High School, whose Board of Education has officially agreed to receive such pupils. (Tr. II-20)

In the Ogdensburg Board's Summation, hereinafter "OS," it is argued that Franklin High School does not provide a suitable educational program for Ogdensburg pupils. Thus, in the event that the Commissioner finds that a *bona fide* agreement exists between the Franklin and Ogdensburg Boards, the Ogdensburg Board seeks an order of the Commissioner terminating that agreement pursuant to *N.J.S.A.* 18A:38-21, which provides that a sending district may apply to:

> "***withdraw its pupils from the schools of the other contracting district and provide educational facilities for them in its own or another district on the ground that the board of education of the receiving district is not providing school facilities and an educational program suitable to the needs of the pupils of the sending district***."

Assuming, *arguendo,* a determination that no contract exists between the parties, the Ogdensburg Board asserts that it has met the required burden of proof to terminate the sending-receiving relationship under *N.J.S.A.* 18A:38-13, which directs that:

> "No such designation of a high school *** shall be changed or withdrawn *** except for good and sufficient reason upon application made to and approved by the Commissioner, who shall make equitable determinations upon any such applications."

In this regard the Ogdensburg Board contends that the Franklin High School

You are viewing an archived copy from the New Jersey State Library.

facilities are outdated, overcrowded, unsuitable and inadequate to meet the needs of its pupils. (OS, at p. 12)

The Ogdensburg Board asserts that Sparta High School provides a viable alternative for Ogdensburg pupils, and this fact importantly differentiates the instant matter from those instances where similar applications were denied by the Commissioner for lack of a practicable alternative. (OS, at pp. 12-14) See *In the Matter of the Application of the Boonton Board of Education for the Termination of the Sending-Receiving Relationship with the Board of Education of Lincoln Park, Morris County,* 1974 *S.L.D.* 1023.

Finally, the Ogdensburg Board argues that the proposed gradual withdrawal of its pupils would be totally offset by increasing enrollments of Franklin, Hardyston and Hamburg pupils, thus working minimal hardship to the Franklin Board's educational program or financial base. (OS, at pp. 12, 15)

In support of these arguments the Ogdensburg Board elicited from witnesses testimony which is succinctly set forth as follows:

Representatives of the Bureau of Facility Planning Services of the State Department of Education, who had made an inspection of the Franklin High School on April 2, 1975, testified that its functional capacity as currently utilized as a K-12 facility is 919 pupils. (Tr. I-10-13) It was testified that certain facilities were deficient in size or design or safety features when compared with the current requirements for schoolhouse construction. Among these were the rooms for business education, art, home economics, biology, woodshop, library, cafeteria, lavatories, the site size, fire detection system, one exit corridor and temperature controls. (Tr. I-17-38, 54, 59, 62-66) It was also testified that, with the exception of the fire detection system, it has not been obligatory to update existing schoolhouses to conform to present standards and that failure to do so does not render a school unacceptable. (R-1; Tr. I-67-70)

The Sussex County Superintendent of Schools testified that he had similarly observed less than ideal room size and facilities in the previously listed academic areas and that his office had found it necessary to approve the use of six substandard off-site elementary classrooms. (Tr. I-101-103) He also testified that more than 30 percent of Ogdensburg secondary pupils have been enrolled at Sussex County Vocational-Technical High School. (Tr. I-101-110)

The Ogdensburg Superintendent testified that there is a reluctance on the part of many pupils to attend Franklin High School and that she had observed both an inordinately high rate of applications and a 44 percent enrollment by pupils at the Vocational-Technical School and a nearby parochial high school. (Tr. I-122-124, 129, 132; Tr. II-10, 14-17)

The Superintendent at Sparta testified to a decrease of 275 pupils when its only sending district pupils from Byram Township were withdrawn to attend the newly operational Lenape Regional High School District in 1974. He stated that present enrollment in Sparta High School, which has a functional capacity of

You are viewing an archived copy from the New Jersey State Library.

1225 and has without inconvenience accommodated that number, is 1050. (Tr. II-21-26) He stated that projected enrollments show that, even in the unlikely event that all of Ogdensburg pupils were to elect to attend Sparta High School, the enrollment would not exceed 1229 in the foreseeable future. (Tr. II-23-28; P-3) It was further testified that, were all Ogdensburg pupils to attend Sparta High School in 1977-78, the estimated tuition cost would be $2,035. (Tr. II-30)

The President of the Ogdensburg Board, who is also a member of the Wallkill Valley Regional Board, testified that the proposed transfer of pupils to Sparta High School, if approved, would in no way affect the full participation of Ogdensburg in the regional district.

It is argued in the Franklin Board's Summary, hereinafter "FS," that despite the absence of a signature on the contractual document (J-1), a contract nevertheless exists. The Franklin Board maintains that an "implied" contract exists when both parties have performed in accordance with the terms of the agreement (J-1) which lacks but a signature. (FS, at pp. 3-4) *Borough of West Caldwell v. Borough of Caldwell,* 26 *N.J.* 9 (1958)

The Franklin Board asserts that the Ogdensburg Board has failed to show that good and sufficient reason exists in the form of either inadequate educational program or facilities at Franklin High School which merits dissolution of the sending-receiving relationship between the parties. (FS, at pp. 4-8, 14)

The Franklin Board further asserts that the application for termination should be denied by reason of the adverse financial and educational effect it would have on the Franklin, Hardyston and Hamburg School Districts. It is contended that the loss of Ogdensburg pupils from Franklin High School would so reduce class sizes as to result in the elimination of certain course offerings from the curriculum. It is further argued that reduction of the Franklin High School enrollment would work a similar result in the number of extracurricular activities which could be effectively maintained. (FS, at pp. 8-10) The Franklin Board similarly maintains that the adverse financial impact from diminution of tuition revenue from Ogdensburg could result only in increased costs per pupil and gross burdens of higher tuition and taxes in each school district.

Finally, the Franklin Board argues that the Ogdensburg Board's contemplated withdrawal is contrary to the best interests of all pupils living within the confines of the Wallkill Valley Regional District of which Ogdensburg is a participant. (FS, at pp. 12-13)

Witnesses called by respondent testified, *inter alia,* as follows:

The Franklin Board's auditor testified that the withdrawal of 93 Ogdensburg pupils would result in a revenue loss of $196,788 in 1977-78 which would be offset by savings of three teachers' salaries and supplies totaling only $40,000. He stated that the net loss of revenue of $156,798 would increase the cost per pupil at Franklin High School from the present $1,973 to $2,415. (R-2; Tr. II-79, 83-84, 108, 133)

You are viewing an archived copy from the New Jersey State Library.

The Superintendent of Franklin stated that, in the event of the loss of Ogdensburg pupils, an additional savings of approximately $8,000 could be achieved by relocating three elementary classes from the church to the elementary school facilities. He testified that in addition to curricular offerings being reduced, the cocurricular activities would suffer if the high school were diminished by the loss of nearly 100 Ogdensburg pupils and thus forced to compete in athletics with much larger schools. (Tr. II-133-142) He also testified that the Franklin High School can accommodate, without adverse impact on the present program or average class size of 21.7 and without appreciable overcrowding, the projected increase of 89 pupils over the next four years. (Tr. II-25-26)

The Franklin Superintendent testified that, although the present combined elementary and secondary enrollment is 1218, only 1078 pupils are scheduled in the building at one time because of classes scheduled at the church and the half day schedule for kindergarten classes. (Tr. III-38) He further testified that numerous improvements recommended by the Bureau of Facility Planning Services, including the omission of a single room from the fire detection system, had been effected in accord with recommendations set forth in the Bureau's April 2, 1975 Evaluation Report. (J-1; Tr. II-142)

Similar corroborative testimony was given by Franklin's director of guidance that, although certain facilities are small, an effective educational program is presented. He testified that Franklin pupils, including those from Ogdensburg, score above the national mean in College Board Examinations and enter advanced educational institutions at a higher percentage than the national average. (Tr. III-73-91, 108)

Franklin High School's principal testified that he has a knowledgeable, dedicated, experienced faculty who conduct a comprehensive educational program in an adequate, uncrowded school to a student body of high morale. (Tr. III-120-149)

The hearing examiner, having carefully examined the testimony of witnesses, documents in evidence, and summations of the parties, makes the following findings of fact:

1. No *bona fide* fully executed contract exists detailing the terms of the sending-receiving relationship. Rather, the parties have continued on a year-to-year basis in accordance with the terms of the agreement which was signed by the Ogdensburg Board but never signed by the Franklin Board. (J-9)

2. The Ogdensburg Board has failed to prove that the facilities or quality of education at Franklin High School are deficient or inappropriate to meet the needs of Ogdensburg pupils. This finding is grounded on the convincing testimony of educators called as witnesses by the Franklin Board. It is further grounded on documents in evidence attesting to accreditation in 1971 for a ten year period by the Middle States Association of Colleges and Secondary Schools and to approval by the State Department of Education. (J-4, 5; 6; Tr. II-147-148, 153; Tr. III-73-90, 108-114, 120-149)

You are viewing an archived copy from the New Jersey State Library.

3. While the Ogdensburg Board has not proven that Franklin High School is unable to offer a viable educational program with its present enrollment, it has shown that the building is at maximum capacity. This finding is grounded on the fact that Franklin has found it necessary to rent six temporarily approved elementary classrooms for approximately 100 pupils. See also J-6(1).

4. Projected enrollment including Ogdensburg pupils indicates increases over 1976-77 enrollments as follows:

1977-78	7
1978-79	53
1979-80	89

No projected school additions are contemplated to accommodate either an increase of 89 pupils or the return of 100 elementary pupils to the Franklin schoolhouse.

In consideration of the above findings of fact the hearing examiner makes the following recommendations to the Commissioner:

1. That no authorization for withdrawal of Ogdensburg pupils be made for the 1977-78 school year in view of enrollment stability and since provisions cannot now be made for the substantial adjustments, financial and otherwise, which would be incumbent upon the Franklin, Hardyston and Hamburg School Districts.

2. That in consideration of a projected enrollment increase of 53 pupils by September 1978, and pursuant to *N.J.S.A.* 18A:38-13, authorization be made to enroll Ogdensburg ninth grade pupils and such upper classmen as choose to do so as tuition pupils at Sparta High School beginning July 1, 1978 with further withdrawal in the subsequent year or years to be arranged by mutual agreementof the litigants. Such authorization will forestall crowding and/or the necessity of further rental of temporary facilities for elementary classes. It will further facilitate a transition free from exorbitant financial stress since probable transfers will be offset by increased enrollment in the remaining districts of Franklin, Hardyston and Hamburg.

This concludes the report of the hearing examiner

* * * *

The Commissioner has carefully reviewed the entire record of the controverted matter including the hearing examiner report and exceptions filed thereto pursuant to *N.J.A.C.* 6:24-1.17(b). The Franklin Board asserts in its exceptions, hereinafter "FBE," that although its projection of enrollment shows an increase through 1979-80, it thereafter anticipates a decline in enrollment which will generate both financial hardship and detrimental effects on curricular and cocurricular offerings. (P-10; Tr. II-139; FBE, at pp. 1-3, 5, 8-9)

The Commissioner, however, perceives the controversy as requiring an

You are viewing an archived copy from the New Jersey State Library.

interim solution during the period of increasing enrollment. The ultimate educational needs of the area must be viewed within the broader context of the establishment by the electorate of the Wallkill Valley Regional High School District. This regional district was legally established in 1972 and has procured land upon which it is anticipated a regional high school will be built. Unfortunately, three referenda to bring this school into existence have been defeated. It is noted that these three referenda have been placed before the public during a recession which undoubtedly had pronounced effect upon the expressed will of the electorate. With the Legislature's imposition of budget caps and the provision of increased State aid to local districts by the enactment of *c.*113, *L.*1976, which has decreased local school taxes, it may reasonably be expected that a future referendum may be successful. The Commissioner is convinced that the educational needs of the area will most appropriately be met by the establishment of a Wallkill Valley Regional High School and the conversion of the present non-operating district to an operating district serving Hamburg, Hardyston, Franklin and Ogdensburg pupils.

The financial inequities which the Franklin Board alleges would exist if Ogdensburg pupils were allowed to leave Franklin would most equitably be alleviated by the establishment of that proposed regional high school. Toward this end the Commissioner will, upon request, provide the Wallkill Regional Board of Education with such technical assistance as the Department of Education is able to provide.

Predicated upon this overriding viewpoint of what is educationally desirable for the area, the Commissioner is not alarmed by what may be a declining enrollment in Franklin High School beginning in 1980-81.

The Franklin Board's further exceptions basically express disagreement with the findings of the hearing examiner in regard to the incapacity of the Franklin High School to accommodate further increased enrollment. The Commissioner finds no merit in these exceptions. This determination is grounded on the results of the building capacity study ordered by the Board in April 1975 which reveals that the present enrollment of 1078 pupils assigned to that schoolhouse now occupies a building which has a K-12 functional capacity of 919 pupils. (J-1; Tr. I-10-13) Additionally, more than 100 pupils are housed in temporarily approved facilities at a nearby church. That temporarily approved expedient should be discontinued as soon as an appropriate alternative may be effected. It follows that such discontinuance would be a corollary to the establishment of a Wallkill Valley Regional High School.

The Commissioner perceives those findings of fact set forth by the hearing examiner to be solidly grounded on the documentary and oral evidence in the record and adopts those findings for his own.

The Commissioner finds the matter herein controverted to be similar in certain important respects to the factual context found in *Morris School District v. Board of Education of the Township of Harding and Board of Education of the Borough of Madison, Morris County,* 1974 *S.L.D.* 457, aff'd State Board of

You are viewing an archived copy from the New Jersey State Library.

Education 487, aff'd Docket No. A-905-74 New Jersey Superior Court, Appellate Division, May 28, 1975 (1975 *S.L.D.* 1107). Therein the Commissioner, in approving the termination of a sending relationship, stated, *inter alia,* that:

> "***The affirmative finding of the hearing examiner is that significant overcrowding does indeed presently exist in the Morristown High School especially in the support facilities (*i.e.* library, cafeteria, gymnasiums) during the overlap portion of the nine-period day when over 2,300 pupils are present in the high school. Such serious overcrowding is of primary significance to the Commissioner. The withdrawal of Harding Township pupils would offer moderate relief from such crowded conditions. Also, the Commissioner determines that the addition of the approximately ninety Harding Township pupils not now attending Madison High School would not produce conditions requiring an extended school day or other major modifications by the Madison Board, and would enable the Madison Board to maintain what it considers an optimum enrollment in the Madison High School with a desirable balance of rural and suburban pupils. The Commissioner finds this good and sufficient reason pursuant to the statutory prescription (*N.J.S.A.* 18A:38-13) to approve the severance of the sending-receiving relationship herein controverted.***" (at 486)

Absent a showing that a duly executed contract existed between the Franklin Board and the Ogdensburg Board covering the sending-receiving relationship, the Commissioner determines, pursuant to *N.J.S.A.* 18A:38-13, that good and sufficient reason exists to begin the termination of the sending-receiving relationship between Ogdensburg and Franklin beginning with the school year 1978-79. At that time all of Ogdensburg's ninth grade pupils and such tenth, eleventh and twelfth grade pupils as elect to do so will be enrolled as tuition pupils in Sparta High School. Thereafter, the sending-receiving relationship which has existed between Franklin and Ogdensburg will terminate by the end of the 1980-81 school year at which time all Ogdensburg pupils enrolled at Franklin High School would normally have graduated.

The Commissioner is constrained to state that the foregoing decision is in no way predicated upon a determination that the educational offerings of Franklin High School are inadequate or that superior offerings exist at Sparta High School. The long, amicable, and mutually advantageous relationship which has existed over many decades between Franklin and Ogdensburg is in no way denigrated by the overriding pupil enrollment facts which prompt the Commissioner to grant Ogdensburg's request to terminate the present sending-receiving relationship. *In the Matter of the Application of the Board of Education of the Township of Liberty for the Termination of the Sending-Receiving Relationship with the Town of Belvidere, Warren County,* 1975 *S.L.D.* 431

COMMISSIONER OF EDUCATION

May 18, 1977

You are viewing an archived copy from the New Jersey State Library.

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, May 18, 1977

For the Petitioner-Appellee, Cohn & Lifland (James D. Opfer, Jr., Esq., of Counsel)

For the Respondent-Appellant, Edward B. Stevens, Esq.

The decision of the Commissioner of Education is affirmed for the reasons expressed therein.

September 7, 1977

In the Matter of the Annual School Election Held in the Township of Hamilton, Mercer County.

COMMISSIONER OF EDUCATION

DECISION

Pursuant to two letter complaints each filed by ten or more registered voters alleging irregularities in the conduct of the annual school election held on March 29, 1977 in the school district of the Township of Hamilton, an inquiry was conducted by a representative designated by the Commissioner of Education at the office of the Mercer County Superintendent of Schools and adjourned to the administration building of the Board of Education of the City of Trenton, on April 12, 1977. The report of the Commissioner's representative follows:

The announced results of the balloting for the election of school board members was not challenged; however, allegations of improper conduct were made with the assertion that such conduct could possibly have influenced the election of certain candidates.

It was apparent at the inquiry that the separate complaints were filed by persons representing opposing slates of candidates competing for seats on the Board of Education. Thus, much of the information gleaned was in the form of allegations made by supporters of the "Save Our Schools" (SOS) slate, against the supporters of the "Give Kids a Better Chance" (GKBC) slate, and vice versa. Generally, the allegations made by each slate were denied by the other.

The Commissioner's representative does not find it necessary to deal *seriatim* with each charge filed by supporters of either slate. Several of the charges are similar; therefore, they will be grouped and discussed, *post.*

You are viewing an archived copy from the New Jersey State Library.

Allegations of electioneering within one hundred feet of the polling place were made by each side against the other. *N.J.S.A.* 18A:14-81 The testimony supported some of these allegations. In several instances police were called and the persons who were electioneering moved away. In one instance the Board Secretary directed a young man to move away. Charges that the Board Secretary used force to move this young man were not supported by the believable evidence. In any event, such a charge, unless certified pursuant to *N.J.S.A.* 18A:6-10 *et seq.*, is not a proper subject for consideration by the Commissioner.

In contested elections such as this, the Commissioner's representative recommends that additional election workers be employed and that arrangements be made with the local police to keep persons from electioneering within one hundred feet of the polling place.

Allegations of free gifts made by each side to influence the voters are not supported by the evidence. The gift offered by the SOS slate was an SOS soap pad with a two inch by six inch card attached supporting their slate of candidates. The other gift was an offer made twice to the public of free beer and hot dogs twelve days and two days prior to the election.

The Commissioner's representative cannot find that these gifts violate the provisions of *N.J.S.A.* 18A:14-88 which forbids a gift of "***money or other valuable consideration or thing***" to influence voting or registration. *State v. Makwinski,* 133 *N.J. Super.* 487 (*Law Div.* 1975)

A charge that a voter attempted to assist another by reaching into an occupied voting booth in violation of *N.J.S.A.* 18A:14-72 and 77 is supported by the testimony. It was disclosed by the election worker in charge that this interference was noticed almost immediately and that the violator was moved away from the voting booth and the polling place.

The Commissioner's representative recommends that election workers be increasingly diligent so as to prevent such occurrences in the future.

The final serious allegation is that some election workers did not compare the poll list with the signature copy register as required by *N.J.S.A.* 18A:14-51. The evidence supports this allegation in part; however, there is no evidence nor is there any charge that any illegal votes were cast.

The Commissioner's representative recommends that the Commissioner direct strict compliance with this statutory requirement in future school elections.

The remainder of the allegations are either insincerely drawn, or too frivolous to warrant comment. The Commissioner's representative believes that certain persons supporting both slates of candidates seized this opportunity to bring discredit to the opposing side. Such conduct by mature persons purporting to have a sincere interest in the education of young people is regrettable.

* * * *

You are viewing an archived copy from the New Jersey State Library.

The Commissioner has reviewed the report of his representative and he deplores the lack of compliance with statutory requirements as evidenced by several irregularities which took place at this school election. He is constrained to direct the Secretary of the Board to instruct all election board officers who will be engaged in the next school election to compare signatures and be alert to electioneering within one hundred feet of the polling place. Consideration should be given to having police officers at least visit polling places during the course of the election to render any assistance required by election board officers to uphold the election laws. As the Commissioner stated *In the Matter of the Election Inquiry in the School District of the Borough of South River, Middlesex County*, 1974 *S.L.D.* 1040:

> "***The evidences of irregularities brought to light by the inquiry, while not condoned in any way by the Commissioner, do not warrant the setting aside of the election results. It is the clear intent of the law that elections are to be given effect whenever possible. It has been held by the courts of this State that gross irregularities, when not amounting to fraud, do not vitiate an election. *Love v. Board of Chosen Freeholders,* 35 *N.J.L.* 269 (*Sup. Ct.* 1871); *Stone v. Wyckoff,* 102 *N.J. Super.* 26 (*App. Div.* 1968) It is clear that irregularities and deviations from election laws by election officials provide insufficient grounds for voiding an election if the will of the people has been fairly expressed and determined and has not been thwarted. *Petition of Clee,* 119 *N.J.L.* 310 (*Sup. Ct.* 1938); *In re Livingston,* 83 *N.J. Super.* 98 (*App. Div.* 1964) It is only when the deviations from statutory procedure are so gross as to produce illegal votes which would not have been cast or to defeat legal votes which would have been counted, so as to make impossible a determination of the will of the people, that an election will be set aside. *In re Wene,* 26 *N.J. Super.* 363 (*Law Div.* 1953) sets forth the rule as follows:
>
> > 'The rule in our State is firmly established that if any irregularity or any other deviation from the election law by the election officials is to be adjudged to have the effect of invalidating a vote or an election, where the statute does not so expressly provide, there must be a connection between such irregularity and the result of the election; that is, the irregularity must be the producing cause of illegal votes which would not have been cast or of defeating legal votes which would have been counted, had the irregularity not taken place, and to an extent to challenge or change the result of the election; or it must be shown that the irregularity in some other way influenced the election so as to have repressed a full and free expression of the popular will.***' (26 *N.J. Super.* at 383)***"
>
> (at 1048)

For the reasons stated, the Commissioner determines that the announced results of the annual school election in the Township of Hamilton will stand.

COMMISSIONER OF EDUCATION

May 18, 1977

You are viewing an archived copy from the New Jersey State Library.

In the Matter of the Annual School Election Held in the School District of the Township of Shamong, Burlington County.

COMMISSIONER OF EDUCATION

DECISION

The announced results of the balloting for two members of the Board of Education for full terms of three years each at the annual school election held March 29, 1977 in the School District of the Township of Shamong, Burlington County, were as follows:

	At Polls	Absentee	Total
Elizabeth Chwastek	184	2	186
Domenic Marchiano	180	2	182
Richard Burns	181	–0–	181
Gerald Harrill	163	–0–	163

Pursuant to a letter request from Richard F. Burns dated March 31, 1977, the Commissioner of Education directed an authorized representative to conduct a recount of the ballots cast. The recount was conducted on April 19, 1977 at the office of the Burlington County Superintendent of Schools.

At the conclusion of the recount of the paper ballots, and a review of the report of the canvass of absentee ballots, there was no change in the results of the election; however, one ballot was voided. (C-1)

The official tally stood as follows:

	At Polls	Absentee	Total
Elizabeth Chwastek	184	2	186
Domenic Marchiano	179	2	181
Richard Burns	180	–0–	180
Gerald Harrill	163	–0–	163

The Commissioner finds and determines that Elizabeth Chwastek and Domenic Marchiano were elected to full terms of three years each on the Board of Education of the School District of the Township of Shamong.

COMMISSIONER OF EDUCATION

May 18, 1977

You are viewing an archived copy from the New Jersey State Library.

Holly Goore, a minor by her natural parent and guardian, Joyce Goore,

Petitioner,

v.

Board of Education of the City of East Orange, Otha L. Porter, Superintendent, and William C. Poole, Board Secretary, Essex County,

Respondents.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Hamlet E. Goore, Jr., Esq.

For the Respondents, Love & Randall, (Melvin Randall, Esq., of Counsel)

Petitioner seeks compensation for transportation costs and salary from the Board of Education of the City of East Orange, hereinafter "Board," for transporting her daughter to the Early Childhood Learning Center in Convent Station which is approximately nineteen miles from her residence in East Orange. Petitioner prays, also, for costs and expenses including legal fees.

A hearing in this matter was conducted on February 11, 1976 in the office of the Essex County Superintendent of Schools, East Orange, before a hearing examiner appointed by the Commissioner of Education. The report of the hearing examiner follows:

It is stipulated between the litigants that petitioner's daughter is a handicapped six-year-old pupil who was placed in the private school in Convent Station by the Board with tuition paid by the Board. (Exhibits C, T; Petitioner's Statement of Facts) The Board has a statutory obligation to transport handicapped pupils (*N.J.S.A.* 18A:46-23) and in this regard, the Assistant Director of Pupil Personnel Services (Director) testified that he explained to petitioner that the Board was willing to provide transportation for her daughter. (Tr. 132-136) Petitioner acknowledges many conversations with the Director by telephone and also met with him to discuss transporting her daughter. She admits that she was told only that the Board was obligated to transport her daughter. She decided to provide her own transportation thereafter because she was led to believe that the Board was not prepared to do so. (Tr. 24-28, 98) On September 11, 1974, the Director sent petitioner the following letter:

> "This is to follow up our telephone conversation during the week of September 2, 1974 and to commit to writing our mutual understanding:
>
> "1. It is your desire to provide your own transportation for Holly to and from the Early Childhood Learning Center, Convent Station, New Jersey.

You are viewing an archived copy from the New Jersey State Library.

"2. Due to our formal contractural (sic) arrangements with our carrier, we will be unable to provide any type of temporary transportation should you be unable to carry Holly to school.

"3. As far as this office can ascertain no reimbursement for this type of situation can be provided.

"4. You accept responsibility and liability for any injuries or damages pursuant to the above transportation." (Exhibit F)

From September 30, 1974 through January 30, 1975, a series of letters were exchanged between petitioner and the Board in which she requested to be employed as a bus driver. She was informed by the Board and its agents that the Board had no obligation to employ her. (Exhibits G, H, I, J, K) The record contains a letter from the Essex County Superintendent of Schools explaining to petitioner that she could apply for a school bus driver license, but that the Board had no obligation to employ her. (Exhibit L)

Another series of letters were exchanged between petitioner and the Board and its agents responding to her specific request for reimbursement at the rate of twelve cents per mile and six dollars per hour for her services as a driver. An offer was made to pay petitioner from the opening of school in September through April 4, 1975 for mileage at the rate of twelve cents per mile, or $1,140. (76 MPD x 125 days x 12¢ = $1,140) (Exhibits M, N, O, P) Arrangements were also made by the Board to transport Holly for the remainder of the year. (Exhibit U) Petitioner did not accept the Board's offer for payment for mileage since that offer did not include any further compensation for her time as a driver. Further, Holly's father met the bus on the first morning it was sent to pick her up and transport her to Convent Station on April 7, 1975. After questioning the bus driver he decided that the driver was either unqualified, was not the regular driver, or that in many respects the service being provided by the Board was either illegal or inadequate. Petitioner continued to transport her daughter for the remainder of the year and no payments of any kind were made to petitioner by the Board. (Exhibit V; Tr. 148-152)

Although the Board initially agreed to pay mileage costs as set forth above, the litigants stipulated at the hearing to the withdrawal of that offer so that the entire matter considered herein might be determined by the Commissioner. (Tr. 178-180) The issue to be determined is what costs, if any, the Board is obligated to pay petitioner for transporting her daughter to Convent Station for the 1974-75 school year.

In the hearing examiner's judgment, the Board has no obligation to pay petitioner's costs for transporting her daughter. The record herein shows quite clearly that the Board explained to petitioner that it understood its obligation to transport her daughter. Nevertheless, petitioner decided that such arrangements were either nonexistent or unsatisfactory and therefore voluntarily decided to provide her own transportation. There is no proof that the Board was unwilling to provide transportation. Quite the contrary. Its offers were refused. (Exhibits

You are viewing an archived copy from the New Jersey State Library.

F, G, H, I, V) The Commissioner has held that a board of education is not obligated for any costs incurred when parents voluntarily enroll their children in private schools. *Ruth and Lawrence Lange v. Board of Education of Hi-Nella, Camden County,* 1959-60 *S.L.D.* 65; *In the Matter of "G" v. Board of Education of the City of Union, Hudson County,* 1967 *S.L.D.* 6; *"T.A." v. Board of Education of the Township of Edgewater Park and the City of Burlington, Burlington County,* 1973 *S.L.D.* 501; *"M.Q." v. Board of Education of the Township of Livingston, Essex County,* 1975 *S.L.D.* 468

Although the enrollment of petitioner's daughter in the private school in this instance was approved by the Board and the tuition was paid by the Board, petitioner's determination to transport her child was entirely voluntary; therefore, the Board has no obligation to pay any transportation costs. *Edwin B. Robinson v. Robert B. Goodwin, Superintendent of Schools, and Board of Education of the Borough of Runnemede, Camden County,* 1975 *S.L.D.* 6 Petitioner's claim is without any legal basis and must be denied. Nor is there any authority for the payment of legal fees or other expenses. See *Celina G. David v. Board of Education of the Borough of Cliffside Park, Bergen County,* 1967 *S.L.D.* 192; *Fred Bartlett, Jr. v. Board of Education of the Township of Wall, Monmouth County,* 1971 *S.L.D.* 163, aff'd State Board of Education 166; and *Jack Norrigian v. Board of Education of Jersey City, Hudson County,* 1972 *S.L.D.* 266, aff'd in part/rev. in part State Board of Education 1973 *S.L.D.* 777.

Finding no relief to which petitioner is entitled, the hearing examiner recommends that the Petition of Appeal be dismissed.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner and the exceptions filed thereto by petitioner pursuant to *N.J.A.C.* 6:24-1.17(b).

Petitioner's exceptions state that she is entitled to mileage costs together with compensation for her time. Petitioner states, also, that her refusal to accept the Board's initial offer of compensation for her mileage costs was grounded on the Board's unwillingness to negotiate its offer. Petitioner admits refusing transportation furnished by the Board because of her determination that the bus driver was not qualified according to State law.

The Commissioner finds no merit in the instant Petition of Appeal. Petitioner has no standing to determine the qualifications of Board employees. Petitioner voluntarily transported her daughter and later refused the Board's offer to transport her daughter. She also refused to accept the Board's offer to pay her mileage costs because she determined that she was also entitled to compensation for her time. Further, petitioner sets forth no legal basis for her claim. The Board has no obligation to pay petitioner for mileage, her time, or her costs.

You are viewing an archived copy from the New Jersey State Library.

The Commissioner concurs with the findings and recommendation of the hearing examiner. The Petition of Appeal is hereby dismissed.

COMMISSIONER OF EDUCATION

May 18, 1977

Adele Vexler,

Petitioner,

v.

Board of Education of the Borough of Red Bank, Monmouth County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Stafford W. Thompson, Esq.

For the Respondent, Reussille, Cornwell, Mausner & Carotenuto (Martin Barger, Esq., of Counsel)

Petitioner, a teaching staff member who acquired a tenure status as a school psychologist in the employ of the Board of Education of the Borough of Red Bank, hereinafter "Board," alleges that her employment was improperly and illegally terminated by the Board through its action of abolishing her position. Petitioner alleges that the Board did not abolish the responsibilities of her position of employment, but, instead, simply transferred her duties. Petitioner demands reinstatement to her employment and all compensation and emoluments withheld from her. The Board denies the allegations and asserts that its action with respect to petitioner's employment is in all respects proper and legal. Petitioner's Motion for *pendente lite* relief was denied by Order of the Commissioner, *Adele Vexler v. Board of Education of the Borough of Red Bank, Monmouth County,* decided June 30, 1975.

A hearing was conducted in this matter on August 21, 1975 at the State Department of Education, Trenton, by a hearing examiner appointed by the Commissioner of Education. Thereafter, petitioner filed a Motion for Rehearing on September 20, 1976, which Motion shall be addressed, *post.* The report of the hearing examiner is as follows:

Petitioner was first employed by the Board as a school psychologist for the 1967-68 academic year. The Board had one other school psychologist, employed since the 1957-58 academic year. (Tr. 8, 80) Petitioner and the other person

You are viewing an archived copy from the New Jersey State Library.

continued in their employment as school psychologists until the 1970-71 academic year when the other person was appointed to the position of Director of Child Study Services, hereinafter "Director." (Tr. 9) Petitioner testified that she and the Director had shared the duties of psychological diagnosis of referred pupils between 1967 and 1970. Subsequent to the appointment of the other person to the position of Director, petitioner assumed all the duties of psychological diagnosis. (Tr. 84)

On or about February 18, 1975, the Superintendent advised petitioner that the Board had determined to abolish her position of school psychologist for the 1975-76 academic year. The Board, at a meeting conducted on April 15, 1975, adopted the following resolution:

> "***BE IT RESOLVED that the position of psychologist [that position held by petitioner] with the Child Study Team be terminated, effective with the 1975-76 school year.***" (P-2)

Petitioner was notified by letter (C-1) dated April 16, 1975 from the Superintendent that the Board had determined not to offer her employment for 1975-76.

Petitioner asserts that, notwithstanding this action of the Board, the duties she performed as a school psychologist were never, in fact, abolished, but were transferred to the Director. She avers that the Board only abolished the title of school psychologist. Petitioner argues that the Board may not purport to abolish a person's position of employment, protected by tenure, by simply transferring the duties of the position to another person and cites *Victor Catano v. Board of Education of the Township of Woodbridge, Middlesex County*, 1971 *S.L.D.* 448, aff'd State Board of Education 1972 *S.L.D.* 665.

The Director testified that her duties after 1970 were as set forth in the job description (P-1) for the position of Child Study Services. The hearing examiner observes that such job description (P-1) was changed on July 10, 1975, and it is this description (P-3) of duties which the Director now performs. The former job description (P-1) of the Director sets forth nine major areas of responsibility as follows: General Responsibilities; Administration of (Pupil) Referrals for Service; Administration of Child Study Team Meetings; Clinical Responsibilities (including serving as school psychologist); Special Classes; Supplemental and Home Instruction; In-Service Training; Statistical Services; and other duties as may be assigned. The Director testified that her responsibility to serve as a school psychologist was added after the job description (P-1) was created. She testified that she had informed school authorities that while she preferred not using her clinical skills as a school psychologist while serving as Director, she would do so if required. (Tr. 41) The fact remains that she has served as a school psychologist since her appointment as Director.

Subsequent to the abolishment of petitioner's position of school psychologist, the Director's revised job description (P-3) lists five major areas of

You are viewing an archived copy from the New Jersey State Library.

responsibility including Diagnosis, Service to Schools, Supervision, Special Programs, and a series of responsibilities which may best be categorized as administrative and supervisory duties attendant to the position of Director of Child Study Services. The Director testified that she fully expected to perform clinical psychological services for the 1975-76 academic year. (Tr. 52)

The Director testified that the Board's Child Study Team for 1974-75 consisted of herself, a learning disabilities specialist, a speech therapist, a social worker, and petitioner in the position of school psychologist. The Child Study Team for 1975-76 would consist of the same positions except that of school psychologist whose duties she, the Director, would carry out. (Tr. 75) The Board asserted that its determination to abolish one of the two positions of school psychologist was based solely on reasons of economy. The Board explained that its proposed 1975-76 school budget was defeated by the electorate and the governing body imposed reductions on its budget which resulted in staff reductions.

The issue posed for consideration herein is whether a board of education may abolish a position of employment, occupied by an incumbent who has acquired a tenure status in that position, and transfer the duties to another person in its employ.

Firstly, it must be recognized that petitioner and the Director originally had been employed by the Board as school psychologists, and both possess appropriate certification as school psychologists pursuant to *N.J.A.C.* 6:11-12.14. Petitioner's employment began in September 1967, while the Director's employment began in September 1957. While the position of Director of Child Study Services was created for the 1970-71 school year, the fact remains that the title, Director of Child Study, is not a specific title cognizable under *N.J.S.A.* 18A:28-5, nor is it a title set forth in the New Jersey Administrative Code, Title 6, Chapter 11. Consequently, when the Board appointed the incumbent Director to the position for 1970-71, it did so pursuant to its authority at *N.J.S.A.* 18A:27-4 which provides in full as follows:

> "Each board of education may make rules, not inconsistent with the provisions of this title, governing the employment, terms and tenure of employment, promotion and dismissal, and salaries and time and mode of payment thereof of teaching staff members for the district, and may from time to time change, amend or repeal the same, and the employment of any person in any such capacity and his rights and duties with respect to such employment shall be dependent upon and governed by the rules in force with reference thereto."

Although the Board created the title of Director of Child Study Services and appointed the other school psychologist it had employed since 1957 to that position, that person has continued in the Board's employ as a school psychologist with a tenure status. (See *Herbert J. Buehler v. Board of Education of the Township of Ocean, Monmouth County,* 1970 *S.L.D.* 436, aff'd State Board of Education 1971 *S.L.D.* 660, aff'd Docket No. A-2297-70 New Jersey Superior Court, Appellate Division, November 2, 1972 (1972 *S.L.D.* 664).)

You are viewing an archived copy from the New Jersey State Library.

The essential effect, then, of the controverted action taken by the Board on April 15, 1975, was to abolish one of two positions of school psychologist, combine the responsibilities into one position of school psychologist, and assign those duties to its incumbent Director of Child Study Services who possessed greater seniority as a school psychologist in the school district.

The elimination of positions by a local board of education is expressly permitted by *N.J.S.A.* 18A:28-9 which reads as follows:

> "Nothing in this title or any other law relating to tenure of service shall be held to limit the right of any board of education to reduce the number of teaching staff members, employed in the district whenever, in the judgment of the Board, it is advisable to abolish any such positions for reasons of economy or because of reduction in the number of pupils or of change in the administrative or supervisory organization of the district or for other good cause upon compliance with the provisions of this article."

The statute specifically states that a local board of education's right to eliminate positions for the reasons stated therein cannot be limited even if the person holding the position has acquired a tenure status in the position. In the instant matter the abolishment of petitioner's position, and subsequent termination of employment, resulted from reasons of economy necessitated by the Board's 1975-76 school budget defeat. A person's termination of employment may not be made for reasons of residence, age, sex, marriage, race, religion or political affiliation, but "***shall be made on the basis of seniority according to the standards to be established by the commissioner with the approval of the state board." *N.J.S.A.* 18A:28-10 Teachers with a tenure status or, in the instant matter, school psychologists with a tenure status, who are dismissed as a result of such reduction, must remain on a preferred eligibility list in the order of seniority for reemployment whenever a vacancy occurs in a position for which he/she is qualified. *N.J.S.A.* 18A:28-12

Petitioner's assertion that the Board acted illegally is without merit. In the first instance, her position of school psychologist could not have been created without duties, otherwise her salary would have constituted a gift of public moneys for services not rendered, which is clearly prohibited by the laws of this State. *Joseph McKay v. Board of Education of the Borough of Red Bank, Monmouth County,* 1972 *S.L.D.* 606 The assignment of petitioner's duties to the other school psychologist, albeit Director, is the precise situation which occurs when a position is abolished by a board of education. This is not a situation wherein petitioner's duties were assigned to a new employee or to a school psychologist with less seniority than she possessed.

Consequently, the hearing examiner finds no defect with respect to the Board's action of April 15, 1975 by which petitioner's position of school psychologist was abolished and her duties assigned to the Board's remaining school psychologist.

The hearing examiner observes that the issuance of this report has been delayed because of the continuous crises which have been facing the Department

You are viewing an archived copy from the New Jersey State Library.

of Education with respect to the postponement of the 1976 school elections and related school finance problems emerging from *Robinson et al. v. Cahill et al.* (V), 69 *N.J.* 449 (1976), decided January 30, 1976

In the interim, petitioner filed a Motion for Rehearing grounded upon the assertion that the Board had employed two persons during 1975-76 to perform psychological services for the equivalent of the full-time position that the Board abolished and which is controverted herein. Petitioner attests in her affidavit (C-2) that subsequent to the abolition of her full-time position of school psychologist the Board offered her employment for one day a week at a per diem rate of $75. Petitioner attests that she refused this offer because of the limited one-day-a-week offer and because the rate was less than she had been receiving.

The Superintendent attests in her affidavit (C-3) that subsequent to the Board's abolition of petitioner's full-time position of school psychologist, it determined to create a part-time position of school psychologist and appropriated $3,000 for 40 days' work. The Superintendent attests that the part-time position was offered petitioner which she refused. The Superintendent offered petitioner the part-time employment again by letter (C-4) dated February 26, 1976, and again by letter (C-5) dated March 2, 1976. In neither instance did petitioner respond.

Finally, the Superintendent asserts that during May 1976, assistance was necessary with respect to the duties of the school psychologist and because petitioner refused part-time employment on three separate occasions, two other persons were employed part time for May and June. One other person was employed for a two-week period in March 1976.

The hearing examiner has reviewed the affidavits of the learning disabilities teacher (C-6) and of the social worker (C-7) with respect to their observations of who performed psychological services for the Board during 1975-76. The hearing examiner has also reviewed the certification of the Board's payroll department and determined that the three persons employed part time as school psychologist, after petitioner refused that employment, were paid a total of $3,525. This sum does not equate with full-time employment.

The hearing examiner finds no merit to Petitioner's Motion for Rehearing. A local board of education has the statutory right to abolish full-time positions, and also has the statutory right to create part-time positions so long as the person whose full-time position is abolished is offered the part-time position. *Josephine De Simone v. Board of Education of the Borough of Fairview, Bergen County,* 1966 *S.L.D.* 43

In the instant matter petitioner was offered the part-time position on at least three separate occasions and refused such employment. Consequently, the Board was free to engage other qualified persons as school psychologists to perform the attendant part-time duties. Had petitioner accepted the offer of part-time employment, notwithstanding the alleged lower salary she claims she was offered, she could have applied for appropriate remedies.

You are viewing an archived copy from the New Jersey State Library.

The hearing examiner recommends that petitioner's Motion for Rehearing be denied and further recommends that the Petition of Appeal be dismissed.

* * * *

The Commissioner has reviewed the record in the instant matter, including the report of the hearing examiner and observes that neither party filed exceptions nor objections thereto.

The Commissioner adopts as his own the findings of fact and conclusions of law set forth by the hearing examiner.

The Commissioner observes that the matter controverted herein is grounded upon the Board's exercise of its discretionary authority at *N.J.S.A.* 18A:28-9. Such discretionary actions of the Board, exercised in good faith, will not be set aside unless such actions are shown to be arbitrary, without rational basis, or are induced by improper motives. *Boult and Harris v. Passaic Board of Education,* 135 *N.J.L.* 329 (*Sup. Ct.* 1947), aff'd 136 *N.J.L.* 521 (*E.&A.* 1948) An action of a local board of education is presumed to be valid and proper and the Commissioner will not substitute his judgment unless it is established that the controverted action is arbitrary, capricious, or unreasonable. *Thomas v. Morris Township Board of Education,* 89 *N.J. Super.* 327 (*App. Div.* 1965), aff'd 46 *N.J.* 581 (1966)

Petitioner has failed to establish herein that the controverted action of the Board is, in any fashion, improper or illegal. Accordingly, the Petition is hereby dismissed.

COMMISSIONER OF EDUCATION

May 18, 1977

You are viewing an archived copy from the New Jersey State Library.

Board of Education of the Town of Dover,

Petitioner,

v.

Mayor and Board of Aldermen of the Town of Dover, Morris County,

Respondent.

COMMISSIONER OF EDUCATION

ORDER

For the Petitioner, Friedman & Greb (Eugene M. Friedman, Esq., of Counsel)

For the Respondent, McKirdy, Riskin & DeFazio (Hugh E. DeFazio, Jr., Esq., of Counsel)

This matter has been opened before the Commissioner of Education through the filing of a formal Petition of Appeal by the Board of Education of the Town of Dover, hereinafter "Board," Eugene M. Friedman, Esq., which challenges the reduction imposed upon its 1976-77 school budget by the Mayor and Board of Aldermen, hereinafter "governing body," Hugh E. DeFazio, Jr., Esq. The principal facts of the matter are these:

At the annual school election held on March 9, 1976, the Board submitted to the electorate the following proposal for the amount to be raised by local taxation for the 1976-77 school year:

Current Expense	$3,394,697

The proposal was defeated. Thereafter, the Board and the governing body consulted and the governing body adopted a resolution determining that a lesser amount was necessary to be raised by local taxation as follows:

Current Expenses	$3,243,632

The Commissioner observes that the amount of the total reduction imposed by the governing body was in the sum of $151,065.

Subsequently, the parties entered into a Stipulation of Settlement and Dismissal which provides that the sum of $75,532.50 for the current expense costs is to be made available to the Board's 1976-77 current expense budget in the form of unbudgeted State aid pursuant to the enactment of *c.*113, *L.*1976 without disturbing the amount previously certified by the governing body in local taxes.

The Commissioner, having found the aforementioned resolutions and Stipulation of Settlement to be in order and properly dispositive of the dispute, hereby authorizes that $75,532.50 in the form of unbudgeted State aid pursuant

You are viewing an archived copy from the New Jersey State Library.

to the provisions of *c.*113, *L.*1976 be added to the Board's 1976-77 current expense budget without disturbing the amount previously certified by the governing body to be raised by local taxation for such purposes during the 1975-76 school year.

IT IS ORDERED that this matter be and is hereby dismissed this 18th day of May 1977.

COMMISSIONER OF EDUCATION

In the Matter of the Petition of the Boroughs of Seaside Heights and Seaside Park and the Township of Lacey for Withdrawal from the Central Regional High School District, Ocean County.

DECISION OF THE BOARD OF REVIEW

For the Boards of Education of Island Heights and Seaside Park, Berry, Summerill, Piscal, Kagan & Privetera (Seymour J. Kagan, Esq., of Counsel)

For the Board of Education of Seaside Heights, Frank S. Salzer, Esq.

For the Board of Education of Lacey Township, Wilbert J. Martin, Jr., Esq.

For the Board of Education of Central Regional, Russo & Courtney (James P. Courtney, Jr., Esq., of Counsel)

For the Board of Education of Berkeley Township, Wilbert J. Martin, Jr., Esq.

For the Board of Education of Ocean Gate, Roy G. Simmons, Esq.

For the Boroughs of Seaside Park and Seaside Heights, Hiering, Grasso, Gelzer & Kelaher (William T. Hiering, Jr., Esq., of Counsel)

For the Borough of Island Heights, Richard A. Walsh, Esq.

The Central Regional High School District, Ocean County, was organized in 1954 pursuant to law (*N.J.S.A.* 18A:13-1) as a limited purpose regional school district to provide an appropriate educational program to all pupils enrolled in grades seven through twelve in the constituent school districts of Berkeley and Lacey Townships and the Boroughs of Island Heights, Ocean Gate, Seaside Heights and Seaside Park. The respective Boards of Education of Lacey Township, Seaside Heights and Seaside Park have now petitioned the

You are viewing an archived copy from the New Jersey State Library.

Commissioner of Education for permission to submit to the legal voters of each of their constituent districts and of the remaining districts within the Regional District the question of whether each of their three constituent districts shall be allowed to withdraw. Such Petitions for withdrawal were specifically authorized by the statutory prescription of *N.J.S.A.* 18A:13-51 *et seq.*, effective March 3, 1976. *c.*360, *L.*1975 The three Petitions are presented directly to the Commissioner, the State Treasurer and the Director of the Division of Local Government Services, hereinafter "Board of Review," in the manner set forth in *N.J.S.A.* 18A:13-56. There has been no application for a public hearing pursuant to the statute and the three Petitions are submitted for the findings and determinations of the Board of Review on the separate pleadings and a report of the Ocean County Superintendent of Schools dated November 25, 1976. The findings and determinations of the Board of Review are set forth, *post,* in the context of the criteria of the applicable statute, *N.J.S.A.* 18A:13-56, which states:

> "***The board of review shall consider the effect of the proposed withdrawal upon the educational and financial condition of the withdrawing and the remaining districts and shall schedule and hold a public hearing on the petition upon the application of any interested party. In considering the effect of the proposed withdrawal upon the educational and financial condition of the withdrawing and remaining districts the board of review shall:
>
> a. Consent to the granting of the application; or
>
> b. Oppose the same because, if the same be granted–
>
> 1. An excessive debt burden will be imposed upon the remaining districts, or the withdrawing district;
>
> 2. An efficient school system cannot be maintained in the remaining districts or the withdrawing district without excessive costs;
>
> 3. Insufficient pupils will be left in the remaining districts to maintain a properly graded school system; or
>
> 4. Any other reason, which it may deem to be sufficient; or
>
> c. Request that if the petition be granted, the amount of debt which the remaining districts would be required to assume, calculated as hereinbefore provided, be reduced for the reason that–
>
> 1. Such amount of indebtedness, together with all other indebtedness of the municipalities or school districts would be excessive;
>
> 2. The amount of expenditure for debt service which would be

You are viewing an archived copy from the New Jersey State Library.

required would be so great that sufficient funds would not be available for current expenses without excessive taxation; or

3. Such amount of indebtedness is inequitable in relation to the value of the property to be acquired by the remaining districts and would materially impair the credit of the municipalities or such districts and the ability to pay punctually the principal and interest of their debt and to supply such essential educational facilities and public improvements and services as might reasonably be anticipated would be required of them.

"The board of review shall make its findings and determination, by the recorded vote of at least two of the three members of the board within 60 days of the receipt of the petition and answers."

In its determinations the Board of Review has considered the separate pleadings and the report of the County Superintendent and sets forth the following facts and arguments *seriatim* with respect to the Central Regional District as an entity and to the separate applications for withdrawal.

Central Regional District

The Regional District is one of the largest in the State and embraces a total of 133.87 square miles in Ocean County. The three districts proposing to withdraw comprise 92.58 miles of this total area. The area of each of the constituent districts is as follows:

Berkeley Township		40.16 square miles
Island Heights		0.63 square miles
Lacey Township		91.73 square miles
Ocean Gate		0.50 square miles
Seaside Heights		0.25 square miles
Seaside Park		0.60 square miles
	Total	133.87 square miles

The total population within the Regional District has increased rapidly in recent years as follows:[1]

	1960	1975(Provisional)
Berkeley Township	4,272	12,465
Island Heights	1,150	1,450
Lacey Township	1,940	7,705
Ocean Gate	706	1,125
Seaside Heights	954	1,375
Seaside Park	1,054	1,505
Totals	10,076	25,625

[1] *Population Estimates for New Jersey, July 1, 1974.* Office of Business Economics, Department of Labor and Industry, State of New Jersey, Trenton, New Jersey, 1975.

You are viewing an archived copy from the New Jersey State Library.

Much of the land area within the district remains in a wooded, rural condition and further growth in the general and pupil populations may be expected.

It is the growth in pupil population which stands as one of the primary motivations in the proffering of the instant Petitions since the Central Regional High School has a functional capacity of 1,250 pupils but on October 1, 1976, had a reported enrollment of 2,740 pupils. This total enrollment was an increase of 131 pupils in the interim since the Commissioner's last compilation of statewide statistical data for the 1974-75 academic year.[2] Such statistical data set forth the following pupil enrollments for each of the six constituent districts of the Regional District:

	Grade Level		
	1-6;Spec.	7-12;Spec.	Total K–12;Spec.
Berkeley Township	1,572	1,127	2,699
Island Heights	179	150	329
Ocean Gate	188	149	337
Lacey Township	1,505	965	2,470
Seaside Heights	221	116	337
Seaside Park	159	102	261
Totals	3,824	2,609	6,433

The total enrollment of all pupils in all six constituent districts is reported by the County Superintendent to have increased by 311 pupils to 6,744 at the end of the 1975-76 academic year. The County Superintendent also projects the following straight line enrollment in grades 7 through 12 for the three districts proposing withdrawal from the Regional District and for the three districts which would remain if the withdrawals were effectuated.

	District			
	Lacey	Seaside H.	Seaside P.	Regional Remaining
1977-78	1,086	141	104	1,372
1978-79	1,106	148	106	1,495
1979-80	1,162	152	101	1,581
1980-81	1,158	147	111	1,561
1981-82	1,192	156	105	1,501

The Lacey Board proposes to build its own high school for grades seven through twelve. The Seaside Heights and Seaside Park Boards have proposed withdrawal from the Regional District and the establishment of a new sending-receiving relationship with the Point Pleasant Beach School District. The Commissioner has recently been advised that the Point Pleasant Beach Board of

[2]State Department of Education, 24th Annual Report of the Commissioner of Education, Financial Statistics of School Districts, School Year 1974-75.

You are viewing an archived copy from the New Jersey State Library.

Education has indicated it will not agree to such proposed sending-receiving relationships.

The County Superintendent reports that a total of 108 pupils or 3.8 percent of the Regional District's 2,740 pupils are of races other than white and that of this total approximately 100 are from Berkeley Township. Thus he calculates that if all three withdrawals were effectuated the percentage of pupils other than white would increase to approximately seven percent in the remaining Regional District. The County Superintendent projects the proportion of operating expenses borne by each of the six constituent districts of the Regional District in the 1976-77 year as:

		(Approximate Percent)
Berkeley Township	$2,718,124	.4341
Island Heights	279,261	.0448
Lacey Township	1,641,235	.3717
Ocean Gate	217,960	.0493
Seaside Heights	260,337	.0499
Seaside Park	287,000	.0500

Thus, in aggregate, approximately 47 percent of the operating costs of the Regional District are borne by the three districts which propose withdrawal. Such percentage of costs will change in future years as the funding formula incorporated as part of the Public School Education Act changes to reflect an increasing emphasis on equalized value rather than number of pupils as the basis for apportionment of school costs in regional districts.

The County Superintendent lists the following equalized valuations:[3]

Berkeley Township	$298,115,118
Island Heights	22,205,258
Lacey Township	295,290,176
Ocean Gate	23,619,776
Seaside Heights	87,482,430
Seaside Park	82,107,863

The listing with respect to average equalized valuation on real property is closely parallel:

Berkeley Township	$294,580,431
Island Heights	22,111,955
Lacey Township	293,365,173
Ocean Gate	23,501,538
Seaside Heights	87,109,997
Seaside Park	81,872,470
Total	$802,541,564

[3]*Certification of Table of Equalized Valuations – 1976.* Department of the Treasury, Division of Taxation, State of New Jersey, Trenton, New Jersey 1976.

You are viewing an archived copy from the New Jersey State Library.

The County Superintendent calculates from such statistics that the borrowing power of the total Regional District is $28,088,955 and that if all three districts leave the Regional the borrowing power would be reduced by 57 percent to $11,906,787. He further estimates the borrowing power of Lacey Township as four percent of $293,365,173 or $11,734,607.

The apportionment of debt service is listed by the County Superintendent as:

	Debt Service	Percentage
Berkeley	$78,074.87	43.4176375
Island Heights	8,056.47	4.4802212
Lacey	66,847.35	37.1739792
Ocean Gate	8,871.73	4.9335901
Seaside Heights	8,976.53	4.9918735
Seaside Park	8,996.00	5.0026985

The value of the Central Regional High School and additions, based on an appraisal of the Industrial Appraisal Company, Pittsburgh, Pennsylvania, is determined to be as follows:

The cost of reproduction new	$8,101,314
The total accrued depreciation	1,294,233
The sound value	6,807,081
The net sound insurable value	6,466,439

The revised debt service apportionment if all three districts were permitted to leave the Regional District is:

Berkeley Township	$156,445.96
Island Heights	10,789.38
Ocean Gate	12,587.61
Total	$179,822.95

The County Superintendent determined it would be appropriate, if the proposed applications are granted, for the Regional District to assume remaining debts and liabilities of the District in return for the assets, including the one schoolhouse and its grounds. He found certain advantages and disadvantages inherent in the proposals for withdrawal. As advantages he lists a reduction of the enrollment in the Regional District to a more reasonable size, a smaller cost for building additions, a reduction in transportation costs and an easing of present scheduling problems. He also would expect the curriculum development of the district to be enhanced and that there would be increased participation by pupils in school activities and by citizens in the educational process. As disadvantages to the Regional District, the County Superintendent lists increased costs for debt service and current expense, a reduction in curricular options, a diminution of staff with the concomitant contractual and morale problems, and he observes that a building addition program would still be necessary.

You are viewing an archived copy from the New Jersey State Library.

Seaside Heights – Seaside Park

The County Superintendent postulates a number of advantages and disadvantages for Seaside Heights and Seaside Park if they are permitted to withdraw from the Regional District.

Advantages are listed as:

"1. Both districts would have less distance for pupils to travel.

"2. Pupils closer to home would increase their involvement in school activities.

"3. Pupils coming from a small community would retain the small town atmosphere in a smaller school.

"4. Pupils and community would be able to identify easier with a similar shore community than with a mainland community.

"5. A normal schedule and less crowded atmosphere would increase the holding power of the school. Pupils dropping out of school should decrease.

"6. Seaside Heights and Seaside Park would experience substantial tax savings as compared with their present share of operating expenses. (See Appendix A)"

Disadvantages are, in the opinion of the County Superintendent, that:

"1. Point Pleasant Beach has made *no* definite commitment to take pupils from Seaside Heights and Seaside Park. (See Appendix A)

"2. In becoming a sending district, the sending-receiving relationships are tenuous at best. The district may be exchanging a permanent relationship for a temporary one.

"3. As a sending district, the community will have no say in policy or board actions of the receiving district.

"4. There would be a break in the continuity of the educational programs of individual pupils upon transferring from one district to another.

"5. Due to the size of the anticipated receiving school, the curriculum offerings will be reduced." (*Emphasis in text.*) (Report, at p. 29)

It is observed that the envisioned option of a sending-receiving relationship of the districts of Seaside Heights and Seaside Park with the district of Point Pleasant Beach is no longer available. The Seaside Park Board, while admitting this fact, avers that "***there may be several alternatives available to the

You are viewing an archived copy from the New Jersey State Library.

Borough of Seaside Park alone or in concert with ***[districts] other than Point Pleasant Beach.***" (Supplemental Petition of Seaside Park, at p. 4)

The Seaside Park Board offers many other objections to the determinations of the County Superintendent. It avers that:

1. Seaside Park has consistently supported the budget proposals of the Regional Board while such support has been denied in other constituent districts, and that the quality of education has been impaired;

2. double session scheduling by the Regional Board resulted in a disruption of family life;

3. extracurricular activities are limited by such scheduling;

4. the resource center at Central Regional High School is inadequate, and there is an inadequacy of other facilities as well.

Further, the Seaside Park Board avers that it is of the belief that a satisfactory alternative can be found for its high school pupils and that the large sum of money now being paid for their education is not now ensuring the quality education which is desired. It also avers that its own representation on the Central Regional Board is not sufficient to influence the Regional Board's decisions and that the replacement of the present allegedly inferior program at Central Regional High School by a superior program elsewhere would be beneficial.

The governing bodies and/or the Boards of Education of the other constituent districts of the Regional District, with the exception of the Regional Board, make no objection to the Application of Seaside Heights and Seaside Park for withdrawal.

The Regional Board does object to the Applications and states that the report of the County Superintendent of Schools should be rejected

> "***in that it fails to provide, as required by N.J.S.A. 18A:13-52, any information which is necessary to enable said governing bodies and local Boards of Education and Regional Board of Education to form an intelligent judgment as to the advisability of the proposed withdrawal and the effect thereof upon the educational and financial condition of the withdrawing district and the regional district.***"
>
> (Regional Board's Answer to Petition, at p. 2)

Additionally, the Regional Board sets forth extensive differences with respect to the specific conclusion of the County Superintendent concerned with advantages and disadvantages of the separations here proposed, and avers the withdrawals would not be educationally and financially sound for the pupils or municipalities of either the withdrawing or receiving districts.

The Board of Review has considered all such facts and arguments and

You are viewing an archived copy from the New Jersey State Library.

determines that the application of the Seaside Heights and Seaside Park Boards to proceed toward withdrawal from the Central Regional District cannot be approved. Such applications are at the present juncture totally tentative and incomplete.

The communities of Seaside Heights and Seaside Park, even if considered together as an entity, cannot alone support a comprehensive educational program for only 250-300 high school pupils in grades 7 through 12 and population growth is improbable. The one possible alternative proposed by the two Boards, a sending-receiving relationship with the Point Pleasant Beach School District, has been rejected by the Point Pleasant Beach Board. It was not an acceptable proposal since, even at inception of the relationship, the Point Pleasant Beach High School would be forced to enroll a total number of pupils in excess of its functional capacity. No other clearly viable alternatives are presently offered by either the Seaside Heights or Seaside Park Boards. In such circumstances a withdrawal from the Regional District cannot be approved. The Board of Review so holds.

Lacey Township

The report of the County Superintendent lists a total of eight advantages and four disadvantages to the application of Lacey Township for permission to proceed toward withdrawal from the Regional District. They are listed as follows:

Advantages

"1. The district would assume total responsibility for the education of their pupils – Grades K thru 12.

"2. The size of pupil population is educationally reasonable to build a comprehensive program.

"3. The district has the financial capabilities to initiate a building program.

"4. There would be continuity in the curriculum Grades K-12.

"5. The need to transport pupils for long distances would be eliminated.

"6. A new building would mean a normal daily schedule.

"7. The curriculum could be developed to meet the needs of the community it serves.

"8. Community pride could develop based upon self-determination.

Disadvantages

"1. A new building program will mean increased expenditures for construction, equipment, and operating expenses.

You are viewing an archived copy from the New Jersey State Library.

"2. The district's cost per pupil will increase as compared to present cost per pupil as a constituent district.

"3. Pupils coming from a large comprehensive high school will find their curriculum offerings somewhat limited due to reduced enrollments.

"4. If permission to withdraw is not contingent upon a successful referendum for a new high school, students might find themselves without a school to attend." (Report, at p. 28)

The constituent districts of the Central Regional District, through their respective Boards of Education and/or governing bodies, except for the Central Regional Board, raise no objection to the application of Lacey Township. The Regional Board does aver that the report of the County Superintendent is incomplete and that the data set forth therein is not sufficient foundation for the conclusions he reached with respect to advantages.

The Central Regional Board avers there is no evidence to indicate the Lacey Township electorate would, if offered the opportunity to decide, approve the erection of a secondary school in Lacey Township or that there is any particular advantage which such a school could afford to pupils of the Township which cannot be provided by the Regional Board. It also denies the conclusion that there would be any advantage to some pupils with respect to transportation. The Regional Board agrees with all of the disadvantages listed by the County Superintendent.

The Lacey Township Board relies on the report of the County Superintendent.

The report of the County Superintendent also found that certain advantages and disadvantages would accrue to the Regional District if the withdrawals here contested were permitted to go forward. He listed these as follows:

Advantages:

"1. It would reduce substantially the enrollment to a more workable size even though the enrollment will be above functional capacity. (See Section IX)

"2. The cost of building additions would be reduced to a great extent since the need for large additions will not be necessary.

"3. The transportation costs will be reduced since the area to be serviced will be reduced from 133.87 square miles to 41.29 square miles.

"4. The school will be able to resume a schedule which is more normal than the double sessions it is now experiencing.

"5. Curriculum development should be able to gain impetus due to less

You are viewing an archived copy from the New Jersey State Library.

scheduling limitations.

"6. Pupil involvement in school activities should increase due to better scheduling and a more 'normalization.'

"7. Reduction in the number of constituent districts should encourage increased community involvement.

Disadvantages:

"1. Would increase operating expense and debt service for the remaining districts. (See Sections X and XI)

"2. A decrease in enrollment would mean a certain amount of curriculum offerings would be reduced.

"3. There would be a serious reduction in staff necessitating the probable release of tenured teachers with the accompanying contractual and morale problems.

"4. The interscholastic sports program would have to be revised due to a change in the group classification.

"5. Operating expense will not be reduced in direct proportion to the number of pupils withdrawing.

"6. Even with a decreased enrollment, the need for a building addition is necessary." (Report, at p. 26)

The Regional Board also disputes these findings of the County Superintendent. In particular, the Regional Board avers that even with withdrawal of some or all of the three districts there would still be a need for an additional building program within the Regional District. It concludes that a withdrawal by Lacey Township from the Regional District would not be educationally nor financially advantageous to pupils of either the withdrawing district or the Regional District.

The Board of Review has considered all such facts and arguments with respect to the proposed withdrawal of Lacey Township as a constituent district of the Regional District and determines that with certain reservations set forth, *post,* their withdrawal proposal may proceed to referendum. It is clearly evident that Lacey Township has sufficient resources within its boundaries to support an integrated educational program for grades kindergarten through twelve, and that its secondary pupil population is sufficient to assure a comprehensive educational program. Further, the Board of Review determines that such withdrawal would not, in fact, be deleterious to the Regional District since it would continue responsibility for the education of a sufficient number of pupils to insure a comprehensive secondary program at moderate cost. While debt service costs to remaining constituent districts will be increased if withdrawal goes forward, such costs are only a small part of the total expense required to be

You are viewing an archived copy from the New Jersey State Library.

incurred by the Regional District and current expense costs may be expected to decrease in approximate proportions to the decrease of pupils.

Accordingly, the Board of Review accedes to the Application of Lacey Township for withdrawal as a constituent district of the Central Regional District if such withdrawal is approved pursuant to law by the voters of Lacey Township and the remaining Regional District and only if, subsequent thereto, the Lacey Township Board and the voters of Lacey Township approve and erect the schoolhouse which is required to effectively implement the withdrawal. The Board of Review further determines that the effective date of withdrawal shall be a date in the month of September next succeeding the completion of the new secondary school, and that at least one year prior thereto a notice with respect to such date shall be furnished the Central Regional Board by the Lacey Township Board.

Finally, the Board of Review sets forth the view that this determination is not grounded in, or primarily concerned with, the merits of Lacey Township's Application for withdrawal from the Regional District since the basic decision must be made by the electorate. The determination is based on a finding that the Application is one which is reasonable and practical of achievement and with many benefits and liabilities which must be weighed by the electorate. The Board of Review accepts the recommendations of the County Superintendent that if the withdrawal Application of Lacey Township is ultimately approved by the electorate (a) the remaining constituent districts of the Regional District shall assume the remaining debt service and liabilities of the Regional District; (b) the remaining districts will retain the building, grounds and other assets of the district; and (c) the withdrawing district will relinquish all claims to assets of the Regional District and will not be responsible for debt service or other liabilities incurred prior to the date of withdrawal.

COMMISSIONER OF EDUCATION

STATE TREASURER

DIRECTOR, DIVISION OF LOCAL GOVERNMENT SERVICES

May 20, 1977

You are viewing an archived copy from the New Jersey State Library.

SUPPLEMENTAL DECISION OF THE BOARD OF REVIEW

For the Boards of Education of Island Heights and Seaside Park, Berry, Summerill, Piscal, Kagan & Privetera (Seymour J. Kagan, Esq., of Counsel)

For the Board of Education of Seaside Heights, Frank S. Salzer, Esq.

For the Board of Education of Lacey Township, Wilbert J. Martin, Jr., Esq.

For the Board of Education of Central Regional, Russo & Courtney (James P. Courtney, Jr., Esq., of Counsel)

For the Board of Education of Berkeley Township, Wilbert J. Martin, Jr., Esq.

For the Board of Education of Ocean Gate, Roy G. Simmons, Esq.

For the Boroughs of Seaside Park and Seaside Heights, Hiering, Grasso, Gelzer & Kelaher (William T. Hiering, Jr., Esq., of Counsel)

On May 20, 1977, a Decision of the Board of Review made pursuant to law (*N.J.S.A.* 18A:13-56) was handed down *In the Matter of the Petition of the Boroughs of Seaside Heights and Seaside Park and the Township of Lacey for Withdrawal from the Central Regional High School District, Ocean County,* decided May 20, 1977. Therein the Board of Review rejected the applications of Seaside Heights and Seaside Park for withdrawal from the Central Regional School District but approved the application of the Board of Education of Lacey Township to submit the question of withdrawal to the voters of Lacey Township and of the combined Regional District. The Board of Education of the Central Regional High School District, hereinafter "Regional Board," has now submitted a Petition for Clarification of the Decision of the Board of Review. Such Petition poses two questions for determination; namely,

> "If the withdrawal of Lacey Township is approved pursuant to the law by the voters of Lacey Township and the remaining regional district, when does the withdrawal of the district become effective?"

and,

> "Who should bear the expense incurred for the election re the question of the withdrawal of Lacey Township from Central Regional High School District?"

Such questions will be considered seriatim.

In its Decision of May 20, 1977, the Board of Review set forth the

You are viewing an archived copy from the New Jersey State Library.

following determination with respect to the effective date of withdrawal of Lacey Township from the Regional District:

> "***Accordingly, the Board of Review accedes to the Application of Lacey Township for withdrawal as a constituent district of the Central Regional District if such withdrawal is approved pursuant to law by the voters of Lacey Township and the remaining Regional District and only if, subsequent thereto, the Lacey Township Board and the voters of Lacey Township approve and erect the schoolhouse which is required to effectively implement the withdrawal. The Board of Review further determines that the effective date of withdrawal shall be a date in the month of September next succeeding the completion of the new secondary school, and that at least one year prior thereto a notice with respect to such date shall be furnished the Central Regional Board by the Lacey Township Board.***"

Such determination, the Regional Board has averred, was contrary to the statutory prescription of *N.J.S.A.* 18A:13-59 which prior to amendment by Chapter 279, Laws of 1977 provided that:

> "If the question is adopted at said elections, the withdrawal of the district shall become effective *upon July 1 of the next ensuing school year."*
> *(Emphasis supplied.)*

The Regional Board's request for clarification with respect to this statutory mandate need no longer be considered by the Board of Review since by passage of *c.*279, *L.*1977 the Commissioner is given discretion with respect to the effective dates of all such withdrawals. The statute now provides:

> "If the question is adopted at said elections, the withdrawal of the district shall become effective upon a date to be determined by the Commissioner of Education."

The amendments of *c.*279, *L.*1977 are effective immediately with respect to all pending applications such as that herein. Accordingly, the Board of Review determines that this question with respect to an effective date of withdrawal of Lacey Township from the Central Regional District must be referred for decision to the Commissioner of Education.

The statutes *N.J.S.A.* 18A:13-5 *et seq.* are silent with respect to responsibility for the costs of the conduct of elections wherein questions of withdrawal of component districts from regional districts are proposed to the electorate except that *N.J.S.A.* 18A:13-58 mandates that:

> "***said election *shall be conducted* and the results thereof determined in the manner prescribed by law for special school elections in type II districts.***" *(Emphasis supplied.)*

The statutory prescription for such special elections is contained in *N.J.S.A.*

You are viewing an archived copy from the New Jersey State Library.

18A:13-5, 14-2, 14-3, 14-3.1 and 14-3.2. These statutes are recited in pertinent part as follows:

N.J.S.A. 18A:13-5

"Elections in regional districts *shall be conducted as in other local districts* except that there shall be at least one polling place in each of the constituent districts and in any such elections, unless otherwise provided by this title, the total vote of the entire regional district, without regard to the territorial boundaries of the constituent districts, shall be counted in determining the result of the election." (*Emphasis supplied.*)

N.J.S.A. 18A:14-2

"An annual school election shall be held in each *type II local district,* on the second Tuesday in February and in *each regional district,* on the first or the second Tuesday in February of each year, as provided in section 18A:13-10, and in case either of such days falls on a legal holiday the election shall be held on the following day." (*Emphasis supplied.*)

N.J.S.A. 18A:14-3

"The board of education of a type II district may call a special election of the legal voters of the district at any time when in its judgment the interests of the schools require it, or *whenever 50 of such legal voters shall by petition so request* but no special school election shall be called to be held in any municipality on any day within 20 days before or after the day fixed according to law for the holding of any primary election for the general election or municipal or general election and no more than two special school elections shall be called by any board of education within any period of six months to submit to the legal voters of the district for their adoption or rejection any proposal, resolution or question authorizing the raising of a special district tax, or the issuance of bonds of the district, for the same purpose, unless the commissioner shall first have certified in writing the necessity therefor." (*Emphasis supplied.*)

N.J.S.A. 18A:14-3.1

"No business shall be transacted at any special election except such as shall have been set forth in the notices by which the election was called and in the notices of any special election, called upon petition as aforesaid, there shall be inserted the purposes named in the petition so far as the same are not in conflict with the provisions of this title."

N.J.S.A. 18A:14-3.2

"All *special elections shall be called in the manner provided for the calling of the annual school election.* The qualification of voters, *conduct of the election,* and establishment of voting districts, together with polling places therein shall be governed in all respects by the provisions of the law regulating the *annual school election,* and in the case of special school bonding elections, the form of ballot shall be controlled by the form prescribed by section 18A:14-37." (*Emphasis supplied.*)

You are viewing an archived copy from the New Jersey State Library.

Thus, it is clear that total responsibility for the conduct of the annual and special elections in regional districts is solely that of regional boards of education. This responsibility extends to special elections called on questions "***whenever 50 of such legal voters shall by petition so request***" even though the petition may not be favored by the regional board. Special elections are specifically equated with the annual school election which is completely within the jurisdiction of regional school districts. *N.J.S.A.* 18A:14-3.2 There is no provision in any statute for the payment of the costs of a special school election in a regional district by any entity other than the regional district. Nor should there be in questions of the kind here considered. The application of Lacey Township, duly considered and approved by the Board of Review for presentation to the voters of the Central Regional District, has implications for all voters of the Regional District. They are all required to bear the expense according to the statutory plan. The Board of Review so holds.

COMMISSIONER OF EDUCATION

STATE TREASURER

DIRECTOR, DIVISION OF LOCAL GOVERNMENT SERVICES

November 1, 1977

COMMISSIONER OF EDUCATION

ORDER

The Board of Education of the Township of Lacey has requested permission from the Board of Review created pursuant to law (*N.J.S.A.* 18A:13-51 *et seq.*) to submit to the voters of the Township of Lacey and the Central Regional High School District a question wherein it is proposed that the Lacey Township District shall withdraw as a constituent district of the Regional District. The Board of Review has acceded to the request of the Lacey Township Board *In the Matter of the Petition of the Boroughs of Seaside Heights and Seaside Park and the Township of Lacey for Withdrawal from the Central Regional High School District, Ocean County,* decided May 20, 1977.

There remains a question concerned with the effective date of such withdrawal in the event that the voters of the Lacey Township District and the remaining Regional District approve it at a special election. The Commissioner of Education has considered this question as one wherein clarification with respect to the determination of the Board of Review *In the Matter of the Petition of the Borough of Seaside Heights et al., supra,* is required. Such clarification is made possible by recent amendments to *N.J.S.A.* 18A:13-59 which now provides that

You are viewing an archived copy from the New Jersey State Library.

if a question concerned with withdrawal of a constituent district is approved by the electorate, the withdrawal of the district "***shall become effective upon a date to be determined by the Commissioner of Education."

The Commissioner determines pursuant to such statutory authority that in the event of approval by the electorate of the withdrawal of Lacey Township from the Central Regional District such withdrawal shall be legally effective July 1, 1978, but that thereafter there shall be a sending-receiving relationship established between Lacey Township and the Central Regional District which shall continue until such time as the Lacey Township Board of Education shall receive authorization for and construct a new high school facility.

IT IS SO ORDERED this 1st day of November 1977.

COMMISSIONER OF EDUCATION

In the Matter of the Annual School Election Held in the School District of the Borough of Fair Lawn, Bergen County.

COMMISSIONER OF EDUCATION

DECISION

The announced results of the balloting for three members of the Board of Education for full terms of three years each and one seat for a term of two years at the annual school election held March 29, 1977 in the School District of the Borough of Fair Lawn, Bergen County, were as follows:

For Three-Year Term	At Polls	Absentee	Total
David B. Seidler	1,826	18	1,844
Henriette Zimmerman	1,787	26	1,813
Edward A. McKenna	1,484	11	1,495
Elissa Rosenthal	1,234	12	1,246
David I. Goldberg	1,116	13	1,129
Leonard Domico	1,062	9	1,071

Twenty six additional persons were listed as having received a collective total of 497 votes. One write-in candidate, Donald (Don) Muse, clearly received a total of 464 votes. None of the remaining listed persons received more than a total of seven votes. It is unnecessary, therefore, that they be listed here.

You are viewing an archived copy from the New Jersey State Library.

For Two-Year Term	At Polls	Absentee	Total
L. Barry Tedesco	1,623	8	1,631
Nathan Streitman	1,521	25	1,546

Candidate Donald (Don) Muse was listed as having received a total of six votes. There were no additional persons listed for the two-year term.

Pursuant to letter requests from Nathan Streitman dated March 30 and April 8, 1977, the Commissioner of Education directed an authorized representative to conduct a recount of the ballots cast at four polling places. The recount was conducted on April 25, 1977 at the warehouse of the Bergen County Board of Elections, Carlstadt, of six voting machines, and at the office of the Bergen County Superintendent, Wood-Ridge, for the write-in votes on the six voting machines. A recheck of the voting machines confirmed that the tally of machine votes cast for the candidates for three seats for full terms of three years each and one seat for a full term of two years was properly reported.

Candidate Streitman requested that the votes cast for the write-in candidates in Polling Districts 16, 19, 21 and 22 be recounted. The Commissioner's representative has verified that the following votes are identifiable:

	Clearly Admissible Votes	Identifiable for Tally		Grand Total
Don Muse (Printed Label)	16	Muse	17	
Don Muse	80	Meese	1	
Donald Muse	16	Don Muise	1	
D. Muse	7	R. Muse	1	
		Muse	1	
		Don Musio	1	
Subtotal	119		22	141

Candidate Streitman challenged the report of the Combined Statement of Result of School Election filed by the Secretary of the Board of Education wherein all but seven write-in votes cast for Candidate Muse were recorded for the full three-year term. The Commissioner's representative consulted with the voting machine warehouse custodian and determined that those write-in votes cast within the first six lines from the top of the machine were cast for a full three-year term and those write-in votes cast below line six, were cast for a full two-year term. The Commissioner's representative observes that at the conclusion of the recount, eighteen votes cast for Candidate Muse in Polling Districts 16, 19, 21 and 22, were identifiable for tally for a full two-year term.

While the total vote for candidate Muse was revised as a result of the recount, such revision is not sufficiently significant to affect the outcome of the election.

This concludes the report of the Commissioner's representative.

You are viewing an archived copy from the New Jersey State Library.

* * * *

The Commissioner finds and determines that David B. Seidler, Edward A. McKenna and Henriette Zimmerman were elected to full terms of three years each, and that L. Barry Tedesco was elected to a full term of two years on the Board of Education of the School District of the Borough of Fair Lawn, Bergen County, at the annual school election held on March 29, 1977.

COMMISSIONER OF EDUCATION

May 23, 1977

Elaine Solomon,

Petitioner,

v.

Board of Education of the Princeton Regional School District, Mercer County,

Respondent.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Ruhlman and Butrym (Cassel Ruhlman, Esq., of Counsel)

For the Respondent, Smith, Cook, Lambert, Knipe & Miller (Thomas P. Cook, Esq., of Counsel)

Petitioner, a teaching staff member employed by the Princeton Regional Board of Education, hereinafter "Board," appeals the Board's action terminating her employment as of June 20, 1975. Petitioner alleges that she had acquired a tenure status as a teaching staff member pursuant to the provisions of *N.J.S.A.* 18A:28-5(c) and was not subject to termination without the certification of charges against her by the Board pursuant to *N.J.S.A.* 18A:6-10 *et seq.* It is further alleged by petitioner that if such avowal is rejected by the Commissioner of Education, the Board's action terminating her employment as a nontenure teacher is arbitrary, capricious and violative of her constitutional rights of due process. Petitioner seeks an order from the Commissioner declaring the Board's action terminating her employment null and void and further directing that she be reinstated to her teaching position with such other relief as may be deemed appropriate by the Commissioner. The Board contends that petitioner did not enjoy a tenure status as a teaching staff member at the time her employment was

You are viewing an archived copy from the New Jersey State Library.

terminated in the school district. The Board further avers that its action with respect to the termination of petitioner's employment was in all ways proper and legally correct.

A conference in the instant matter was held at the State Department of Education, Trenton, on September 9, 1975 with a representative of the Commissioner. The parties agreed that the matter of petitioner's tenure claim should be first decided by the Commissioner, and that petitioner's allegations with respect to her illegal termination by the Board as a nontenure teacher be held in abeyance until her claim to tenure has been determined by the Commissioner. Accordingly, counsel agreed to have petitioner's tenure claim advanced before the Commissioner in the form of a Motion for Summary Judgment submitted on the pleadings, stipulations of fact, and Briefs submitted in support of their respective positions.

The following facts are not in dispute and have been stipulated by the parties:

"1. The petitioner was employed by the respondent for each of the academic years beginning with the 1962-63 school year until October 6, 1971, when she resigned.

"2. Petitioner was re-employed by the respondent commencing October 3, 1972, and was continuously employed for the remainder of that year and for each of the subsequent academic years.

"3. Petitioner was on leave of absence granted by respondent for the entire academic year 1970-71.

"4. On or about April 29, 1975, petitioner received a letter from the Secretary of the respondent stating that she would not be re-appointed for the 1975-76 school year.***

"5. On or about May 24, 1975, petitioner received from the Secretary of the respondent a letter advising that the respondent had adopted a resolution terminating her employment as of June 20, 1975.***"

(Stipulation of Facts, filed October 3, 1975)

It was further stipulated by the parties on October 10, 1975, that:

"***Petitioner during all of her employment by the Respondent has held and continues to hold an appropriate certificate issued by the New Jersey State Board of Examiners.***"

(Supplemental Stipulation, filed October 10, 1975 with attached teaching certificates marked J-1, J-2)

The Commissioner observes that petitioner was issued a "Limited Secondary Teacher's Certificate" (J-1) December 15, 1964, and subsequently

You are viewing an archived copy from the New Jersey State Library.

obtained a regular certificate (J-2) as a "Secondary School Teacher of English" issued by the State Board of Examiners in July 1968.

For the purpose of further clarification petitioner's employment with the Board is set forth as follows:

Academic School Year	Academic Years of Employment Service
(1) 1962-63	1
(2) 1963-64	1
(3) 1964-65	1
(4) 1965-66	1
(5) 1966-67	1
(6) 1967-68	1
(7) 1968-69	1
(8) 1969-70	1
(9) 1970-71	Granted Leave of Absence by Board
(10) 1971-72	Active Service Resumed Sept. 1, 1971 through Oct. 5, 1971 (Resigned Employment Oct. 6, 1971)
(11) 1972-73	Reemployed by Board Oct. 3, 1972, served through June 30, 1973
(12) 1973-74	1
(13) 1974-75	Employment Service effective September 1, 1974 - June 20, 1975.

Petitioner argues in the first instance that her leave of absence granted by the Board for the entire academic school year of 1970-71 does not interrupt the consecutiveness of her academic years of service in the Board's employ for tenure purposes. Petitioner relies on *John Mountain v. Board of Education of the Township of Fairview, Bergen County,* 1972 *S.L.D.* 526, aff'd State Board of Education 1973 *S.L.D.* 777 in support of the above contention. Petitioner points out that in *Mountain,* the Commissioner overruled his previous holding in *Dorothy Mateer v. Board of Education of the Borough of Fair Lawn, Bergen County,* 1950-51 *S.L.D.* 63 and held that employment both before and after a leave of absence would be considered a continuous period of employment service for tenure purposes. (Petitioner's Brief, at p. 6)

Secondly, petitioner avers that, subsequent to her resignation as a teaching staff member in the Princeton Regional School District effective October 6, 1971 (1971-72 academic school year), the Board reemployed her before one academic year had elapsed on October 3, 1972 (1972-73 academic year) and, therefore, the consecutiveness of her employment service was not broken to the

You are viewing an archived copy from the New Jersey State Library.

extent that it would be rendered null and void pursuant to *N.J.S.A.* 18A:28-5(c) of the Tenure Act.

The Commissioner observes that the pertinent part of the above-referenced statute, including section (c), on which petitioner relies reads as follows:

> "The services of all teaching staff members *** as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education *** shall be under tenure *** after employment in such district or by such board for:
>
> (a) three consecutive calendar years, *** or
>
> (b) three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or
>
> (c) the equivalent of more than three academic years within a period of *any* four *consecutive* academic years***." (*Emphasis supplied.*)

It is petitioner's position that the legislative intent of *N.J.S.A.* 18A:28-5(c) was to amend the Tenure Act so as to protect the tenure rights of teaching staff members who were subject to prior practices of local boards of education in which they were required to resign a few days before the end of a school year as a condition for obtaining an employment contract for the ensuing school year. She argues that such practices by local boards of education pursuant to *N.J.S.A.* 18A:28-5(a) and (b) were previously upheld before the enactment of *N.J.S.A.* 18A:28-5(c) and thereby precluded teaching staff members from attaining a tenure status in certain school districts. *Ahrensfield v. State Board of Education,* 126 *N.J.L.* 543 (*E.&A.* 1941); *Chalmers v. State Board of Education,* 11 *N.J. Misc.* 781 (*Sup. Ct.* 1933); *Norwitz v. Board of Education of Harrison Township,* 128 *N.J.L.* 13 (*Sup. Ct.* 1942) (Petitioner's Brief, at p. 8)

Accordingly, petitioner contends that the application of the facts to applicable statutory and case law reveals that she was employed for a total of eight consecutive academic years beginning with the 1962-63 academic year. Petitioner was granted a leave of absence by the Board during all of her ninth year of employment. (1970-71 academic year) Petitioner asserts she then returned to active employment service for parts of the next two successive academic years (1971-72, 1972-73 academic years) which constitute the equivalent of more than one academic year. Thereafter, petitioner avers, she was continuously employed by the Board for the academic years 1973-74 and 1974-75 until June 20, 1975 when the Board terminated her employment. (Petitioner's Brief, at p. 9)

Petitioner avers that, considering only her employment commencing with the 1968-69 academic school year, she has more than satisfied the statutory standards for tenure purposes at the conclusion of the 1972-73 academic year. The aforementioned years of employment are summed up by petitioner as follows:

You are viewing an archived copy from the New Jersey State Library.

***

"SCHOOL YEAR	ACADEMIC YEARS OF EMPLOYMENT
1968-69	1
1969-70	1
1971-72	1
1972-73	1 year, plus 3 days***"*

(Petitioner's Brief, at p. 10)

*Counsel's calculation of 1 year 3 days for the 1972-73 academic year is derived from an addition of the days from September 1, 1971 to October 6, 1971, at which time petitioner resigned, and of the days forward from October 3, 1972 when she resumed employment.

Thus:

Sept. 1, 1971 - Oct. 6, 1971	=	1 month	6 days
Oct. 3, 1972 - June 30, 1973	=	10 months	27 days
	Total	1 year	3 days

The justification advanced by petitioner in claiming a tenure status based upon the employment period set forth above is that the periods of employment (1968-69 and 1969-70 academic years) prior to her leave of absence during 1970-71 academic year must be added to the 1971-72 and 1972-73 academic years by the Commissioner in arriving at a determination in her favor. *Mountain, supra*

Petitioner argues that her resignation on October 6, 1971 during the 1971-72 academic school year does not preclude a favorable determination by the Commissioner with respect to her tenure status since she has met the precise terms and conditions of employment set forth in *N.J.S.A.* 18A:28-5(c) and is therefore entitled to continued employment in the Princeton Regional School District.

The Board argues to the contrary with respect to petitioner's tenure claim. It is the Board's position that petitioner's previous tenure status as a teaching staff member in its school system was terminated commencing with her voluntary resignation effective October 6, 1971. (1971-72 academic year) The Board avers that its reemployment of petitioner on October 3, 1972 (1972-73 academic year) constituted the beginning of a new period of employment service in the Princeton Regional School District which remained in effect until June 20, 1975, when petitioner's services were terminated by the Board with pay until the end of the 1974-75 academic school year. (Joint Stipulation of Facts, paragraph 5, including attached schedule B; Board's Brief at pp. 2-3)

In this regard the Board avers the only applicable period of employment service that is relevant with respect to petitioner's claim pursuant to *N.J.S.A.* 18A:28-5(c) falls within the following periods in which petitioner's teaching service was rendered:

You are viewing an archived copy from the New Jersey State Library.

***

"September 1, 1971 through October 5, 1971 [1971-72 academic year]
"October 3, 1972 through June 30, 1973 [1972-73 academic year]
"September 1, 1973 through June 30, 1974 [1973-74 academic year]
"September 1, 1974 through June 19, 1975 [1974-75 academic year] ***" (Board's Brief, at p. 4)

These periods of employment, the Board maintains, constitute employment service rendered by petitioner which falls short by ten days of complying with the statutory prescription for the reacquisition of tenure pursuant to *N.J.S.A.* 18A:28-5(c).

The Board argues that petitioner could not achieve a tenure status during her second period of employment until she again completed a probationary period of service in which her teaching performance could be evaluated. *Zimmerman v. Board of Education of Newark,* 38 *N.J.* 65 (1962)

The Board further rejects petitioner's claim that the teaching services she performed during the academic years 1968-69 through 1972-73, excepting the 1970-71 academic year when petitioner was granted a leave of absence, must be considered in compliance with the statutory interpretation of *N.J.S.A.* 18A:28-5(c) as "*** any four consecutive academic years***" for tenure purposes.

The Board acknowledges the fact that in *Mountain, supra,* the Commissioner held that Mountain was permitted to count his two academic years of employment service, which preceded two successive academic years' leave of absence, toward tenure accrual. The Commissioner ordered the Fairview Board of Education to reemploy Mountain subsequent to his return from two successive years' leave of absence.

Accordingly, in the Board's view, the only relevant periods of employment service rendered by petitioner which may be considered with respect to her tenure claim pursuant to *N.J.S.A.* 18A:28-5(c) are the last four consecutive academic years (1971-72 through 1974-75) which encompass the period constituting her renewed employment relationship with the Board. In this regard, the Board maintains that petitioner has failed to establish that she has reacquired a tenure status pursuant to law and therefore requests that the Commissioner render a decision for Summary Judgment in its favor.

The Commissioner has reviewed all such facts and legal arguments presented by the parties and determines that the key to a final determination herein focuses upon whether or not petitioner has met the precise requirements of the statutory provisions which set forth an entitlement for tenure accrual.

It is clear that petitioner offered her resignation from her position of employment as a teaching staff member and that such resignation was accepted by the Board effective October 6, 1971. In the Commissioner's judgment, petitioner's resignation effectively terminated her previous tenured employment

You are viewing an archived copy from the New Jersey State Library.

with the Board on that date and barred all service prior to such date from subsequently accruing to a new tenure entitlement. Such holding is consistent with a previous ruling of the Commissioner wherein the petitioner voluntarily resigned his teaching position which constituted abandonment of any rights he may have had to a tenure claim. *Thomas J. Commins v. Board of Education of the Township of Woodbridge, Middlesex County,* 1967 *S.L.D.* 11

As the Commissioner said with respect to the effect of a resignation in *F. Rupert Belles v. Board of Education of the Township of Wayne, Passaic County,* 1938 *S.L.D.* 556 (1933):

> "***Acceptance is to offer what a lighted match is to a train of gunpowder. It produces something which cannot be recalled or undone.***" (at 557)

Petitioner's employment began anew on October 3, 1972, and continued until June 20, 1975. This constitutes a period which falls short of the statutory prescription set forth in *N.J.S.A.* 18A:28-5(c) for the purpose of new tenure accrual.

In the judgment of the Commissioner, the amendment of *N.J.S.A.* 18A:28-5 which added paragraph (c) was not for the purpose argued by petitioner. There were essentially two reasons for this amendment to the statute. Prior to the amendment, local boards of education did not always consider any period of employment which consisted of a fraction of an academic year for the purpose of determining the length of service for the acquisition of a tenure status. For example, if a teaching staff member began service in the middle of an academic year, a local board might consider such service as not being part of three consecutive academic years, together with employment at the beginning of the next succeeding academic year. The effect of such an interpretation was that a teaching staff member would not acquire a tenure status until the fulfillment of the requirement as stated in *N.J.S.A.* 18A:28-5(b). The legislative amendment which added paragraph (c) clarified the law so that the beginning of service in the middle of, or some other point of time during an academic year, would be counted towards the probationary period required by statute.

The second reason for the addition of paragraph (c) to the statute was discussed by the Court of Errors and Appeals in *Madeline L. Schulz v. Board of Education of the City of Newark,* 1939-49 *S.L.D.* 136 (1942), reversed State Board of Education 140, reversed 131 *N.J.L.* 350 (*Sup. Ct.* 1944), reversed 132 *N.J.L.* 345 (*E.&A.* 1945). The Court discussed *Ahrensfield v. State Board of Education,* 124 *N.J.L.* 231 (*Sup. Ct.* 1940), affirmed 126 *N.J.L.* 543 (*E.&A.* 1941), holding against the asserted right of tenure of Mrs. Ahrensfield, a regularly employed female teacher, because at the suggestion of the supervising principal she had broken the continuity of her employment by resigning one day before the three year period was complete and was then reemployed in her position. This was because the local board of education had adopted a resolution opposing the placing of married female teachers on tenure and the teacher in question was a married woman. The Court stated that:

You are viewing an archived copy from the New Jersey State Library.

"***A comparison of the provisions of the amendment with the *Ahrensfield* facts leaves little doubt that the amendment was inspired by and was intended to apply to the incidents of that case, namely, an artificial splitting of the period of employment to avoid the application of the tenure statute to a regularly employed, full-time teacher.***"

(132 *N.J.L.* at 351)

The Commissioner finds no "artificial splitting" of petitioner's employment in the instant matter. On the contrary, a period of twelve months separated petitioner's voluntary resignation and subsequent employment on October 3, 1972. Under the provision of *N.J.S.A.* 18A:28-5(c) she would have acquired a tenure status on October 4, 1975, which would have been "***the equivalent of more than three academic years within a period of any four consecutive academic years***."

Accordingly, the Commissioner finds and determines that petitioner failed to establish an entitlement for a new tenure accrual during the period set forth above. Having made such determination the Commissioner grants Summary Judgment in favor of the Board.

The Commissioner observes, however, that the above determination does not finally dispose of all of the allegations set forth in the instant Petition of Appeal. Therefore, the Commissioner retains jurisdiction and remands this matter back to his representative for further proceedings to allow petitioner an opportunity to prove the remaining allegations set forth therein.

COMMISSIONER OF EDUCATION

May 23, 1977

STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, May 23, 1977

For the Petitioner-Appellant, Ruhlman & Butrym (Cassell R. Ruhlman, Esq., of Counsel)

For the Respondent-Appellee, Smith, Cook, Lambert and Miller (Thomas P. Cook, Esq., of Counsel)

The State Board of Education affirmed the decision of the Commissioner of Education for the reasons expressed therein.

September 7, 1977

You are viewing an archived copy from the New Jersey State Library.

In the Matter of the Annual School Election Held in the School District of the City of Garfield, Bergen County.

COMMISSIONER OF EDUCATION

DECISION

The announced results of the balloting for candidates for three members for three-year terms and three members for two-year terms on the Board of Education of the City of Garfield at the annual school election held on March 29, 1977 in the School District of the City of Garfield were as follows:

	At Polls	Absentee	Total
For Three-Year Term:			
Lillian Brodhead	1948	26	1974
Carmine J. Perrapato	1689	39	1728
Charles Rigoglioso	1461	26	1487
Lucy Matijakovich	1447	21	1468
Joseph H. Petrasek	1262	22	1284
Richard Derkacs	710	7	717
Guy Thomas Caruso	690	16	706
June Babula	654	13	667
Kevin D. Bashaw	348	18	366
Casmir J. Kudlacik	322	2	324
Angelo Perri	314	9	323
James G. Kritikos	94	1	95
For Two-Year Term:			
Richard Amos	2315	45	2360
Kenneth Kulig	1167	14	1181
Joseph Stefanco	1080	18	1098
Nancy Chabora	954	17	971
Trifonio Rizzo	796	19	815
John Szucs	704	6	710
Marie Hurley	663	19	682
Michael Sadik	627	7	634
Edward Dolack	609	5	614
James Benti	561	15	576
Joseph J. Clements	451	8	459
John R. Follari	420	22	442
Norman Berg	416	7	423
Robert A. Szabo	181	3	184

Two additional write-in candidates were recorded. Since these two candidates do not affect the final outcome of the election, there is no need to consider them further.

Pursuant to a letter request received by the Commissioner of Education on April 5, 1977 from Candidate Matijakovich and at the direction of the

You are viewing an archived copy from the New Jersey State Library.

Commissioner, an authorized representative conducted a recount of the totals on the voting machines used in this election. The recount was conducted on April 11, 1977 at the voting machine warehouse of the Bergen County Board of Elections.

The Commissioner's representative reports that the Combined Statement of Result of School Election as completed by the election officials contains a tabulating error in that the votes cast for Candidate Kulig were added incorrectly. The Combined Statement of Result should state that the number of votes cast for Candidate Kulig at the polls was 1267, and the total number of votes cast for Candidate Kulig was 1281. In all other respects, the recount of machine votes disclosed that the tally of votes cast was unchanged from the results announced by the election officials at the close of the election on March 29, 1977, as set forth above.

On April 19, 1977, the members of the Bergen County Board of Elections, together with the Superintendent of Elections, the candidates, and their representatives, did examine all absentee ballots. The recount of absentee ballots disclosed that the tally of votes was unchanged from the results announced by the election officials as of the close of the election on March 29, 1977.

This concludes the report of the Commissioner's representative.

* * * *

The Commissioner has reviewed the report of his representative and determines that there has been an error in tabulating the total number of votes cast for Candidate Kulig, as recorded on the Combined Statement of Result of School Election. This error, however, does not alter the results of the election. Accordingly, the Commissioner finds and determines that Charles Rigoglioso, Carmine J. Perrapato, and Lillian Brodhead were elected to seats for terms of three years each and Kenneth Kulig, Joseph Stefanco, and Richard Amos were elected to seats for terms of two years each on the City of Garfield Board of Education at the school election held on March 29, 1977.

COMMISSIONER OF EDUCATION

May 23, 1977

You are viewing an archived copy from the New Jersey State Library.

In the Matter of the Annual School Election Held in the School District of the Borough of Highlands, Monmouth County.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Margaret Schultz, *Pro Se*

For the Respondent Board, Norton and Kalac (Paul M. Griffin, Esq., of Counsel)

Margaret Schultz, hereinafter "petitioner," was a candidate for a three-year term on the Board of Education of the Borough of Highlands, hereinafter "Board," at the annual school election on March 29, 1977 in which the announced results of balloting for three full terms of three years each on the Board were as follows:

Bonnie A. Rieman	336
David R. Gilson	279
W. Allen Turner	236
Margaret Schultz	227
Howard W. Paronto	219
M. Audrey Stefanski	215

Subsequent to a recheck of the voting machines on April 15, 1977, which confirmed the announced tally revealing Gilson, Turner, and Rieman to be the successful candidates for three-year terms, an election inquiry was held to determine the validity of petitioner's allegations set forth in letters dated April 1 and 7, 1977, addressed to the Commissioner of Education.

Specifically, petitioner alleged the following:

1. One person who resides outside the district was improperly allowed to vote.

2. Five voters whose names were not in the signature register were improperly allowed to vote without completing affidavits.

3. Two voters registered in one of the three election districts, but who listed addresses on the poll lists in another election district, were improperly allowed to vote.

4. Eight persons registered at one home address, but who listed on the poll lists a different address, were improperly allowed to vote.

An inquiry was conducted on April 18, 1977 by the Commissioner's representative at the office of the Monmouth County Superintendent of Schools and at the Monmouth County Election Board Office, Freehold. As principal part of the inquiry the pertinent signature copy registers were examined by the Commissioner's representative.

You are viewing an archived copy from the New Jersey State Library.

This process was also observed and participated in by petitioner, the Board attorney, the Board Secretary, one election official who served at the election, and a chief clerk from the County Election Board. The following facts were revealed by that examination and testimony taken at the inquiry:

1. Petitioner relied upon voter registry lists which had not been updated with respect to the five voters referred to in allegation No. 2, *ante*. Those voters' names were in the signature copy registers, however, and they were legally entitled to vote.

2. Five additional voters of those referred to in allegations Nos. 3 and 4, *ante*, had moved from their former places of residence but had filed the appropriate change of address certificate with the County Election Board in timely fashion. They were properly allowed to cast their votes in the March 29, 1977 school election.

Since ten voters of the sixteen named by petitioner were found to have legally cast their ballots, the ballots of the remaining six voters would be insufficient in number to cast doubt on the validity of the announced plurality of Candidates Gilson, Turner and Rieman whose total votes exceeded by nine or more the number of recorded votes cast for petitioner, *ante*. Nor does petitioner press the matter in view of those ballots which have been authenticated.

It was, however, revealed by the inquiry that certain of the remaining six voters in question were improperly allowed to cast ballots without updating their address of residence with the election officials or by filing affidavits pursuant to the provisions of *N.J.S.A.* 18A:14-52. The importance of strict compliance with the election laws has been sufficiently impressed upon the responsible officials at the hearing. Absent a showing that any noncompliance was other than the result of inadvertence or nescience, the Commissioner need not comment further upon that aspect of the election. Petitioner was correct, however, in requesting an inquiry which by its instructive process may well prevent further inadvertent noncompliance.

The Commissioner's determination, grounded on the findings heretofore set forth, is that the announced result of the election naming Candidates Gilson, Turner and Rieman to three-year terms on the Board is confirmed.

COMMISSIONER OF EDUCATION

May 25, 1977

You are viewing an archived copy from the New Jersey State Library.

In the Matter of the Application of the Board of Education of the Township of Branchburg for the Termination of the Sending-Receiving Relationship with the Board of Education of the Borough of Somerville, Somerset County.

COMMISSIONER OF EDUCATION

DECISION

For the Petitioner, Blumberg, Rosenberg, Mullen & Blackman (William B. Rosenberg, Esq., of Counsel)

For the Respondent, Richard J. Murray, Esq.

For the Intervenor, Thomas H. Dilts, Esq.

Petitioner, the Board of Education of the Township of Branchburg, hereinafter "Branchburg Board," has made application to the Commissioner of Education pursuant to law for severance of the sending-receiving relationship between it and the Board of Education of the Borough of Somerville, hereinafter "Somerville Board." The Somerville Board opposes the application and avers that a severance of the relationship should be denied by the Commissioner.

A hearing of eight days' duration was conducted by a hearing examiner appointed by the Commissioner at the office of the Somerset County Superintendent of Schools and was concluded on June 14, 1976. Subsequently Briefs were filed by both Boards and by the Borough of Somerville, which was joined as a party to the litigation. A total of 108 exhibits were admitted into evidence at the hearing. The report of the hearing examiner is as follows:

The sending-receiving relationship here in question has been a lengthy one which, prior to 1956, was grounded in tradition, but in 1956 became contractual in nature for a ten year period. (P-3) At the expiration of this period the relationship continued pursuant to law (*N.J.S.A.* 18A:38-13), but began to be marked by controversy caused in part by a growing pupil population in Somerville High School and by general population growth in the school districts in the Somerville area which send pupils enrolled in grades nine through twelve to Somerville High School. At one time this high school provided the educational program for pupils of nine adjacent school districts. (R-10)

In the past decade this increase in both the general and pupil populations in the Somerville area resulted in a number of decisions to alleviate overcrowded conditions; certain former sending districts effected other relationships or regionalized, one district built its own high school, and the Somerville Board initiated plans in the late 1960s to construct a new high school which subsequently was constructed.

Thus, for a period of years there were a series of alterations in the sending-receiving relationships and in educational facilities in the Somerville

You are viewing an archived copy from the New Jersey State Library.

area, and such alterations were of great significance. They were impelled by population pressures which the Somerville Board envisioned would continue. In any event, even with a new high school under construction, the Somerville Board sought in the late 1960s to further reduce its obligation as a receiving district for Branchburg pupils and notified the Branchburg Board that it wished to terminate the sending-receiving relationship. Such notification was given on October 27, 1969, and subsequently the two Boards did agree to termination beginning in the 1975-76 academic year.

Plans for termination then went forward and ultimately the Branchburg Board advanced a proposal to district voters to build a high school of its own. Such proposal was defeated by the electorate of Branchburg by a vote of 774 to 527 on December 12, 1972, and the Branchburg Board then proceeded to a study of other alternatives. This study was pursued for a period of approximately three years and included consideration of a Branchburg-Somerville regionalization.

In the interim, however, from the Somerville Board's first notice to the Branchburg Board, that a severance of the relationship between them was desirable, to the 1975-76 academic year, new pupil population projections caused the Somerville Board not only to reverse its previous position but to actively oppose the severance it had previously sought. According to the Somerville Board, "Population and birth patterns [had] changed significantly***" and a severance was no longer necessary or desirable. (See R-10.)

The question for determination herein is whether, under present conditions, the Branchburg Board should be permitted by the Commissioner for "good and sufficient reason" to sever its sending-receiving relationship with the Somerville Board. The statutory prescription is that contained in *N.J.S.A.* 18A:38-13 which is recited in its entirety as follows:

> *N.J.S.A.* 18A:38-13
>
> "No such designation of a high school or high schools and no such allocation or apportionment of pupils thereto, heretofore or hereafter made pursuant to law shall be changed or withdrawn, nor shall a district having such a designated high school refuse to continue to receive high school pupils from such sending district except for good and sufficient reason upon application made to and approved by the commissioner, who shall make equitable determinations upon any such applications."

The Branchburg Board maintains there is sufficient reason in the evidence it presented at the hearing. The Somerville Board avers that a continuation of the relationship is required if pupils of Branchburg and of Somerville are to be provided comprehensive educational programs in grades nine through twelve. Such arguments pose the principal issue for determination.

The evidence adduced at the hearing will now be examined. It includes testimony of school and local government officials, consultants, members of the two Boards and officials of the State Department of Education.

You are viewing an archived copy from the New Jersey State Library.

Somerville High School provided the educational program for a total of 1253 full time and 45 shared time pupils during the 1975-76 academic year. (R-9) Such pupils were resident in three communities: the Borough of Somerville and the Townships of Branchburg and Millstone. Millstone pupils are, however, being withdrawn at the rate of one class a year for attendance in another area high school and now comprise less than 40 pupils of the total enrollment in Somerville High School. The withdrawal of all Millstone pupils is scheduled for completion by 1978-79. (R-10) Thus, in that year the pupils of Branchburg will be the only ones in attendance in Somerville High School from a sending district.

The present enrollment of approximately 1235 pupils in Somerville High School is accommodated in a schoolhouse with a functional capacity of 1095 pupils. Such capacity rating was developed for the hearing at the request of the hearing examiner by the Bureau of Facility Planning, State Department of Education, and a representative of that Bureau was present to testify at the hearing. (Tr. I-76 *et seq.*) (PR-1) He testified that the formula employed by the Bureau to measure functional capacity has been altered on occasion over the years but that, as presently expressed, such capacity is an estimate of the number of pupils who may be adequately housed in a school building "***at one time***." (Tr. I-79) He testified that scheduling devices and cooperative programs wherein pupils have released time away from the high school all have an effect on rated functional capacity but do not basically alter it. (Tr. I-85) He further testified that, viewed narrowly, any pupil enrollment over functional capacity could be classified as "overcrowding." (Tr. I-96)

The testimony of the President of the Branchburg Board in support of the request for severance of its relationship with the Somerville Board is contained in the document P-1 and in the record of the hearing. (Tr. I-B *et seq.*) Her written testimony recites efforts the Branchburg Board has made since 1967 to provide an educational program for high school pupils of the district. She testified these have included steps toward the acquisition of a high school building site and the commitment of funds toward its purchase. Such testimony also emphasizes the desire of the Branchburg Board to terminate the relationship here in question in order that the Board may have "more effective" local control over the educational process. (P-1, at p. 2) She testified that the sending-receiving relationship carries with it no "***direct voice in any of the decisions made concerning the secondary pupils from this district.***" (P-1, at p. 3) She maintains that there is no voice in controlling costs, setting goals, determining the means of achieving goals or in assessment and evaluation. (P-1, at p. 3) She also testified that the tuition costs for 538 pupils at an approximate $1,750 for each pupil are considerable and avows that Branchburg needs its own high school in order to provide a thorough and efficient educational program "***in accord with the educational philosophy of the community of Branchburg Township.***" (P-1, at p. 3) (See Tr. I-B-10.) The Board President testified that the Branchburg Board had adopted a resolution wherein the racial implications of severance were considered and such resolution was later admitted into evidence. (Tr. I-B-11; P-8) The resolution provides in pertinent part as follows:

You are viewing an archived copy from the New Jersey State Library.

"***[T]he Board discussed the possibility of minority students entering Branchburg's High School.

"It was the unanimous decision of the Members of the Board present at this meeting that the Branchburg Board of Education is willing to provide space at the Branchburg High School to the extent of its functional capacity to accommodate voluntary pupils from Somerville, in a number equal to the current proportion of non-white students to the present Somerville High School student population.***" (P-8)

The President also testified that the Branchburg Board had discussed regionalization with Somerville on at least two occasions. (Tr. I-B-15)

The Mayor of Branchburg testified that the Township had approximately doubled its population from 3741 persons in 1960 to 7500 in 1975 and that a population of 12,000 was anticipated by 1980. (P-5; Tr. I-B-5) He testified that Branchburg is a "***distinct, separate community with a proud feeling of independence***" and that, in his opinion, the termination of the sending-receiving relationship between Branchburg and Somerville "***must be executed in order to provide our children the educational program that they require and deserve***." (P-5, at p. 3)

The Branchburg Superintendent of Schools testified that there were three principal reasons to support a severance of the sending-receiving relationship. He listed these as philosophical, educational and financial (Tr. I-B-35-36) and testified with specificity concerning such reasons. The Superintendent also detailed the present composition of the Branchburg school system and its historical development in recent years. He, like the Board President, indicated that he believed that citizens of Branchburg were entitled to participation in the process leading to an establishment of educational goals pursuant to the Public School Education Act of 1975 (*N.J.S.A.* 18A:7A-1 *et seq.*), and that such entitlement could only be secured by the Branchburg Board through the operation of its own high school. (Tr. II-32)

The Superintendent testified that the planning of the Branchburg Board with respect to school building needs began in 1968 with the commissioning of a report by a consulting firm and had continued to the present day but that the district's three elementary schools were now operating at about maximum capacity of approximately 1369 pupils. (P-2; Tr. I-B-47-48, 64) He testified that the Branchburg Board had been proceeding to plan for a new school building which would in the initial phase of operation house grades seven through twelve but would ultimately be used as a high school for grades nine through twelve. (Tr. II-19) He testified that such planning had proceeded with Somerville's concurrence during the period 1972-75 (P-2), but a new proposed referendum was then opposed by the Somerville Board, which resulted in the instant litigation. (P-3)

The Superintendent testified that the relationship was not now mutually advantageous to pupils of Branchburg (Tr. II-3-5), and he detailed a number of factors in support of this opinion. He testified that Somerville High School is

You are viewing an archived copy from the New Jersey State Library.

operated with what he characterizes as a "negative system of discipline" which is contrary to a philosophy of discipline espoused by the Branchburg Board. (Tr. I-B-54; P-7) Further, he testified that under a continuance of the present relationship "***it is impossible to see how the Branchburg Board of Education can insure to its constituency that its secondary pupils are receiving an educational program which is in keeping with community aspirations.***" (P-7, at p. 4)

The Superintendent further testified that Somerville High School is on a "staggered session" day of nine periods and that the early dismissal of the school for Branchburg pupils at the end of period eight seriously limits their participation in extracurricular activities. (Tr. I-B-49) He testified that 21 percent of the courses at Somerville High School are not selected by Branchburg pupils, but that costs for such courses are a basic part of assessed tuition. (Tr. I-B-53) He stated that the Branchburg Board could realize savings of approximately $8,000 per year if it were enabled to supply transportation to its own high school. (Tr. I-B-60) The Superintendent admitted, however, that the passage of the Public School Education Act had affected transportation costs (Tr. II-8) and that Branchburg pupils were given priority consideration with scheduling problems. (Tr. II-22)

The following data was also developed from testimony of the Superintendent:

1. The tuition cost of high school education projected to be paid by the taxpayers of Branchburg in the 1976-77 academic year was $1,102,000. (P-4)

2. The Somerville High School has been allegedly overcrowded since 1971-72 with enrollments as follows: (P-2)

1971-72	–	1263 pupils
1972-73	–	1281 pupils
1973-74	–	1244 pupils
1974-75	–	1255 pupils
1975-76	–	1270 pupils

The Superintendent testified that the high school enrollment would approximate 1300-1360 pupils in the period 1976-1981. (P-2)

3. The pupil population of Branchburg is 99 percent white. (P-4)

4. The number of Branchburg pupils enrolled in Somerville High School in the period 1967-1975 has increased from approximately 334 to 516 full-time pupils. (P-22) The estimated tuition cost per pupil was $1,750 in the 1975-76 academic year. (P-23)

5. The enrollment projections of all Branchburg pupils grades K-12 in the period 1976-1981 are listed as follows: (P-14)

You are viewing an archived copy from the New Jersey State Library.

1976-77	–	2071 (or 2040 (P-9))
1977-78	–	2134
1978-79	–	2197
1979-80	–	2263
1980-81	–	2332

(Such projections are used for planning purposes. Straight line projections show an actual decrease of Branchburg pupils in the same period from 2025 to 2006 pupils.) (P-4)

6. Data from the Somerset County Planning Board indicates that the population of Branchburg Township totaled 7025 persons in 1975 but was projected to increase to 8000 in 1980, 12,000 in 1990 and 18,000 in the year 2000. (P-4)

7. The equalized value of Branchburg property has increased from approximately $25,000,000 in 1962 to $150,000,000 in 1976. (P-30)

In summary, the Superintendent lists seven principal reasons in support of the Branchburg Board's Petition for a severance of its relationship with Somerville. These reasons are recited in their entirety as follows:

> "(1) There is an immediate need for school facilities today in Branchburg Township.
>
> "(2) There is a rationale, suggested by research, to suggest that a K-12 system is a *proper* organization for Branchburg Township.
>
> "(3) There is a population base today, and growth potential tomorrow, to support a K-12 system for Branchburg Township.
>
> "(4) There is a financial base today to support a K-12 system for Branchburg Township.
>
> "(5) Branchburg's secondary pupils are in a facility which has exceeded, and will continue to exceed, functional capacity.
>
> "(6) A coordinated K-12 system for Branchburg Township is necessary to provide a thorough and efficient education for the children of Branchburg Township and to be in accord with the educational philosophies of the community of Branchburg.
>
> "(7) The termination of the sending-receiving relationship can be done without educational or financial harm to Somerville." (*Emphasis in text.*)

The rationale in support of the argument that a kindergarten through grade twelve system should be established in Branchburg received further elaboration at the hearing from a citizen of Branchburg and from an educational consultant.

You are viewing an archived copy from the New Jersey State Library.

The citizen, Dr. Benjamin Muckenhoupt, a mathematician, testified that a severance of the relationship between the two districts would have little effect on Somerville taxpayers since reduced revenues available to the Somerville Board could in his opinion be offset by reduced expenditures for a fewer number of pupils. (P-6) Specifically, he postulated the opinion that in 1974-75 when the Branchburg Board paid $831,095.08 in tuition to Somerville, "***at least $631,969.03 could have been saved***" from required expenditures by the Somerville Board if Branchburg pupils had not been present. (P-6, at p. 6) He testified that over a period of years the per pupil instructional costs to Somerville taxpayers, if the instant Petition is granted, "***would not exceed 2%***." (P-6, at p. 7) His detailed explanation of this calculation is set forth in Exhibit P-6 at pages 3-7. Dr. Muckenhoupt also detailed his opinion with respect to the impact of severance on Branchburg if "***all students would be moved to the new [Branchburg] high school on completion of the building***." (P-6, at p. 8) He estimated that the increased costs would be 9.6 percent in the first year, and 9 and 8 percent in each of the two succeeding years. Dr. Muckenhoupt also estimated that, based on expenditures of past years, a regionalization of the two communities for education for grades K-12 would increase Branchburg's school taxes by about two to ten percent and that a grade nine to twelve regionalization would increase them approximately eight percent. (P-6, at p. 11) Such estimates are supported in his testimony by eight tables of reference. Thus, his testimony, in essence, is that either of the proposed alternatives to the present relationship would be slightly more expensive to both Branchburg and Somerville, but that such expense differential would be mitigated over the years and would be compensated, in part at least, by better adapted educational programs. (See also Tr. II-52-53 and P-24, modifications to original projections.)

Dr. William W. Ramsay, an educational consultant, also testified at the hearing as a witness for the Branchburg Board. His testimony was an elaboration of documentary submissions P-13(a) and (b) and was concerned principally with his conclusions with respect to the effect that the severance proposed herein would have, if approved, on pupils of both Branchburg and Somerville. (Tr. II-58 *et seq.*) In part, this testimony was an examination of the efficacy of the small high school in American society and an application of his opinions to the facts of the instant matter wherein, if severance is granted, the enrollment in both Branchburg and Somerville High Schools would approximate 600-800 pupils in grades seven through twelve.

Dr. Ramsay testified that there was no unanimity of opinion with respect to the most propitious size of a high school and no absolute optimum pupil population figure that he could advance; that size *per se* was just one of many factors of importance. (Tr. II-59, 62, 64) He testified that, in his opinion, the severance would have certain positive results for Branchburg. He testified that with its own high school it would be possible for "***Branchburg's high school students to experience a program of studies which would be correlated with its present K-8 program.***" (P-13, at p. 3) He further testified that such a high school would encourage greater involvement by Branchburg pupils in cocurricular activities and provide a more effective voice for the citizens of Branchburg in the conduct of school affairs. He said:

You are viewing an archived copy from the New Jersey State Library.

> "***I think for Branchburg, it would provide them with an opportunity to do a thorough analysis of their own goals and needs in reference to the total educational programs of Branchburg.***" (Tr. II-68)

He testified that the Branchburg Board could provide a satisfactory high school program at moderate cost with an initial grade seven through twelve organization and approximately 750 pupils. (Tr. II-69)

Dr. Ramsay testified that the effect of the proposed severance on Somerville High School would, in his opinion, be favorable. In particular, he testified that present 40 minute class periods could be lengthened, double period courses increased, class size reduced, new courses added in some instances, overcrowding in certain classes eliminated, and that Somerville's school organizational plan could be altered to provide for abandonment of certain older facilities. (P-13, at pp. 4-6) He testified that such benefits could be secured even with the loss of tuition revenue if the Somerville Board effected a reduction of twenty to twenty-four teachers. (Tr. II-71) He testified, in conclusion, that:

> "***It would appear from a consideration of all factors, including enrollment and population figures, that Branchburg can support a viable high school program. It also appears that Somerville, with some redistribution of its pupil enrollment can provide a more effective secondary school program for the Somerville students."
> (P-13a, at p. 14) (Tr. II-75, 95)

Dr. Ramsay, like Dr. Muckenhoupt, testified that severance would nevertheless produce some cost escalation for both Branchburg and Somerville, He said that "***obviously, Branchburg would have to broaden its fiscal responsibility***" and that "***Somerville would not come away scot-free.***" (Tr. II-95) (See also Tr. IV-A-6.)

The Somerville Board contests any argument that the financial impact upon it will be a minimal one if severance is granted. Instead, the Somerville Board avers that there will "***be both educational harm and financial harm to Somerville***" and such harm may be classified in an order of magnitude as "severe." (Tr. IV-B-118-119) Such testimony, by the Superintendent of Somerville Schools, is grounded in an analysis of various alternative plans which are possible and/or feasible if the Somerville Board is left to conduct a high school program for only its own pupils. (Tr. IV-A-61 *et seq.*) These alternative plans, identified as plans "zero," "one" and "two" are set forth in chart form (R-24-26) and are summarized as follows:

Plan zero (R-24) would incorporate no basic changes in course offering or in staffing at Somerville High School in the event of severance. It projects the cost differentials if Branchburg pupils are removed in such circumstances as ranging from $1,266 per pupil in 1975-76 to $2,260 in 1979-80 by comparing tuition costs per pupil of $1,766 to $3,032 in the initial year to costs of $2,346 to $4,606 in the latter. The Superintendent testified that such increased costs would be "significant" and beyond the point of toleration. (Tr. IV-A-67)

You are viewing an archived copy from the New Jersey State Library.

Plan 1 (R-25) would incorporate no basic changes in course offerings at Somerville High School but would require a reduction in teaching staff and other staff from 76 to 61 at a saving of $180,000 and would result in a narrowing of the per pupil tuition cost differential (*i.e.* to $897 in 1975-76, and to $1,699 in 1979-80). The Superintendent testified that this plan would be more desirable educationally than either of the other plans although pupil costs would still be increased appreciably. (Tr. IV-A-70)

Plan 2 (R-26) would require the elimination of a number of course offerings at Somerville High School and a reduction of 33 teaching staff members and would result in a further narrowing of the per pupil cost differential (*i.e.* to $506 in 1975-76 and to $1,106 in 1979-80). The Superintendent testified, however, that such a plan, even though significantly more expensive than the present operation, would reduce course offerings to many pupils and would not be desirable. (Tr. IV-A-71 *et seq.*) (See also R-31.)

The Superintendent's testimony was that a severance of Branchburg pupils from Somerville High School would be deleterious to Somerville High School as the result of the increased costs and/or educational program elimination. He said that a reduction in program would be contrary both to the spirit and letter of the Public School Education Act of 1975. (Tr. IV-B-74)

The Superintendent's testimony was also centered in rebuttal of the testimony of the witnesses for the Branchburg Board in a series of documents which are summarized as follows:

Exhibit R-30 is a projection of pupil distribution. (Tr. IV-B-77) This chart is a presentation of past, present and projected future enrollment of Somerville High School. Future enrollment is projected by the chart as:

	Branchburg	**Somerville**	**Total**
1976-77	581	714	1295
1977-78	571	756	1327
1978-79	626	739	1365
1979-80	652	677	1329

(Note: This projection by Somerville is not significantly different from that of Branchburg except that in 1977-78 Branchburg projects 615 rather than 571 high school pupils.)

Exhibit R-33 is a summation of Somerville High School enrollment in the period 1965-1975. It indicates that a total of 1422 pupils were enrolled in the present Somerville High School in 1970-71 and that of this total 137 were of a minority race (9.6 percent). It further indicates that since 1971 the high school enrollment has varied only slightly from a mean of 1258 pupils. (See Tr. IV-B-81.) (Note: Chart R-49 indicates that 10.79 percent of the pupils enrolled in Somerville High School in the 1975-76 academic year were non-white. It also indicates that without Branchburg pupils the percentage of non-white pupils in Somerville High School would increase to 18.42 percent.) (See also Tr. IV-B-103.)

You are viewing an archived copy from the New Jersey State Library.

Chart R-36 is labeled as Somerville High School's "Student Distribution by Period" for the 1975-76 academic year. It portrays the placement of 1306 pupils in each period of the school day. The Superintendent testified that he thought there was significance in the fact that the chart lists no period in which pupils assigned to regular classes exceed 1077, a figure below the school's rated functional capacity (1095). (Tr. IV-B-85)

The Somerville Superintendent further testified that the Somerville Board has no present plan to add an addition to the Somerville High School to remedy the alleged overcrowded conditions but that if such addition is eventually required there is adequate space to accommodate it. (Tr. V-125-126) He testified that, in his judgment, the school as presently constituted is a fine educational facility with a good, balanced program and that it should not be utilized for an inclusive grouping of grades seven through twelve or for purposes of housing classes in special education for pupils younger than high school age. (Tr. V-126, VI-8) He also testified that "***there is a good balance***" in course selection by all pupils at the present time and that there are very few classes that do not include at least some Branchburg pupils. (Tr. IV-B-93) (See also Tr. V-90 and R-43.) He testified that the good quality of the high school program is evidenced by the fact that most Branchburg pupils who complete grade eight go on to Somerville High School, rather than private schools, that the dropout rate is low, and that Branchburg pupils are well represented among those who later attend college. (Tr. IV-B-91, 95; R-41-42, 44)

The Superintendent further testified that the Somerville Board has sought "***to provide and seek input from Branchburg school officials and their parents and students in terms of course selection and development.***" (Tr. IV-B-101) (See also Tr. V-112 and R-50.) He also testified that the Somerville Board has been interested in exploring regionalization possibilities with Branchburg and that the County Superintendent had urged such exploration or an examination of the present relationship. (Tr. IV-B-113) He testified that there are other alternatives to severance in order that "***drastic educational and financial implications***" may be avoided. (Tr. IV-B-128)

The Mayor and Tax Collector of the Borough of Somerville testified with respect to the financial implications to the Borough of a severance of the sending-receiving relationship. Both officials testified that the tax rate in the Borough was the highest in Somerset County in 1975 and attributed this fact, in part at least, to the function of Somerville as the seat of County government.

The Mayor testified that the Borough's limited size, only 2.4 square miles, precludes an influx of new industry and that the two biggest employers at the present time were the County and a hospital, both of which are exempt from the payment of local taxes. (Tr. VI-35) The Mayor also listed other tax exempt property holders, including fourteen churches, State Courts, a library, a bankrupt railroad and a YMCA. (Tr. VI-34 *et seq.*) He testified that such property holders nevertheless require many municipal services, a larger police force than that required in other comparable communities, the maintenance of parking areas, the provision of free sewerage disposal, and a fire department

You are viewing an archived copy from the New Jersey State Library.

which requires a ladder truck for the primary benefit of the hospital. (Tr. VI-34 *et seq.*) (See R-60-61, 63.)

The Borough Tax Collector estimated that tax exempt property in Somerville approximated twenty-five percent of all ratables which totaled $160,892,708 in 1976. (Tr. VI-14) He testified further that the Borough's ratable base had been eroded during the year by a reduction in assessed value (Tr. VI-14) and he estimated the impact that various school tax increases, which might occur because of severance, would have on the total tax levy. (Tr. VI-18) (See R-62, 65-66.) His testimony was that all such possible increases would represent a significant financial impact on local taxpayers. (Tr. VI-17 *et seq.*)

Dr. W. Donald Walling, a professor at Rutgers University with long experience in school planning, testified at the hearing in the capacity of a private consultant to the Somerville Board. (Tr. VI-55 *et seq.*) His testimony was essentially a rebuttal of statistical and other projections of the witnesses for the Branchburg Board with respect to future pupil enrollment, cost data and the total effect that a severance of the present sending-receiving relationship would have on both Branchburg and Somerville.

Dr. Walling testified that Somerville High School is at the present time an "outstanding" physical facility with a curriculum which he characterizes as one of the best in the State. (Tr. VI-61-62, 64, 68) He testified that there was good articulation between the two school districts and that in his opinion the school was not now overcrowded or likely to be so in the future. (Tr. VI-132-133; Tr. VII-A-31, 33) He cites a low dropout rate as evidence that the school is operating in a manner conducive to the promotion of pupil interest and learning achievement. (Tr. VI-68-69)

His testimony with respect to a severance of the present relationship is essentially that it would be deleterious to both communities and that it would "***destroy the program" of studies in Somerville while at the same time requiring a greater expenditure per pupil. (Tr. VI-65) He testified that conversion of the present four year high school to one of seven years would be "disastrous" and that a proposed alternate use of the building by handicapped pupils of varying ages would be "unthinkable." (Tr. VI-69, 71-72) He classified the grade seven through twelve proposal as a kind of "gimmick" which districts employ when there are not enough pupils for a four year program. (Tr. VI-69)

Dr. Walling's pupil population estimates for future years differ widely from those advanced by Branchburg. (Tr. VI-65, 74, 80; R-71) He estimates a pupil population of 590-600 pupils for Somerville High School in future years, and a total approximating 110 pupils per grade level in Branchburg. (Tr. VI-65, 74, 80) He also testified that if non-white pupils leave Somerville High School under the voluntary transfer plan advanced by the Branchburg Board, the enrollment in Somerville High School could in future years reach as low as 500 pupils. (Tr. VI-74)

Dr. Walling further disagrees with Branchburg's projection of additional costs which might reasonably be expected to be incurred if severance is effected.

You are viewing an archived copy from the New Jersey State Library.

(Tr. VI-95 *et seq.*) He testified that a review of all factors indicates that, with a schedule of one class of Branchburg pupils withdrawing from Somerville High School per year beginning in 1978-79, the total additional cost of an educational program to Branchburg taxpayers would approximate $1,097,772 in 1978-79 and continue at such high level through the 1982-83 academic year. (Tr. VI-95 *et seq.;* Tr. VII-A-7; R-70-71) The specific additional per year costs which he estimates would be required to furnish a high school educational program comparable to the one presently available are calculated by Dr. Walling as follows: (R-70)

1978-79	–	$1,097,772
1979-80	–	1,136,078
1980-81	–	1,103,933
1981-82	–	910,664
1982-83	–	900,151

Such projections include increased costs for transportation because of a loss of State assistance, for school administration, for additional teachers beyond the usual normal ratio to insure educational excellence, and for tuition payments combined with capital amortization. (R-70)

Dr. Walling also projects additional expenses if the two districts were to effect a grade nine through twelve regionalization, but avers that a consolidation of grades kindergarten through twelve could be effected without additional cost. (Tr. VII-A-19) He testified additionally that his projected costs of severance are moderate ones and do not reflect what he projects as a total of approximately $900,000 to $1,100,000 in costs which might be incurred for additional Branchburg school facilities such as a planetarium, tennis courts, bleachers, a swimming pool, a track, etc. (R-71; Tr. VII-A-6)

The Director of the Office of Equal Educational Opportunity, State Department of Education, testified at the hearing with respect to the offer of the Branchburg Board to accept voluntary transfer of non-white pupils in the event of severance (P-8) and with respect to the import of the changes such severance would cause in racial balance. She presented her opinion that severance of the two districts would be "deleterious" in that the high school in Branchburg would be composed almost entirely of white pupils while the other high school in Somerville would experience an increase approximating eight percent in its number of non-white pupils. (Tr. V-22; R-51-52) She testified that such a transfer plan as offered by the Branchburg Board (P-8) was not one capable of "***delivering the kind of situation you wish to have and it is not an acceptable plan in and of itself.***" (Tr. V-30)

This completes a summary recital of the evidence presented during the hearing. The parties have set forth diametrically opposed views with respect to the weight that should be assigned to each facet of such evidence.

The Branchburg Board avers its studies indicate that a "***termination of the sending-receiving relationship will afford to both school districts educational benefits and benefits to the physical plants without any untoward financial

You are viewing an archived copy from the New Jersey State Library.

burdens on either district.***" (Branchburg Board's Memorandum, at p. 29) Such avowal is, the Branchburg Board asserts, well founded in the total record and in the affirmative reasons it has advanced.

In this latter regard the Branchburg Board avers that the testimony of its expert witnesses and the documentary evidence it has submitted stand as sufficient proof that the advantages of a high school of 600-900 pupils outweigh the disadvantages, and that high schools of such size in Branchburg and in Somerville would serve the pupils of both communities in an exemplary manner. (Branchburg Board's Memorandum, at p. 17 *et seq.*) The Branchburg Board asserts that with such severance it would be able to achieve a better articulation between elementary and high schools and would in fact be afforded the representation in school affairs at the high school level which is presently denied to it. Further, it asserts that its own growth pattern is such that a building program at the elementary school level is now essential and this need can best be met with construction of a new school to house grades seven through twelve in an initial stage of operation. (Petitioner's Memorandum, at p. 7) Additionally, the Branchburg Board maintains that against such principal affirmative reasons there are no reasons advanced by the Somerville Board which prove that severance would be harmful to Somerville. It avers that the Somerville Board would be enabled by severance to reduce present overcrowding in many of its high school areas, eliminate the ninth period, improve its teacher-pupil and guidance counselor-pupil ratios, and so reduce expenditures that there would be no economic hardship. Further, the Branchburg Board avers that there are no viable alternatives remaining which it has not explored and rejected, and in particular it rejects proposals which would lead toward regionalization. The Branchburg Board cites a number of decisions of the Commissioner and the courts in favor of its position and/or differentiates the factual situation contained therein from the instant matter. In particular the Branchburg Board cites the decision in *Board of Education of the Borough of Haworth v. Board of Education of the Borough of Dumont,* 1950-51 *S.L.D.* 42 wherein the Commissioner held that an application of severance would be granted only when he was satisfied that positive benefits would accrue to pupils sufficient to overcome the claim of receiving districts. It is the Branchburg Board's primary claim that such benefits are evidenced herein.

The Somerville Board's main Brief cites prior decisions of the Commissioner, the courts and the recent enactment of the Public School Education Act (*N.J.S.A.* 18A:7A-1 *et seq.*) in support of its argument that the severance requested by the Branchburg Board would be contrary to traditional criteria in such matters and, in fact, illegal. *Haworth, supra; Jenkins et al. v. Morris Township School District et al.*, 58 *N.J.* 483 (1971); *Robinson et al. v. Cahill et al.* (*Robinson* I), 62 *N.J.* 473 (1973), (*Robinson* II) 63 *N.J.* 196 (1973) In particular the Somerville Board cites testimony and other evidence to support its avowal that a severance of the relationship would adversely affect the pupils and citizens of both Branchburg and Somerville in terms of both educational excellence and financial responsibility. The Somerville Board avers that even adoption of the limited Plan 2, *ante,* would represent for Somerville "***a diminution of the present curriculum and course offerings, teaching and

You are viewing an archived copy from the New Jersey State Library.

administrative staff***." (Somerville Board's Main Brief, at p. 10) It further maintains that the proposal of the Branchburg Board to begin operation of a new high school containing grades seven through twelve would be educationally unsound and produce only the "skeleton" of a high school curriculum which would in comparison to present opportunity be detrimental to the education of Branchburg pupils. (Somerville Board's Main Brief, at pp. 16-17) The Somerville Board further postulates a series of facts and possible eventualities with respect to the effect of severance on racial imbalance and states that on the basis of applicable law "***you simply cannot create a racially segregated school.***" (Somerville Board's Main Brief, at p. 18) The reference is to the fact that, subsequent to a grant of severance by the Commissioner, the composition of pupils in Branchburg High School would approximate 99 percent white pupils while the percentage of non-white pupils in Somerville High School would increase from more than 10 percent as reported, *ante*.

The Somerville Board is joined by the Borough of Somerville, as Intervenor, in its opposition to the request of the Branchburg Board for severance. Intervenor particularly cites the testimony and evidence with respect to the financial implications of severance and avers the primary question for determination by the Commissioner is "***whether Branchburg's claimed right of 'self determination'***" outweighs financial impact factors and the allegedly adverse racial balance and educational impact considerations. Intervenor maintains that Branchburg's right does not outweigh such factors and avers that the effect of severance on Somerville would be both "***direct and long term.***" (Intervenor's Brief, at p. 9)

The Branchburg Board submitted an answering Memorandum and the Somerville Board subsequently filed a Reply Brief. Such documents are an elaboration of views previously set forth at length and a defense of, or attack on, the credibility of witnesses who testified at the hearing for the respective parties. The hearing examiner determines that such supplemental arguments would, if recited in elaborate point by point detail, further obfuscate the issues and would add little to the instant report.

The hearing examiner has reviewed all such evidence and arguments and sets forth the following conclusions of law and findings of fact.

The two Boards in the instant matter, and the communities they represent, have, over a period of almost ten years, been engaged in a controversy concerned with high school education. The controversy in its present aspect is one which is grounded in the desire by Branchburg for a kind of representation and voice not available under present law, and in widely divergent views on what the future portends for the citizens of both communities. Major questions still remain and may be set forth succinctly as an initial frame of reference for the total problem:

How reliable is the conclusion of the Somerville Board that the Borough of Somerville, comprising only 2.4 square miles, can indefinitely provide high school facilities for a township many times as large? Is there any assurance that a large additional influx of Branchburg pupils to Somerville High School will not again prompt the Somerville Board to ask that Branchburg be severed as a

You are viewing an archived copy from the New Jersey State Library.

sending district to avoid new and significant capital expenditures? Is there any guarantee that severance of the relationship would cause the voters of Branchburg to approve the large capital expenditure required to enable that district to effectively establish its own kindergarten through grade twelve educational program when similar proposals have failed approval in the recent past? What would be the immediate and long range effects on the pupils of both districts in attendance at two high schools significantly smaller in size from the one they now attend?

The testimony and other evidence is pertinent, in part, to an answer to such questions but they lead the hearing examiner to conclude that the request of Branchburg, in the context of present known facts and despite the record of the past ten years, is premature.

Certain primary facts developed at this hearing are not contested and are summarized as follows:

1. The present Somerville High School is a good, perhaps superior, school in the State's school system, and it offers a well-rounded educational program to all pupils.

2. The pupil population of the high school at the present time is, in terms of the breadth of possible program offerings, an almost ideal number of approximately 1250 pupils.

3. Such pupil population in the high school is technically overcrowding, but such overcrowding is managed well and is not, on the evidence of this hearing, a serious reason to recommend severance of the relationship. Additionally, there is the possibility of some future correction to rectify the problem at a minimal cost.

4. An approval of the requested severance would have a financial impact on both school districts which, while not precisely delineated, would be of great significance. There was no testimony at the hearing that Branchburg's costs for high school education would be reduced by severance and in fact every witness testified they would be greater. Similarly, Somerville's per pupil costs, even if mitigated by reductions in program, would almost certainly be increasingly burdensome. The Branchburg Board's suggestions for utilization of the Somerville High School building would clearly represent an educational step in the wrong direction if implemented by the Somerville Board.

5. Severance at an increased pupil cost to both communities will result in the necessity to maintain two small high schools with limited programs and reduced educational opportunities. There is no method known to the hearing examiner, except increased expenditures and higher per pupil costs, for a high school of 550-650 pupils to be educationally comparable to a high school of twice that size.

6. There are factors of racial balance as reported, *ante*, which are of more than minimal significance.

You are viewing an archived copy from the New Jersey State Library.

The reasons which appear to mitigate such facts include: the opportunity for real and effective local control of education in Branchburg, a voice for citizens in school affairs, the pride of ownership and, perhaps most importantly, the Branchburg opinion that it will "grow into" a proposed high school in which it plans initially to enroll grades seven through twelve.

The hearing examiner adjudges that the time is not ripe to conclude that such factors weigh in favor of the request for severance, and it may well be that when and if such time arrives, Somerville may be as willing as Branchburg to effect the severance which it now opposes.

This conclusion is reached as a result of a balancing of all the present known and projected factors with respect to the request for severance by the Branchburg Board. Of most importance, however, is the fact that severance would result in the substitution of two small high schools for a good, almost ideally sized high school wherein, on the record of this hearing, there is a well established, fine educational program. The factual situation is thus similar to that *In the Matter of the Application of the Boonton Board of Education for the Termination of the Sending-Receiving Relationship with the Board of Education of Lincoln Park, Morris County,* 1974 *S.L.D.* 1023. Therein the hearing examiner found that there was a preponderance of reasons against the severance of a long relationship and that such relationship should be continued. Such finding was founded in part on the testimony of a County Superintendent and was expressed as follows:

> "***Of principal importance in this regard is the expressed conclusion of the County Superintendent that such a severance as proposed here would reduce the enrollment of Boonton High School to a 'barely functional' level and make it very difficult to sustain the diversity of program which that high school offers now. *** This view is consistent with previously expressed case law cited *ante* which, in general, holds that a fragmentation of sending-receiving relationships is not desirable when, as here, such fragmentation would almost certainly require a contraction of educational offerings, an increase in overhead costs, and resultant detriment to Boonton as well as to Lincoln Park.***" (at 1033)

Such determinations have been made by the Commissioner on many occasions in prior years and are summarized *In the Matter of the Application of the Upper Freehold Regional Board of Education for the Termination of the Sending-Receiving Relationship with the Board of Education of the Township of Washington, Mercer County,* 1972 *S.L.D.* 627, as follows:

> "***The judgment required of the Commissioner is whether 'good and sufficient' reason exists to warrant the termination of an existing sending-receiving relationship and if so, whether or not there are 'good grounds' for such termination.
>
> "In interpreting the words of these statutes, and similar statutes which have preceded them, the Commissioner has often been required to elucidate the specifics which underlie such judgments***." (at 634)

You are viewing an archived copy from the New Jersey State Library.

Perhaps the most complete rationale for decision-making involving sending-receiving relationships is found in *Haworth, supra,* wherein the Commissioner stated the following:

> "***In considering an application for a change of designation or reallocation of pupils, the Commissioner must be mindful of the purpose of the high school designation law. In this State there are 165 school districts which maintain high schools for pupils of all high school grades. This means that 387 school districts must depend upon the 165 for the education of their high school pupils. This arrangement is mutually advantageous. The sending districts obtain high school facilities cheaper than such facilities can be provided by themselves and the additional pupils enable the receiving districts to expand their educational offerings and reduce their overhead.
>
> "The success of the so-called 'receiving-sending set-up' has given New Jersey an enviable position in the nation in secondary education. New Jersey has fewer small high schools than any other State in the United States. It was to give stability to the receiving-sending set-up that the first high school designation law was enacted. Before the enactment of this law, receiving districts hesitated to bond themselves to erect buildings and to expand their facilities to provide for tuition pupils for the fear that the tuition pupils might be withdrawn after the facilities have been provided. The high school designation law protects such districts from the withdrawal of tuition pupils without good cause. This statute benefits the sending district as well as the receiving district. If the law were not in effect, many sending districts, either individually or by uniting with other districts, would be burdened with the erection and maintenance of high schools.
>
> "In order to provide for cases where good and sufficient reasons exist for the transfer of pupils to another high school, the Legislature charged the Commissioner with the duty of determining when there is good and sufficient reason for a change of designation. The Commissioner feels constrained to exercise his discretion under the statute with great caution. Otherwise, the law will not accomplish the salutary purposes intended by the Legislature. Accordingly, the Commissioner will grant an application for change of designation or reallocation of pupils only when he is satisfied that positive benefits will accrue thereby to the high school pupils sufficient to overcome the claims of the receiving district to these pupils.***" (1950-51 *S.L.D.*, at p. 43)

The finding herein is that the "positive benefits" which would accrue if severance were granted are outweighed on balance by serious and compelling reasons of educational and financial importance and that the "burden of proof" that is required for approval of the requested change has not been advanced. Accordingly, the hearing examiner recommends that the Petition be dismissed and that the parties be directed to explore other avenues of cooperation and discussion as at least a partial solution to the problems of communication which are hereinbefore set forth.

You are viewing an archived copy from the New Jersey State Library.

This concludes the report of the hearing examiner.

* * * *

The Commissioner has reviewed the report of the hearing examiner and the exceptions, objections and replies pertinent thereto filed by the Branchburg and Somerville Boards. The Branchburg Board disputes the findings of fact and avers that such findings should have embraced a statement that the Somerville High School is overcrowded, both as a school and with respect to many of its areas. It further avers that there is no testimony in the record to show that a 1250 pupil high school is "any more or less ideal" than one with another number of pupils and disputes the finding that severance of the relationship will result in the creation of two small high schools with limited programs and reduced educational opportunities. (Exceptions of the Branchburg Board, at p. 1) The Branchburg Board also maintains that the racial balance statistics in all Somerville schools should have been considered and avers that there is no evidence to support a conclusion that severance "***would be too burdensome for Branchburg to bear and this should be for the citizens of Branchburg to determine.***" (Exceptions of the Branchburg Board, at p. 3) Additionally, the Branchburg Board maintains that passage of the Public School Education Act of 1975 (*N.J.S.A.* 18A:7A-1 *et seq.*) and the Commissioner's decision in *Board of Education of the Borough of Bloomingdale, Passaic County v. Board of Education of the Borough of Butler, Morris County,* 1976 *S.L.D.* 944 has in effect "***added a whole new dimension to the law of sending-receiving relationships***," although it is not maintained that a regionalization proposal is, in the instant matter, a solution to the problems presented. (Exceptions of the Branchburg Board, at p. 8)

The Somerville Board avers that the hearing examiner's report incorrectly indicated that the Branchburg Board had proceeded toward severance with the concurrence of the Somerville Board during the period 1972-75. It cites the testimony of its Superintendent in this regard. (Tr. V-110, 114)

Thus the instant controversy stands as one with contested facts and disputed conclusions embracing a legal argument grounded in the passage of a comprehensive legislative enactment designed to insure a thorough and efficient educational program for all pupils. This legal argument, while similar to the one in *Bloomingdale, supra,* wherein there was a demand that the Commissioner direct a regionalization of the two districts, differs in that the request is for severance and complete independence. The question for determination is whether such severance would be in the best interests of both the Branchburg and Somerville Boards in the joint desire of the two Boards to provide an appropriate program of education for all of their high school pupils. A key component of such question is whether a "breadth of program" mandated as necessary by the Public School Education Act could be maintained by the Boards at a time subsequent to severance. The hearing examiner concluded it could not without increased expenditures and higher per pupil costs.

There are no clearly convincing and definitive studies known to the Commissioner which may be employed to remove the question of cost

You are viewing an archived copy from the New Jersey State Library.

efficiency-optimum size from the realm of subjective judgment when discussing secondary schools. The Director of the Bureau of Facility Planning, State Department of Education, did report to the Commissioner in 1975 that recent studies had supported a finding that secondary schools with enrollments in excess of 1500 pupils were not desirable. Such finding was evidently premised on studies of schools wherein there had been pupil disruption and was occasioned in part by the concern of civil defense organizations for the safety of exceptionally large numbers of pupils in the event of natural disasters. The finding appears to be a reasonable one although it has not been adopted by the State Board of Education as a policy determinant.

Neither has there been a policy determinant with respect to the minimum number of pupils necessary to the offering of an effective breadth of program, although such consideration was an integral part of the State Board's decision on September 12, 1973 to refuse approval for the School District of the Borough of Sea Girt, Monmouth County, to build its own high school and sever its relationship with the Board of Education of Manasquan. The facts of that proposal differ from those herein in that the contemplated secondary school proposed to be established was for less than 200 pupils. The issue was similar to the instant matter, namely, whether a high school of small size, even in a community of great resources, could offer a well-rounded and adequate program of education. In discussing the issue the then Assistant Commissioner of Education for Curriculum and Instruction, said:

> "***The basic problem is there can be no assurance that the comprehensive program needed to run a modern secondary school can be maintained with such a narrow pupil base, consequently we have had to recommend to the Commissioner that this not be approved.***"
> (1973 State Board Tr. 46)

The State Board acted in conformance with the recommendation. The proposal was not approved. Pupils of Sea Girt are still in attendance at Manasquan High School on a double session schedule.

The other principal precedents with respect to the approval of small high schools are those reported with respect to *Boonton, supra,* and *Haworth, supra*. It is particularly noteworthy that in *Haworth* the Commissioner indicated that New Jersey was in an "enviable position in the nation" since:

> "***New Jersey has fewer small high schools than any other State in the United States.***" (1950-51 *S.L.D.* at 43)

In the context of these precedents and the testimony of the instant hearing, the principal question is whether it is desirable and/or feasible to grant a severance to Branchburg at this juncture and whether, if it is, such severance would be advantageous to both districts or at the least not harmful to either one. A principal element of the total consideration is this concern with the matter of an optimum school size applicable to secondary schools.

In this regard the Commissioner reaffirms the view that a proliferation of

You are viewing an archived copy from the New Jersey State Library.

small high schools which might result from either a severance of sending-receiving relationships or deregionalization proposals is not desirable and that all such proposals, if they are to be met with acquiescence, must show that the number of pupils enrolled in grades nine through twelve will not, at the time of separation or within a period of five years thereafter, fall below a minimum of 800 pupils nor exceed 1500 pupils. Such parameters appear to be consistent with the findings of research on the subject and to be reasonable.

The research concerned with the optimum size of schools and school districts appears almost without exception to emphasize a trend toward larger secondary schools and a consolidation of school districts. This trend was evidently given great impetus by Dr. J.B. Conant who in 1959 focused his attention on the limitations imposed by restricted curricular offerings in small secondary schools. The trend was discussed by Harl R. Douglas in his book, *Trends and Issues in Secondary Education.* (The Center for Applied Research in Education, Inc., 1962) He said:

> "******Optimum size of high school.*** Increased attention has been given in recent years to the optimum size of high schools. Dr. J.B. Conant, for example, recommends that wherever possible secondary schools be established with at least 100 students in the twelfth grade. This recommendation is made not only for the purpose of increasing the offerings of the school and the quality and extent of better housing and equipment, but also to encourage the formation of groups of definitely superior students and groups of definitely less academically able students. The consensus of leaders of secondary education based on data gathered in the doctoral theses of Professors Albert I. Oliver, Jr., and W.C. Wood at the University of Colorado, and Dr. L.P. Mennozi, at the University of Denver, seems to indicate a preference for secondary schools of the following sizes: two-year junior high schools, 300 to 500 students; three-year junior high schools, 500 to 800 students; senior high schools, 600 to 1,000 students; and four-year high schools, 800 to 1,200 students.***" (at 69)

While recognizing that there is a wide range of opinion with respect to the acceptable and/or optimum school size, authors Calvin Grieder, Professor of School Administration, University of Colorado, Truman M. Pierce, Dean, School of Education, Auburn University, and William Everett Rosenstengel, late Professor of Education at the University of North Carolina, listed in *Public School Administration* (Ronald Press, 1961) the following "optimum" enrollments as representing the recommendations of forty-five leading school authorities:

School Grade Level	Pupils
Grades 1-6	525
Grades 1-8	550
Grades 7-9	700
Grades 10-12	950
Grades 7-12	775

(at 16)

You are viewing an archived copy from the New Jersey State Library.

Peter F. Oliva of the University of Florida set forth statistics with respect to the decline of small high schools in the United States in his book, *The Secondary School Today* (World Publishing, 1967) and made the following comments with respect to small and large secondary schools:

> "***Educational administration is constantly faced with the questions of size relationships. Some findings, many of which are based upon opinions and limited documentary evidence, seem to indicate (1) that extremes in minimum size are uneconomical, inefficient and do not foster effective educational programs; and (2) that maximums in size do not necessarily guarantee economic efficiency and effective educational programs. There is good evidence that units which are too small are economically inefficient and very limiting in terms of program possibilities; it also indicates that beyond certain sizes both economic and program efficiencies appear to plateau.
>
> "*Administrative units*. In the local setting, administration is faced first with the question of size of the administrative units which can be operated economically, efficiently, and effectively. Much literature has been produced on the size of an optimum administrative unit, particularly in the publications and studies on reorganization of school districts. The most frequently mentioned characteristics of satisfactory, effective, and ideal districts are (1) large enough child population for good educational services for at least grades 1-12; (2) conformation with 'natural sociological areas'; (2) satisfactory distance factors for walking or bus travel; and (4) adequate financial base for supporting an effective educational program.***" (at 16)

The State Department of Education in its brochure, "Toward Better Schools in New Jersey," set forth in 1969 the following rationale with respect to the matter of school size:

> "***Size in itself does not guarantee quality education. But it does provide a broader financial and professional foundation upon which schools can build improved programs.
>
> "Research has shown that, generally, the larger the school the better prepared the teachers, the more extensive are school services (such as course offerings) and the greater the achievement of the students.
>
> "It is generally acknowledged that the quality of education is determined largely by the competence of the staff, and numerous studies have demonstrated that teaching experience and the amount of professional training both increase with the size of enrollment – especially at the high school level. New Jersey's own study reports that school districts with fewer than 1,500 students tend to have the smallest percentage of teachers with master's degrees. It has been found that the larger districts attract better prepared teachers largely because they offer a wider range of teaching experiences and better incentives in the form of modern facilities, opportunities for in-service training and greater educational resources.

You are viewing an archived copy from the New Jersey State Library.

"There is also a definite link between enrollment and the number of course offerings. A study of New Jersey high schools has shown that only 63 per cent of the high schools in the state offer 80 or more courses. Nearly all (87 per cent) of these schools are in larger districts.

"An association between size and student achievement is well-documented by reliable research. In study after study, researchers have concluded that measurable academic achievement is higher in larger schools at both the elementary and high school levels.***"

This brochure followed the publication of the report of the "New Jersey State Committee to Study the Next Steps of Regionalization and Consolidation in New Jersey" and was premised on it. The report of the Committee consolidated the views of twenty educators and persons interested in education in New Jersey and contained the following recommendation with respect to school districts and pupil enrollments:

"A. *School District*

"1. All school districts be organized on a K-12 (N-12) basis to provide a comprehensive, quality education for all pupils.

"2. Constituent districts of regionals or districts with sending-receiving relationships be reorganized in a K-12 district.

"a. Exception: When such reorganization mitigates against an effective county reorganization plan.

"3. Districts which have not maintained nor operated a school for the preceding two years shall become a part of a reorganized district.

"B. *Enrollment*

"4. The comprehensive K-12 district enroll a minimum of 3,500 pupils.

"a. Exceptions to the minimum may be allowed when:

(1) the proposed district is so extensive as to require transportation greater than 45 minutes one way.

(2) the growth of the proposed district is projected to be sufficient to meet the minimum enrollment by 1973.***" (at 5)

In the context of such studies the proposal of Branchburg to construct a six year high school for an initial enrollment of only approximately 750 pupils is one which is barely minimal at best and with the additional factor of population decline may not approach even that level in future years. These factors may not be disregarded and the Commissioner is cognizant of their importance. Many

You are viewing an archived copy from the New Jersey State Library.

schools in New Jersey have been closed or are closing because of declining enrollments. Citizens in two school districts in Middlesex County have recently expressed their concern to the Commissioner regarding the effect of such declines on the comprehensiveness of their high school programs. Cost escalation and program skeletonization appear as major factors for consideration.

In the context of these factors the Commissioner determines that he cannot find sufficient assurance in the pupil population data furnished by the Branchburg Board and the record of this hearing to decide that the severance here proposed should go forward. There is no projection that the Branchburg pupil population will reach 800 pupils in a four year high school in the immediate future, and it will possibly remain well below this figure. There are factors of racial imbalance with respect to secondary enrollment which are significant. While it is argued that the citizens of Branchburg should be left to decide for themselves whether they will bear increased costs, such decision cannot be made in a vacuum which ignores the interests of the citizens of Somerville. There is no challenge by the Branchburg Board with respect to the finding, *ante,* that the record of this hearing is proper attestation to the fact that increased costs would be incurred by both school districts if severance were permitted to go forward.

The Commissioner is fully cognizant of the fact that program articulation would be enhanced for Branchburg pupils by severance and that such articulation is rendered difficult by the organizational infirmities of the sending-receiving relationship *per se*. There is no opportunity in such relationship for an effective representation in school affairs for the citizens of Branchburg or for the parents of more than 25,000 pupils in other New Jersey communities and, as the Branchburg Board correctly avers, this fact is an apparent contradiction to the mandate of the Public School Education Act of 1975 that there shall be public participation in school affairs. Such participation is at best incomplete if there is no effective vote on major policy decisions in school matters and may often be ineffective. The remedy for this problem is not primarily one for administrative action, although in *Bloomingdale, supra,* the specific facts required such action, but in the form of legislative review and change. The Commissioner would deem it advisable if all districts in the State were organized on the basis of a comprehensive enrollment, grades kindergarten through twelve, and will do what is administratively possible to foster this kind of organization in the development of new regional groupings proposed pursuant to law, and in his review of deregionalization proposals. The Commissioner does not deem it advisable in the instant matter to weigh this factor so heavily in the total equation.

Accordingly, the application of Branchburg for the severance of its sending-receiving relationship with Somerville for the education of high school pupils is denied.

COMMISSIONER OF EDUCATION

May 31, 1977
Pending State Board of Education

State of New Jersey
Department of Education
225 West State Street
Trenton, N.J. 08625

You are viewing an archived copy from the New Jersey State Library.