

FIELDS HOWARD, PHILIP HAMILTON	:	
AND GERALDINE BUCHANAN,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
STATE-OPERATED SCHOOL DISTRICT	:	DECISION
OF THE CITY OF NEWARK, ESSEX	:	
COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioners, three District administrators, alleged that their requests to attend the Annual Convention of the New Jersey Education Association (NJEA) were denied in violation of *N.J.S.A.* 17A:31-2. Petitioners attended the convention and were charged personal days. Petitioners sought restoration of their days and retroactive compensation. Respondent contended that the statute does not mandate payment after permission has been denied.

The Commissioner determined that there is no provision in *N.J.S.A.* 18A:31-2 for denial of permission for an employee's attendance at the NJEA convention under any circumstances. Thus, the Commissioner found that respondent impermissibly denied petitioners' requests to attend the convention in violation of the statute. Respondent's Motion for Summary Dismissal was denied and Summary Decision was granted in favor of petitioners. The Commissioner ordered the District to restore petitioners' personal days and to retroactively compensate petitioners for any salary, benefits and emoluments lost as a result of respondent's action. Request for interest was denied.

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This matter was opened January 14, 2003 by way of the filing of a Petition of Appeal. Petitioners Fields Howard and Geraldine Buchanan, Vice Principals in the State-operated School District of Newark, allege that their requests to attend the Annual Convention of the New Jersey Education Association (NJEA) on November 7 and 8, 2002 were denied in violation of *N.J.S.A.* 18A:31-2.<sup>1</sup> Petitioner Philip Hamilton, a Department Chairperson in the District, alleges that the he did not receive a response to his request to attend the NJEA Convention. Notwithstanding that their requests to attend the NJEA convention were not approved, petitioners attended the NJEA convention. As a result, Petitioners Howard and Buchanan were charged two personal days for their attendance at the NJEA convention on November 7 and 8, 2002, and Petitioner Hamilton was charged one personal day for his

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<sup>1</sup> Ms. Buchanan claims that she originally received permission to attend the NJEA convention, but that she was notified by her principal on November 1, 2002 that permission to attend the convention was no longer granted. (Petition of Appeal at 3)

attendance on November 8, 2002. Petitioners seek an order by the Commissioner directing respondent to:

- 1) restore the personal days that were deducted as a result of the administrators' attendance at the NJEA convention in Atlantic City;
- 2) retroactively compensate petitioners for all salary, benefits and emoluments lost as a result of respondent's action, with interest; and
- 3) provide such other and further relief as the Commissioner of Education may deem just and equitable. (Petition at 2-4)

Respondent filed a Motion for Summary Dismissal in lieu of an Answer on March 7, 2003, averring that "*N.J.S.A.* 18A:31-2 does not mandate paying District administrators who attend a New Jersey Education Association conference after their request has been denied for a legitimate reason."<sup>2</sup> (Motion for Summary Dismissal at 1) Respondent asserts that this matter is ripe for a summary disposition, pursuant to *N.J.A.C.* 6A:3-1.12, in that there are no genuine issues of material fact in dispute and the petition arises out of the interpretation of *N.J.S.A.* 18A:31-2 (attendance at NJEA conventions), which is clearly within the Commissioner's jurisdiction. (*Id.* at 2-3)

Respondent submits that the plain language of *N.J.S.A.* 18A:31-2 shows that attendance at the NJEA convention is permissive and that statutory language should be given its ordinary meaning if its terms are clear and unambiguous on its face. *See State v. Butler*, 89 *N.J.* 220, 226 (1982). (*Id.* at 4) "Even if there is ambiguity, the facial meaning of the statutory language controls. *International Broth. Of Elec. Workers v. Gillen*, 174 *N.J.S.* 326, 329 (App. Div. 1980)." (*Ibid.*)

Respondent argues that the use of the word shall in *N.J.S.A.* 18A:31-2 mandates that payment shall be made once permission to attend the convention has been granted and that

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<sup>2</sup> As noted by respondent, "in a State-Operated District the State District Superintendent assumes the function of a board and is therefore charged with making the decision under this provision." (*Id.* at 2)

permission to attend the convention should not be arbitrarily denied. (*Ibid.*) The statute does not mandate payment, respondent asserts, after permission has been denied. The only position petitioners can assert, in respondent's view, is that the denial of permission to attend the convention was an arbitrary decision. (*Ibid.*) This position, if asserted by petitioners, must be rejected, respondent claims, because petitioners' requests to attend the NJEA convention were denied for legitimate reasons. Respondent claims that the District had established a deadline for the first week in December 2002 for preparation of its budget and that these administrators' presence was required on November 7 and 8 to complete the school-based budgets. (*Id.* at 4-5) Moreover, if all petitioners had to do was to submit their requests and attend the NJEA convention, respondent reasons, the statute would not require attendees to seek permission beforehand. (*Id.* at 5)

As set forth in their opposition papers filed on March 28, 2003, it is petitioners' position that the law mandates that respondent allow employees to attend the NJEA convention, that employees be paid for those days of attendance at said conference and that respondent's interpretation that the granting of leave is permissive is clearly erroneous. (Petitioners' Opposition to Motion at 1-2) In support thereof, petitioners cite, *inter alia*, a decision made by the Public Employment Relations Commission (PERC), *In the Matter of East Hanover Township Board of Education, Respondent, and East Hanover Education Association*, 19 NJPER 24232 (1993), *aff'd on appeal*, 19 NJPER 24158 (1993), which held that:

the school board had engaged in an unlawful interference with the association by requiring secretaries to obtain approval for a professional day and to file a professional day report for attending the NJEA meeting in order to receive pay. The hearing officer ordered that the Board accept a Certification of Attendance at the NJEA meeting in order to receive pay. The hearing officer ordered that the Board accept a Certificate of Attendance at the NJEA convention as the only document required for full payment of a secretary's salary for days of attendance at the convention\*\*\*. (*Id.* at 2)

According to petitioners, PERC indicated in *East Hanover, supra*, that, while there had not been any judicial or administrative decision construing *N.J.S.A. 18A:31-2*, it was the Legislature's intent that whenever an employee applies for permission to attend the annual convention of the NJEA, such permission shall be granted for a period not to exceed two days in any one calendar year. (*Id.* at 3)

In conclusion, petitioners assert that respondent has offered no case law in support of its conclusion that a school district has discretion with respect to whether to grant permission for employees to attend the NJEA convention, and thus, as cited in *East Hanover, supra*, interpretation of the statute at issue must be in favor of the employees. (*Id.* at 4)

Initially, the Commissioner has determined to deny respondent's Motion for Summary Dismissal of the Petition of Appeal. However, the Commissioner does agree that summary decision is appropriate in this instance, pursuant to the discretionary authority granted by *N.J.A.C. 6A:3-1.12*, in that no facts are in dispute, the issue is a matter of legal interpretation within the Commissioner's jurisdiction and both parties have had an opportunity to set forth their legal arguments in the course of briefing on respondent's motion for summary dismissal. In reviewing the statutory language in *N.J.S.A. 18A:31-2* and the arguments presented by the parties, the Commissioner has determined that petitioners are entitled to prevail as a matter of law for the reasons that follow.

*N.J.S.A. 18A:31-2.* Attendance at conventions of New Jersey Education Association provides that:

*Whenever any full-time teaching staff member of any board of education of any local school district or regional school district or of a county vocational school or any secretary, or office clerk applies to the board of education by which he is employed for permission to attend the annual convention of the New Jersey Education Association, such permission shall be granted for a period of not more than two days in any one year and he shall*

receive his whole salary for the days of actual attendance upon the sessions of such convention upon filing with the secretary of the board a certificate of such attendance signed by the executive secretary of the association. (emphasis added)

The Commissioner agrees with respondent that statutory language should be given its ordinary meaning if its terms are clear and unambiguous on their face. As emphasized above, the statute states that “whenever any full-time teaching staff member\*\*\*applies\*\*\*for permission to attend the annual convention of the [NJEA], such permission shall be granted\*\*\*”. The Commissioner finds that such statutory language is clear and unambiguous on its face. Thus, when a full-time staff member of any board of education of any local school district or regional school district or of a county vocational school or any secretary, or office clerk applies to the board of education by which he is employed for permission to attend the annual convention of the NJEA, there is no discretion provided in the statute for denial of such request. Although respondent argues that the use of the word “shall” in *N.J.S.A.* 18A:31-2 mandates that payment shall be made once permission to attend the convention has been granted and that permission to attend the convention should not be arbitrarily denied, the use of the word “shall” cannot be construed to suppose an intent by the Legislature that is unwritten and unexpressed in the statute. There is no provision in the statute at issue providing that an employee’s request to attend the NJEA convention should not be arbitrarily denied or shall only be denied for legitimate business reasons. (*Ibid.*) In fact, there is no provision for denial of permission under any circumstances set forth in *N.J.S.A.* 18A:31-2.

Accordingly, for the reasons expressed above, the Commissioner finds that respondent impermissibly denied petitioners’ requests to attend the NJEA convention on November 7 and 8, 2002 in violation of *N.J.S.A.* 18A:31-2. Respondent’s Motion for Summary Dismissal is, therefore, denied. Summary decision is granted in favor of petitioners and the State-operated School District of the City of Newark is ordered to restore the personal days that

were deducted as a result of petitioners' attendance at the NJEA convention in Atlantic City and to retroactively compensate petitioners for any salary, benefits and emoluments lost as a result of respondent's action. Pursuant to *N.J.A.C.* 6A:3-1.17, petitioner's request for interest is denied.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 28, 2003

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<sup>3</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*