

BOARD OF EDUCATION OF THE :
BOROUGH OF BLOOMINGDALE, :
PASSAIC COUNTY, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :
BOROUGH OF BUTLER, :
MORRIS COUNTY, :

RESPONDENT. :
_____ :

SYNOPSIS

Petitioning sending Board of Education (Bloomingdale) contended respondent receiving district Board of Education (Butler) was prohibiting its representative from voting on certain matters in violation of *N.J.S.A.* 18A:38-8.1 and applicable case law. Each Board submitted a cross-motion for summary decision.

The ALJ denied both Boards' motions and directed that the matter proceed to plenary hearing, reasoning that operative law requires subtle distinctions among agenda items that cannot be made in the absence of a fully developed factual record. The Boards contended that the ALJ's Order created an unworkable standard and jointly requested interlocutory review for purposes of establishing a "bright line test."

The Commissioner granted the requested review and rejected the ALJ's Order. Reiterating the standard set forth in prior case law (*Lincoln Park, Little Ferry and Green*), the Commissioner granted Butler's motion for summary decision, holding that the agenda items on which the Bloomingdale Board member had been prohibited from voting were neither procedural/organizational nor expressly enumerated in *N.J.S.A.* 18A:38-8.1, and were, therefore, beyond the scope of authority conferred upon sending district board members by applicable statute and case law.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

June 17, 2004

OAL DKT. NO. EDU 9367-03
AGENCY DKT. NO. 251-7/03

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This matter comes before the Commissioner by way of a joint request for interlocutory review of the Letter Order of the Office of Administrative Law (OAL) denying the parties’ cross-motions for summary decision. The request was submitted, granted and briefed in accordance with the provisions of *N.J.A.C.* 1:1-14.10.

In the Order under review, the Administrative Law Judge (ALJ) concluded that the agenda items in dispute were not amenable to analysis in the absence of a fully developed record, since the operative statutes and case law require fact-sensitive distinctions between “procedural” and “substantive” items, as well as a determination of the extent to which any particular item is “of district-wide importance” or any particular sending-district-member voting prohibition is “unduly restrictive.” (Letter Order at 9) The parties contend that this standard is unworkable, effectively contemplating factual analysis of every vote taken by the Butler Board of Education; they therefore ask that the Commissioner reject the ALJ’s recommendation, decide the case as a matter of law and

create a “bright line test” to be relied upon by the parties without the need to debate each time a matter comes up for vote before the Butler Board. (Request for Interlocutory Review at 5-6)

The Bloomingdale Board claims that *N.J.S.A.* 18A:38-8.1 provides “inherent rights to [its] representative by virtue of his membership on the receiving district’s board,” and that the Commissioner’s decisions in *Little Ferry, supra*, and *Lincoln Park, supra*, confer upon sending district board members the full spectrum of rights attendant to membership on receiving boards. According to Bloomingdale, such rights “undoubtedly include voting on procedural and organizational matters” which “clearly are of district-wide importance and affect the Butler High School”; these include but are not limited to: “the professional appointments of non-teaching staff employees at the high school level; teaching staff members; the designation of Board of Education accounts and required signatures; the approval of financial depositories; and the approval of outside organizations’ use of school facilities.” Therefore, Bloomingdale contends, as a matter of law, its representative on the Butler Board is entitled to vote, in addition to those matters specified in *N.J.S.A.* 18A:38-8.1, on all “procedural matters, high school issues, and matters of district-wide importance.” (Bloomingdale’s Brief at 3-8). In response to Butler’s arguments in opposition, Bloomingdale denies that it is attempting to expand the *substantive* voting rights of its representative and counters that it is merely attempting to compel Butler to honor the *procedural and organizational* voting rights conferred by law, particularly the Commissioner’s decision in *Little Ferry, supra*. (Bloomingdale’s Reply Brief at 1-5)

Upon review of the ALJ's Order, the briefs of the parties and the Stipulation of Facts which together constitute the substantive record of this matter, the Commissioner determines to reject the recommended Order and grant summary decision to the Butler Board of Education.

The Commissioner is unpersuaded by Bloomingdale's attempt to characterize the matters on which it contends its representative is entitled to vote as "procedural and organizational" within the meaning of the Commissioner's decision in *Little Ferry, supra*. Indeed, the Commissioner finds that Bloomingdale's claims are premised on an erroneous reading of *Little Ferry*, and that, to a great extent, the ALJ has accepted that reading in reaching his conclusion on the appropriateness of summary decision. Both Bloomingdale, in its briefs, and the ALJ, in his recommended Order at 8-10, have properly recognized—as has the Butler Board—that statute and case law accord membership to a sending district member on the receiving board, and that such membership entails rights over and above the substantive voting rights expressly specified in statute. All have understood that these rights are not unlimited, however, and that the parameters for them have been established by prior decisional law.

Where Bloomingdale and the ALJ have erred is in fixing upon individual phrases within the text of *Little Ferry*—such as "organizational and procedural matters of district-wide import," "procedural matters attendant to the orderly conduct of Board operations," "full and effective participation as a board member," and cautions against "unduly restrictive" interpretation of *N.J.S.A.* 18A:38-8.1—to conclude, contrary to the clear general thrust of the decision itself, prior related case law and the statute and its legislative history, that the voting rights conferred on a sending district board member by

virtue of his or her membership on the receiving board are, or may potentially be, depending upon factual circumstances, sufficiently expansive in scope to encompass the wide range of issues set forth in Bloomingdale's complaint. (Bloomingdale Brief at 4-8; Bloomingdale Reply at 2-6; Initial Decision at 8-10)¹

Instead, the Commissioner finds *Little Ferry* to stand for the clear proposition that, as the Butler Board has correctly set forth in its briefs and correspondence with the Bloomingdale Board (Stipulation of Facts, Exhibits E and G), the rights afforded to sending district members on receiving boards of education in effectuation of their status as board members, over and above the substantive voting rights expressly enumerated in statute, extend *only* to participation in deliberation, discussion and access to materials and information, and to voting on organization of the board pursuant to *N.J.S.A.* 18A:10-3 and 18A:15-1 and other "procedural and organizational matters necessary to ensure the effective operation *of the board itself*." (*Little Ferry, supra*, Slip Opinion at 7-8 (emphasis supplied); see also, *Board of Education of the Township of Green, Sussex County, v. Board of Education of the Township of Newton, Sussex County*, decided by the Commissioner August 5, 1997.)

In other words, under controlling statute and case law, the sending district board member's right to vote on non-enumerated matters encompasses *internal procedural and organizational items only*, such as election of officers, parliamentary matters, approval of board minutes and officer reports, and the like, and does *not*

¹ The Commissioner further notes that the more extended language relied upon by the ALJ in the Order at 9, when read in context, pertains in the first instance solely to participatory and deliberative rights, *not* to voting rights, and in the second means no more than that statutory limitations on the sending district representative's substantive voting rights cannot act to limit the procedural voting rights arising from his status as a board member so as to prevent him from voting on the board's organization pursuant to *N.J.S.A.* 18A:10-3 and 18A:15-1. *Little Ferry, supra*, Slip Opinion at 7-8.

encompass matters arising from the operation *of the school district*, as opposed to the operation of *the board itself*, such as voting on staff appointments or employment matters other than those enumerated in *N.J.S.A. 18A:38-8.1c*,² designation of board accounts and required signatures, approval of financial depositories, or use by outside organizations of high school facilities, notwithstanding that such matters may impact on the district as a whole and consequently on the sending district and its students. Indeed, to take the position espoused by Bloomingdale and the ALJ would permit the sending district representative, actually or potentially, to vote on virtually every item before the receiving board, excluding only those few items shown to pertain solely to grades or schools having no impact on the sending district or its students—in clear contravention of a statute that would then be effectively returned to the pre-enactment form expressly rejected by the Governor and the Legislature. (Initial Decision at 6-8; however, see *Lincoln Park, supra*, at 595-96, for a more thorough recitation of the legislative history of *N.J.S.A. 18A:38-8.1*.)

Therefore, apart from two items previously conceded by the Butler Board with respect to appointment of substitute teachers at the high school and approval of Board Officer reports (Butler’s Brief at 13; Butler’s Reply Brief at 2-3), the present record reveals no instance where the Butler Board prevented the Bloomingdale Board member from voting on a matter falling within the scope of applicable statute or

² The Commissioner here notes that *Callowhill, supra*, was *not* repudiated or superseded by *Little Ferry, supra*, contrary to Bloomingdale’s contention (Stipulation of Facts, Exhibit F at 2; Brief at 7), but rather is entirely consistent with it in regard to the sending board member’s entitlement to vote.

decisional law; to the contrary, the Butler Board has at all times interpreted and applied the law correctly.³

Accordingly, for the reasons set forth above, the recommended Order of the ALJ is rejected and summary decision is granted to the Butler Board of Education. The Petition of Appeal is dismissed, and this matter shall be returned to the agency by the OAL pursuant to *N.J.A.C.* 1:1-3.3(a).

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: June 17, 2004

Date of Mailing: June 17, 2004

³ See Stipulation of Facts, Exhibits D through G, in addition to Butler's Brief and Reply.

⁴ 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.*