SB #44-01 and #4-02 (consolidated)

IN THE MATTER OF THE APPROVAL OF THE :
LEASE SUBMITTED PURSUANT TO :
N.J.S.A. 18A:20-4.2 BY THE STATE-OPERATED :
SCHOOL DISTRICT OF THE CITY OF NEWARK, :
ESSEX COUNTY. :

STATE BOARD OF EDUCATION

DECISION ON MOTIONS

Decided by the Commissioner of Education, October 16, 2001

Decision on motion by the Commissioner of Education, December 26, 2001

For the Appellant, Horowitz, Rubino & Patton (Curtis L. Michael, Esq., of Counsel)

For the Respondent State-Operated School District of the City of Newark, Essex County, McManimon & Scotland, L.L.C. (Leslie G. London, Esq., of Counsel)

For the Respondent 570 Escuela Partners, L.L.C., Drinker Biddle & Shanley (Kenneth J. Wilbur, Esq., of Counsel)

This matter involves an appeal from the Commissioner of Education's approval on October 16, 2001 of a lease agreement with an option to purchase between 570 Escuela Partners, LLC (hereinafter "Escuela") and the State-operated School District of the City of Newark (hereinafter "District"), which the Commissioner granted pursuant to N.J.S.A. 18A:20-4.2(e). The appellant is Hartz Mountain Industries, Inc. and its affiliate Hartz 707 Broad Limited Partnership (hereinafter "Hartz"), from whom the District currently leases the premises in which its central administrative offices are housed.

Hartz filed its appeal on November 21, 2001, along with a request that the briefing schedule be placed in abeyance pending a determination by the Commissioner as to whether to reconsider his approval.[1] Because it appeared from the notice of appeal that the appeal had been filed beyond the thirty-day statutory time limitation of N.J.S.A. 18A:6-28, the matter was referred to our Legal Committee for consideration. However, Hartz was afforded the opportunity to submit an affidavit setting forth any circumstances that might be relevant to whether the appeal was timely. In response, Hartz filed an affidavit executed by its Executive Vice President, attesting that the first notice Hartz had of the lease between Escuela and the District was from a newspaper article in the Star Ledger on October 31, 2001, and that the first time it received actual notice of the Commissioner's approval was on November 19, 2001. Based on its review of the circumstances as presented in Hartz's filing, the Legal Committee concluded that Hartz's notice of appeal was in fact timely filed.

On January 9, 2002, Escuela filed a motion with the State Board seeking dismissal of Hartz's appeal on the grounds that the appeal is untimely and that Hartz lacks the requisite standing to pursue the appeal. Escuela also seeks an order from the State Board dismissing a petition of appeal that Hartz has filed with the Commissioner to initiate a contested case.

On January 10, 2002, the District also filed a motion seeking dismissal of Hartz's appeal. Like Escuela, the District contends that the appeal is untimely and that Hartz lacks standing. In addition, the District joins Escuela in seeking dismissal by the State Board of the petition that Hartz has filed with the Commissioner.

[1] On December 26, 2001, the Commissioner determined that he would not reconsider his approval. On January 2, 2002, Hartz filed an appeal from that determination and requested that it be consolidated with its earlier appeal. This request has been granted.

On January 14, Hartz filed its answer to the motions, contending that its appeal is timely and that it has the requisite standing to pursue it. Hartz also argues that it would be improper for the State Board to dismiss its petition of appeal to the Commissioner before the Commissioner has made his determination.

We have carefully reviewed the motions and the arguments of counsel with respect to those motions. For the reasons that follow, we deny them.

Initially, we concur with Hartz that it would be improper for the State Board to order the dismissal of a petition of appeal filed with the Commissioner before he has decided the matter. In point of fact, we lack the jurisdiction to do so. In this respect, we stress that the Commissioner has primary jurisdiction to hear and determine all controversies and disputes arising under the education laws or under the rules of the State Board or the Commissioner. N.J.S.A. 18A:6-9. In contrast, our jurisdiction is over appeals taken from determinations made by the Commissioner. N.J.S.A. 18A:6-27.

We also concur with the Legal Committee that Hartz's appeal of November 21, 2001 is not untimely. Neither Escuela nor the District dispute that Hartz first learned of the their agreement from a newspaper article in the Star Ledger on October 31, 2001. However, they argue that this fact is irrelevant and that the thirty-day statutory limitation must be measured from the date on which a given Commissioner's decision is filed as calculated under the State Board's regulations without regard to whether the party appealing has had notice of the decision. We disagree. There are numerous circumstances in which the statutory time period is appropriately measured from the date on which an appellant receives notice of the determination from which an appeal is being filed. These circumstances include instances in which the mailing of a decision is

delayed so that the date of mailing set forth on the decision is not accurate, when the decision is sent to the wrong address, when mail delivery is interrupted, and when the individual affected by the determination is not notified and does not know about the decision. In such circumstances, calculating the time period for appeal from the filing date of the determination would be contrary to the principles of due process and would result in injustice. As our Legal Committee determined, the circumstances here were such that the time limitation for appeal was properly measured from when Hartz first learned of the agreement between the District and Escuela.

We also find that Hartz has the requisite standing to pursue this appeal. The statutory framework governing appeals to the State Board provides that "[a]ny party aggrieved by any determination of the commissioner may appeal from his determination to the state board." N.J.S.A. 18A:6-27. Hence, our jurisdiction is not limited to appeals from decisions made by the Commissioner in contested cases. Given that fact, standing to pursue an appeal to the State Board is not limited to individuals who were parties to a contested case decided by the Commissioner. Rather, although we are mindful of the distinctions between judicial power and the quasi-judicial authority exercised in administrative proceedings, City of Hackensack v. Winner, 82 N.J. 28-29 (1980), the assessment of whether an individual complainant has standing to pursue an administrative appeal from a determination such as involved here is resolved by application of the principles expressed by the judicial opinions on the subject. Ridgewood Educ. v. Ridgewood Bd., 284 N.J. Super. 427 (App. Div. 1995) (reversing State Board of Education's determination that petitioning education association did not have standing because none of its present members were affected by policy being

challenged and that individual petitioners lacked standing notwithstanding that they were residents and taxpayers of the school district ).

The courts of New Jersey have consistently taken a liberal approach in determining whether an individual has standing. Under the pertinent decisions, an individual has standing to pursue an action when he evidences a sufficient stake in the outcome of the litigation and real adverseness. New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Commission, 82 N.J. 57, 68 (1980); Crescent Park Tenants Ass'n v. Realty Equity Corp. of N.Y., 58 N.J. 98, 107 (1971). At the same time, the courts have recognized that lack of standing to invoke the power of judicial review may confer a conclusive character on administrative action to the possible detriment of the public. Elizabeth Federal S. & L. Ass'n v. Howell, 24 N.J. 488 (1957). They have further recognized that a narrow approach to standing may lose sight of the overriding need of the system to make sure that someone will in fact be able to secure review of administrative action. Id. Hence, when a substantial public interest is involved, a slight private interest may be sufficient to give standing to invoke judicial review. New Jersey State Chamber of Commerce, supra; Elizabeth Federal S. & L. Assn., supra. Moreover, as the Appellate Division has made clear, "[w]here the challenge is to the exercise of legislative or quasi-legislative power, the public interest is necessarily involved…." Ridgewood Educ. v. Ridgewood Bd., supra.

In this case, termination of Hartz's lease is the inevitable consequence of the District's determination to enter into an agreement with Escuela to obtain new premises for its administrative offices and the Commissioner's approval of such agreement. It is difficult to see how termination of the District's lease with Hartz would not be detrimental

to Hartz's interests. This is sufficient to provide Hartz with the requisite standing to challenge the Commissioner's approval of the District's agreement with Escuela. See Enourato v. N.J. Building Authority, 90 N.J. 396 (1982). Moreover, given the character of Hartz's allegations concerning the propriety of the process that resulted in the Commissioner's approval and its assertions that the arrangement with Escuela is contrary to the interests of the taxpayers, it is in the public interest for this appeal to be heard.

In sum, we find that Hartz's appeal from the Commissioner's determination of October 16, 2001 is not untimely and that Hartz has the requisite standing to pursue its challenge to that determination. We also find that it would be improper for the State Board to order the Commissioner to dismiss the petition filed with him by Hartz to initiate a contested case. We therefore deny the motions to dismiss this appeal that were filed by Escuela and the District. In doing so, we stress that we have considered and decided only those motions and that we make no judgment concerning the merits of Hartz's appeal.

Debra Casha recused herself.

February 6, 2002

Date of mailing _____